

VEECO INSTRUMENTS INC

FORM 10-Q (Quarterly Report)

Filed 10/31/07 for the Period Ending 09/30/07

Address	TERMINAL DRIVE PLAINVIEW, NY 11803
Telephone	516 677-0200
CIK	0000103145
Symbol	VECO
SIC Code	3559 - Special Industry Machinery, Not Elsewhere Classified
Industry	Semiconductors
Sector	Technology
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **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 0-16244

VEECO INSTRUMENTS INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of
Incorporation or Organization)

11-2989601

(I.R.S. Employer
Identification Number)

**100 Sunnyside Boulevard, Suite B
Woodbury, New York**

(Address of Principal Executive Offices)

11797-2902

(Zip Code)

Registrant's telephone number, including area code: **(516) 677-0200**

Website: **www.veeco.com**

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 ☒ 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 ☐

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

31,767,392 shares of common stock, \$0.01 par value per share, were outstanding as of the close of business on October 29, 2007.

SAFE HARBOR STATEMENT

This Quarterly Report on Form 10-Q (the “Report”) contains 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. Discussions containing such forward-looking statements may be found in Items 2 and 3 hereof, as well as within this Report generally. In addition, when used in this Report, the words “believes,” “anticipates,” “expects,” “estimates,” “plans,” “intends,” and similar expressions are intended to identify forward-looking statements. All forward-looking statements are subject to a number of risks and uncertainties that could cause actual results to differ materially from projected results. These risks and uncertainties include, without limitation, the following:

- The cyclical nature of the microelectronics industries we serve directly affects our business.
- We operate in an industry characterized by rapid technological change.
- We face significant competition.
- We depend on a limited number of customers that operate in highly concentrated industries.
- Our quarterly operating results fluctuate significantly.
- Our outsourcing strategy could adversely affect our results of operations.
- We rely on a limited number of suppliers.
- Any difficulty or inability to attract, retain and motivate key employees could have a material adverse effect on our business.
- We are exposed to the risks of operating a global business and the requirement to comply with laws and regulations of various jurisdictions such as import/export controls, which may not apply to our non-U.S. competitors.
- We are subject to foreign currency exchange risks.
- Our success depends on protection of our intellectual property rights.
- We may be subject to claims of intellectual property infringement by others.
- Our acquisition strategy subjects us to risks associated with evaluating and pursuing these opportunities and integrating these businesses.
- Changes in accounting standards for stock-based compensation may adversely affect our stock price and our ability to attract, motivate and retain key employees.
- The implementation of a new information technology system may disrupt our operations.
- We face securities class action and shareholder derivative lawsuits which could result in substantial costs, diversion of management’s attention and resources and negative publicity.
- We may not obtain sufficient affordable funds to finance our future needs.
- We are subject to risks of non-compliance with environmental and safety regulations.
- We have adopted certain measures that may have anti-takeover effects which may make an acquisition of our company by another company more difficult.

- The other matters discussed under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations” contained in this Report and in the Annual Report on Form 10-K for the year ended December 31, 2006 of Veeco Instruments Inc. (“Veeco” or the “Company”).

Consequently, such forward-looking statements should be regarded solely as our current plans, estimates and beliefs. We do not undertake any obligation to update any forward-looking statements to reflect future events or circumstances after the date of such statements.

Available Information

We file annual, quarterly and current reports, information statements and other information with the Securities and Exchange Commission (the “SEC”). The public may read and copy any materials we file with the SEC at the SEC’s Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of that site is <http://www.sec.gov>.

Internet Address

We maintain a website where additional information concerning our business and various upcoming events can be found. The address of our website is www.veeco.com. We provide a link on our website, under Investors — Financial Information — SEC Filings, through which investors can access our filings with the SEC, including our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and all amendments to those reports. These filings are posted to our Internet site, as soon as reasonably practicable after we electronically file such material with the SEC.

VEECO INSTRUMENTS INC.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements (Unaudited)

Veeco Instruments Inc. and Subsidiaries
Condensed Consolidated Statements of Operations
(In thousands, except per share data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Net sales	\$ 97,718	\$ 112,369	\$ 295,653	\$ 317,922
Cost of sales	61,824	64,513	173,819	178,585
Gross profit	35,894	47,856	121,834	139,337
Costs and expenses:				
Selling, general and administrative expense	22,723	22,296	69,347	68,622
Research and development expense	15,049	15,716	46,341	45,554
Amortization expense	1,959	4,025	8,236	12,029
Restructuring expense	529	—	1,974	—
Write-off of purchased in-process technology	—	1,160	—	1,160
Other income, net	(179)	(310)	(605)	(243)
Total operating expenses	40,081	42,887	125,293	127,122
Operating (loss) income	(4,187)	4,969	(3,459)	12,215
Interest expense, net	665	1,056	2,256	3,583
Gain on extinguishment of debt	—	—	(738)	(330)
(Loss) income before income taxes and noncontrolling interest	(4,852)	3,913	(4,977)	8,962
Income tax provision	954	612	3,490	2,878
Noncontrolling interest	(123)	(1,207)	(482)	(1,207)
Net (loss) income	<u>\$ (5,683)</u>	<u>\$ 4,508</u>	<u>\$ (7,985)</u>	<u>\$ 7,291</u>
Net (loss) income per common share	<u>\$ (0.18)</u>	<u>\$ 0.15</u>	<u>\$ (0.26)</u>	<u>\$ 0.24</u>
Diluted net (loss) income per common share	<u>\$ (0.18)</u>	<u>\$ 0.14</u>	<u>\$ (0.26)</u>	<u>\$ 0.23</u>
Weighted average shares outstanding	31,100	30,693	30,975	30,369
Diluted weighted average shares outstanding	31,100	31,393	30,975	31,100

See accompanying notes.

Veeco Instruments Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(In thousands)

	<u>September 30, 2007</u> (Unaudited)	<u>December 31, 2006</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 108,402	\$ 147,046
Accounts receivable, less allowance for doubtful accounts of \$2,728 in 2007 and \$2,683 in 2006	68,603	86,589
Inventories	105,659	100,355
Prepaid expenses and other current assets	10,254	9,378
Deferred income taxes	2,605	2,565
Total current assets	295,523	345,933
Property, plant and equipment at cost, less accumulated depreciation of \$93,559 in 2007 and \$88,087 in 2006	69,505	73,510
Goodwill	100,898	100,898
Purchased technology, less accumulated amortization of \$71,119 in 2007 and \$64,736 in 2006	37,469	43,852
Other intangible assets, less accumulated amortization of \$28,936 in 2007 and \$26,740 in 2006	23,754	25,053
Other assets	215	354
Total assets	<u>\$ 527,364</u>	<u>\$ 589,600</u>
Liabilities and shareholders' equity		
Current liabilities:		
Accounts payable	\$ 35,619	\$ 40,588
Accrued expenses	50,369	48,714
Deferred profit	1,342	251
Income taxes payable	1,382	2,723
Current portion of long-term debt	5,434	5,597
Total current liabilities	94,146	97,873
Deferred income taxes	3,470	2,423
Long-term debt	146,450	203,607
Other non-current liabilities	1,716	2,304
Noncontrolling interest	1,160	1,642
Shareholders' equity	280,422	281,751
Total liabilities and shareholders' equity	<u>\$ 527,364</u>	<u>\$ 589,600</u>

See accompanying notes.

Veeco Instruments Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2007	2006
Operating activities		
Net (loss) income	\$ (7,985)	\$ 7,291
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Depreciation and amortization	19,288	22,426
Deferred income taxes	1,111	291
Gain on extinguishment of debt	(738)	(330)
Non-cash compensation expense for share-based payments	3,490	1,443
Noncontrolling interest in net loss of subsidiary	(482)	(1,207)
Gain on sale of property, plant and equipment	(79)	(27)
Write-off of purchased in-process technology	—	1,160
Changes in operating assets and liabilities:		
Accounts receivable	19,972	3,103
Inventories	(4,801)	(14,691)
Accounts payable	(5,042)	5,025
Accrued expenses, deferred profit and other current liabilities	524	3,159
Other, net	(2,481)	(5,119)
Net cash provided by operating activities	22,777	22,524
Investing activities		
Capital expenditures	(6,854)	(12,473)
Proceeds from sale of property, plant and equipment	311	35
Payments for net assets of businesses acquired	—	(3,068)
Net maturities of investments	—	(128)
Net cash used in investing activities	(6,543)	(15,634)
Financing activities		
Proceeds from stock issuance	2,781	15,082
Repayments of long-term debt	(55,407)	(19,680)
Payments for debt issuance costs	(1,503)	—
Other	(314)	—
Net cash used in financing activities	(54,443)	(4,598)
Effect of exchange rates on cash and cash equivalents	(435)	(226)
Net change in cash and cash equivalents	(38,644)	2,066
Cash and cash equivalents at beginning of period	147,046	124,499
Cash and cash equivalents at end of period	<u>\$ 108,402</u>	<u>\$ 126,565</u>
Supplemental disclosure of non-cash investing and financing activities		
Exchange of convertible subordinated notes	\$ 118,766	\$ —
Transfers from property, plant and equipment to inventory	473	1,515
Transfers from inventory to property, plant and equipment	78	743
Acquisition of assets in connection with the consolidation of a variable interest entity	—	3,550
Assumption of liabilities in connection with the consolidation of a variable interest entity	—	643

See accompanying notes.

VEECO INSTRUMENTS INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Note 1—Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments considered necessary for a fair presentation (consisting of normal recurring accruals) have been included. Operating results for the three and nine months ended September 30, 2007, are not necessarily indicative of the results that may be expected for the year ending December 31, 2007. For further information, refer to the financial statements and footnotes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2006.

Consistent with prior years, the Company reports interim quarters, other than fourth quarters which always end on December 31, on a 13-week basis ending on the last Sunday within such period. The interim quarter ends are determined at the beginning of each year based on the 13-week quarters. The 2007 interim quarter ends are April 1, July 1, and September 30. The 2006 interim quarter ends were April 2, July 2, and October 1. For ease of reference, the Company reports these interim quarter ends as March 31, June 30, and September 30 in its interim condensed consolidated financial statements.

Net (Loss) Income Per Common Share

The following table sets forth the reconciliation of weighted average shares outstanding and diluted weighted average shares outstanding:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
	(In thousands)			
Weighted average shares outstanding	31,100	30,693	30,975	30,369
Dilutive effect of stock options and restricted stock awards	—	700	—	731
Diluted weighted average shares outstanding	<u>31,100</u>	<u>31,393</u>	<u>30,975</u>	<u>31,100</u>

Net (loss) income and diluted net (loss) income per common share are computed using the weighted average number of common and common equivalent shares outstanding during the period.

During the three and nine month periods ended September 30, 2007, options to purchase 5.7 million shares of common stock (at prices ranging from \$0.27 to \$72.00 per share) that were outstanding were excluded from the computation of diluted earnings per share. During the comparable 2006 periods, options to purchase 2.9 million shares (at prices ranging from \$23.11 to \$72.00 per share) and 3.0 million shares (at prices ranging from \$22.63 to \$72.00 per share) of common stock that were outstanding were excluded from the computation of diluted earnings per share. In the 2007 periods, the Company recorded net losses, so the effect of all options outstanding was anti-dilutive. In 2006, the exercise price of these options exceeded the average market price of the Company's common stock, thereby causing their effect to be anti-dilutive.

During the second quarter of 2007, the Company issued a new series of 4.125% convertible subordinated notes due April 15, 2012 (the "New Notes") pursuant to privately negotiated exchange agreements with certain holders of its outstanding 4.125% convertible subordinated notes due 2008 (the "Old Notes"). In total, the Company exchanged \$118.8 million of Old Notes for \$117.8 million of New Notes.

The effect of the assumed conversion of the Old Notes is approximately 0.7 million and 2.2 million common equivalent shares for the three and nine months ended September 30, 2007, respectively, and 5.2 million and 5.3 million for the comparable periods of 2006, respectively. The converted shares are anti-dilutive and, therefore, are not

included in the weighted shares outstanding for the three and nine months ended September 30, 2007 and 2006, respectively. The second quarter 2007 debt exchange, together with the \$56 million in debt repurchases of Old Notes during the first quarter of 2007 reduced the effect on earnings per share of the assumed conversion of the Old Notes, which was calculated using the “if converted” method of accounting.

The New Notes meet the criteria for determining the effect of the assumed conversion using the treasury stock method of accounting, as long as the Company has the ability and the intent to settle the principal amount of the New Notes in cash. Under the terms of the New Notes, the Company may pay the principal amount of converted New Notes in cash or in shares of common stock. The Company has indicated that it intends to pay such amounts in cash. Using the treasury stock method, the impact of the assumed conversion of the New Notes is anti-dilutive for the three and nine months ended September 30, 2007, as the average stock price was below the conversion price of \$27.23 for both periods. The effect of the assumed converted shares is dependent on the stock price at the time of the conversion. The maximum number of common equivalent shares issuable upon conversion inclusive of the maximum make whole provision is approximately 6.0 million.

Income Taxes

In July 2006, the Financial Accounting Standards Board (“FASB”) issued FASB Interpretation Number 48, *Accounting for Uncertainty in Income Taxes* (“FIN 48”), an interpretation of FASB Statement No. 109 (“SFAS 109”), which became effective for Veeco on January 1, 2007. FIN 48 addresses the determination of how tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under FIN 48, the Company must recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such uncertain tax positions are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution. The application of income tax law is inherently complex. Laws and regulations in this area are voluminous and are often ambiguous. The Company is required to make many subjective assumptions and judgments regarding its income tax exposures. Interpretations of and guidance surrounding income tax laws and regulations change over time and changes in assumptions and judgments can materially affect the amounts recognized in the Company’s condensed consolidated financial statements. The impact of the Company’s reassessment of its tax positions in accordance with FIN 48 during the first quarter of 2007 resulted in a \$0.8 million reduction to the January 1, 2007 retained earnings balance. For additional information regarding the adoption of FIN 48, see Note 5, *Income Taxes*.

Recent Accounting Pronouncements

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* (“SFAS 157”). SFAS 157 establishes a common definition for fair value to be applied to U.S. generally accepted accounting principles requiring use of fair value, establishes a framework for measuring fair value, and expands disclosure about such fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. The adoption of this statement is not expected to have a material impact on the Company’s consolidated financial position or results of operations.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* (“SFAS 159”). SFAS 159 permits entities to choose to measure financial assets and liabilities (except for those that are specifically scoped out of the Statement) at fair value. The election to measure a financial asset or liability at fair value can be made on an instrument-by-instrument basis and is irrevocable. The difference between carrying value and fair value at the election date is recorded as an adjustment to opening retained earnings. Subsequent changes in fair value are recognized in earnings. SFAS 159 is effective for fiscal years beginning after November 15, 2007. The adoption of this statement is not expected to have a material impact on the Company’s consolidated financial position or results of operations.

Note 2—Share-Based Payments

Stock Option and Restricted Stock-Based Compensation

Share-based compensation cost is measured at the grant date, based on the fair value of the award, and is recognized as expense over the employee requisite service period. The following compensation expense was included in

the condensed consolidated statement of operations for the three and nine months ended September 30, 2007 and 2006 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Share-based compensation expense	\$ 1,505	\$ 722	\$ 3,490	\$ 1,442

As of September 30, 2007, the total unrecognized compensation cost related to nonvested stock awards is \$10.3 million and to stock option awards is \$3.7 million. The related weighted average period over which it is expected that such unrecognized compensation costs will be recognized is approximately 2.4 years for the nonvested stock awards and 2.5 years for option awards.

A summary of the Company's restricted stock awards including restricted stock units as of September 30, 2007, is presented below:

	Shares (In thousands)	Weighted- Average Grant-Date Fair Value
Nonvested at beginning of year	244	\$ 22.50
Granted	505	19.25
Vested	(93)	25.08
Forfeited	(50)	18.17
Nonvested as of September 30, 2007	606	19.75

A summary of the Company's stock option plans as of and for the nine months ended September 30, 2007, is presented below:

	Shares (In thousands)	Weighted- Average Exercise Price	Aggregate Intrinsic Value (In thousands)	Weighted- Average Remaining Contractual Life (in years)
Outstanding at beginning of year	6,363	\$ 25.58		
Granted	603	19.58		
Exercised	(169)	15.72		
Forfeited (including cancelled options)	(1,079)	35.46		
Outstanding at September 30, 2007	5,718	\$ 23.37	\$ 6,049	3.1
Options exercisable at September 30, 2007	5,011	\$ 23.86	\$ 5,748	2.6

Note 3—Balance Sheet Information

Inventories

Inventories have been determined by lower of cost (principally first-in, first-out) or market. Inventories consist of:

	September 30, 2007	December 31, 2006
	(In thousands)	
Parts and components (1)	\$ 60,121	\$ 60,249
Work in process (1)	32,192	27,961
Finished goods	13,346	12,145
	<u>\$ 105,659</u>	<u>\$ 100,355</u>

(1) The prior period has been reclassified to conform to current period presentation.

Accrued Warranty

The Company estimates the costs that may be incurred under the warranty it provides and recognizes a

liability in the amount of such costs at the time the related revenue is recognized. Factors that affect the Company's warranty liability include product failure rates, material usage and labor costs incurred in correcting product failures during the warranty period. The Company periodically assesses the adequacy of its recognized warranty liability and adjusts the amount as necessary. Changes in the Company's warranty liability during the nine months ended September 30, 2007 and 2006 are as follows:

Nine Months Ended September 30,	
2007	2006
(In thousands)	

Balance as of January 1	\$ 7,118	\$ 6,671
Warranties issued during the period	4,170	5,088
Settlements made during the period	(4,788)	(4,602)
Balance as of September 30	<u>\$ 6,500</u>	<u>\$ 7,157</u>

Note 4—Segment Information

The Company manages the business, reviews operating results, and assesses performance, as well as allocates resources, based upon two separate reporting segments. The Process Equipment segment combines the etch, deposition, dicing and slicing products sold mostly to data storage customers and the molecular beam epitaxy ("MBE") and metal organic chemical vapor deposition ("MOCVD") products primarily sold to high-brightness light emitting diode, solar, and wireless telecommunications customers. This segment has production facilities in Plainview, New York, Ft. Collins, Colorado, Camarillo, California, St. Paul, Minnesota and Somerset, New Jersey. The Metrology segment represents products that are used to provide critical surface measurements on items such as semiconductor devices and thin film magnetic heads, as well as biological, nanoscience, and material science samples, and includes the Company's broad line of atomic force microscopes, optical interferometers and stylus profilers sold to semiconductor customers, data storage customers and thousands of research facilities and scientific centers. This segment has production facilities in Camarillo and Santa Barbara, California and Tucson, Arizona.

The Company evaluates the performance of its reportable segments based on income (loss) from operations before interest, income taxes, amortization and certain items ("EBITA"), which is the primary indicator used to plan and forecast future periods. The presentation of this financial measure facilitates meaningful comparison with prior periods, as management of the Company believes EBITA reports baseline performance and thus provides useful information. Certain items include charges for purchased in-process technology, restructuring, and debt-related costs or gains. The accounting policies of the reportable segments are the same as those described in the summary of critical accounting policies.

The following tables present certain data pertaining to the reportable product segments of the Company and a reconciliation of EBITA to income (loss) before income taxes and noncontrolling interest for the three and nine months ended September 30, 2007 and 2006 and goodwill and total assets as of September 30, 2007 and December 31, 2006 (in thousands):

	Process Equipment	Metrology	Unallocated Corporate Amount	Total
Three Months Ended September 30, 2007				
Net sales	<u>\$ 62,923</u>	<u>\$ 34,795</u>	<u>\$ —</u>	<u>\$ 97,718</u>
Income (loss) before interest, taxes, amortization and certain items (EBITA)	\$ 2,249	\$ (395)	\$ (3,553)	\$ (1,699)
Interest expense, net	—	—	665	665
Amortization expense	1,444	399	116	1,959
Restructuring expense	<u>159</u>	<u>46</u>	<u>324</u>	<u>529</u>
Income (loss) before income taxes and noncontrolling interest	<u>\$ 646</u>	<u>\$ (840)</u>	<u>\$ (4,658)</u>	<u>\$ (4,852)</u>

	Process Equipment	Metrology	Unallocated Corporate Amount	Total
Three Months Ended September 30, 2006				
Net sales	\$ 71,375	\$ 40,994	\$ —	\$ 112,369
Income (loss) before interest, taxes, amortization and certain items (EBITA)	\$ 7,482	\$ 4,352	\$ (1,680)	\$ 10,154
Interest expense, net	—	—	1,056	1,056
Amortization expense	3,333	433	259	4,025
Write-off of purchased in-process technology	1,160	—	—	1,160
Income (loss) before income taxes and noncontrolling interest	\$ 2,989	\$ 3,919	\$ (2,995)	\$ 3,913

	Process Equipment	Metrology	Unallocated Corporate Amount	Total
Nine Months Ended September 30, 2007				
Net sales	\$ 181,028	\$ 114,625	\$ —	\$ 295,653
Income (loss) before interest, taxes, amortization and certain items (EBITA)	\$ 11,842	\$ 4,015	\$ (9,106)	\$ 6,751
Interest expense, net	—	—	2,256	2,256
Amortization expense	6,628	1,135	473	8,236
Restructuring expense	159	1,398	417	1,974
Gain on extinguishment of debt	—	—	(738)	(738)
Income (loss) before income taxes and noncontrolling interest	\$ 5,055	\$ 1,482	\$ (11,514)	\$ (4,977)

	Process Equipment	Metrology	Unallocated Corporate Amount	Total
Nine Months Ended September 30, 2006				
Net sales	\$ 191,927	\$ 125,995	\$ —	\$ 317,922
Income (loss) before interest, taxes, amortization and certain items (EBITA)	\$ 17,159	\$ 16,280	\$ (8,035)	\$ 25,404
Interest expense, net	—	—	3,583	3,583
Amortization expense	9,909	1,328	792	12,029
Write-off of purchased in-process technology	1,160	—	—	1,160
Gain on extinguishment of debt	—	—	(330)	(330)
Income (loss) before income taxes and noncontrolling interest	\$ 6,090	\$ 14,952	\$ (12,080)	\$ 8,962

	Process Equipment	Metrology	Unallocated Corporate Amount	Total
As of September 30, 2007				
Goodwill	\$ 71,530	\$ 29,368	\$ —	\$ 100,898
Total assets	272,842	127,069	127,453	527,364
As of December 31, 2006				
Goodwill	\$ 71,530	\$ 29,368	\$ —	\$ 100,898
Total assets	285,661	138,140	165,799	589,600

Note 5—Income Taxes

The provision for income taxes of \$1.0 million for the three months ended September 30, 2007 included \$0.6 million relating to Veeco's foreign operations, which continue to be profitable, and \$0.4 million relating to the Company's domestic operations. The provision for income taxes of \$3.5 million for the nine months ended September 30, 2007 included \$2.5 million relating to Veeco's foreign operations and \$1.0 million relating to the Company's domestic operations. Due to significant domestic net operating loss carry forwards, which are fully reserved by a valuation allowance, Veeco's domestic operations are not expected to incur significant income taxes for the foreseeable future.

The Company adopted FIN 48 on January 1, 2007. As a result of adopting FIN 48, the Company recognized a \$0.8 million increase to its reserves for uncertain tax positions during the first quarter of 2007, which was recorded as a reduction to the January 1, 2007 retained earnings balance. At the adoption date of January 1, 2007, the Company had approximately \$2.3 million of unrecognized tax benefits, including the cumulative effect increase to its reserve for uncertain tax positions. For the three and nine months ended September 30, 2007, the Company recorded \$0.1 million and \$0.6 million, respectively, related to unrecognized tax benefits. As a result, the Company had \$3.0 million of unrecognized tax benefits at September 30, 2007, all of which relate to positions taken on its foreign tax returns and represent the amount of unrecognized tax benefits that, if recognized, would favorably impact the effective income tax rate in future periods.

The Company or one of its subsidiaries files income tax returns in the U.S. federal jurisdiction and various state, local, and foreign jurisdictions. All material federal, state, local, and foreign income tax matters have been concluded for years through 2002 subject to subsequent utilization of net operating losses generated in such years.

The Company is continuing its practice of recognizing interest and penalties related to income tax matters in income tax expense. The total accrual for interest and penalties related to uncertain tax positions was approximately \$1.1 million as of September 30, 2007, which included \$0.2 million accrued during the nine months ended September 30, 2007, the impact of which was to reduce net income by \$0.2 million and earnings per diluted share by less than \$0.01 for the nine months ended September 30, 2007.

Note 6—Comprehensive (Loss) Income

Total comprehensive (loss) income for the three and nine months ended September 30, 2007 and 2006 was as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Net (loss) income	\$ (5,683)	\$ 4,508	\$ (7,985)	\$ 7,291
Foreign currency translation	1,481	(1,065)	1,387	672
Total comprehensive (loss) income	\$ (4,202)	\$ 3,443	\$ (6,598)	\$ 7,963

Note 7—Debt

Convertible Debt

During the first quarter of 2007, the Company repurchased \$56.0 million of its 4.125% convertible

subordinated notes (the “Old Notes”) for \$54.8 million, reducing the amount of the Old Notes outstanding from \$200.0 million to \$144.0 million. As a result of these repurchases, the Company recorded a net gain from the extinguishment of debt of \$0.7 million.

On April 20, 2007, the Company issued new convertible subordinated notes (the “New Notes”) pursuant to privately negotiated exchange agreements with certain holders of the Old Notes. Under these agreements, such holders agreed to exchange \$106.4 million aggregate principal amount of the Old Notes for approximately \$105.5 million aggregate principal amount of New Notes. On May 1, 2007, the Company issued an additional \$12.3 million aggregate principal amount of New Notes in a second round of exchange transactions with the holders of \$12.4 million of Old Notes. Following the exchange transactions, approximately \$25.2 million of the Old Notes, with a conversion price of \$38.51 per common share, remained outstanding. No net gain or loss was recorded on the exchange transactions since the carrying value of the Old Notes including unamortized deferred financing costs approximated the exchange value of the New Notes.

The New Notes initially will be convertible into 36.7277 shares of common stock per \$1,000 principal amount of New Notes (equivalent to a conversion price of \$27.23 per share or a premium of 38% over the closing market price for Veeco’s common stock on April 16, 2007). Holders may convert the New Notes at any time during the period beginning on January 15, 2012 through the close of business on the second day prior to April 15, 2012 and earlier upon the occurrence of certain events including the Company’s common stock trading at prices 130% over the conversion price for a specified period.

Credit Agreement

During the third quarter of 2007, the Company entered into a Credit Agreement with HSBC Bank USA, National Association, as administrative agent (“HSBC”), and the lenders named therein (the “New Credit Agreement”). The New Credit Agreement amends and restates, and effectively replaces, the prior Credit Agreement, dated as of March 15, 2005, among the Company, HSBC and the lenders named therein (the “Prior Credit Agreement”). The Prior Credit Agreement was set to expire on March 15, 2008.

The New Credit Agreement provides for revolving credit borrowings of up to \$100.0 million. The annual interest rate under the New Credit Agreement is a floating rate equal to the prime rate of the agent bank. A LIBOR-based interest rate option is also provided. Borrowings may be used for general corporate purposes, including working capital requirements and acquisitions. The New Credit Agreement contains certain restrictive covenants substantially similar to those of the Prior Credit Agreement. These include limitations with respect to the incurrence of indebtedness, the payment of dividends, long-term leases, investments, mergers, acquisitions, consolidations and sales of assets. The Company is required to satisfy certain financial tests under the new Credit Agreement substantially similar to those of the prior Credit Agreement. Substantially all of the assets of the Company and its material domestic subsidiaries, other than real estate, have been pledged to secure the Company’s obligations under the New Credit Agreement. The revolving credit facility under the New Credit Agreement expires on March 31, 2012. In connection with the New Credit Agreement, the Company paid approximately \$0.2 million in fees, which will be amortized over the term of the agreement, along with the remaining deferred financing fees of less than \$0.1 million associated with the Prior Credit Agreement. As of September 30, 2007 and December 31, 2006, there were no borrowings outstanding. Interest expense associated with the credit agreement recorded during the period was nominal and is included in accrued expenses as of September 30, 2007.

Note 8—Commitments, Contingencies and Other Matters

Litigation

As previously reported in Veeco’s Annual Report on Form 10-K for the year ended December 31, 2006, Veeco and certain of its officers have been named as defendants in a securities class action lawsuit consolidated in August 2005 that is pending in federal court in the Southern District of New York (“the Court”). The lawsuit arises out of the restatement in March 2005 of Veeco’s financial statements for the quarterly periods and nine months ended September 30, 2004 as a result of the Company’s discovery of certain improper accounting transactions at its TurboDisc business unit. On July 5, 2007, Veeco entered into a Memorandum of Understanding to settle and fully resolve this lawsuit for a payment of \$5.5 million. Veeco expects that insurance proceeds will cover the settlement amount and any significant legal expenses related to the settlement. The settlement agreement is subject to court approval and would dismiss all pending claims against Veeco and the other defendants with no admission or finding of wrongdoing by Veeco or any of the other defendants, and Veeco and the other defendants would receive a full release of all claims pending in the litigation.

2007 Restructuring Expenses

In conjunction with a cost reduction plan, the Company recognized a restructuring charge of approximately \$0.5 million and \$2.0 million during the three months and nine months ended September 30, 2007, respectively, which was recorded as restructuring expense in the condensed consolidated statements of operations. The charge consisted of personnel severance costs for approximately 40 employees, or approximately 3% of total employees, which included management, administration and manufacturing employees companywide. As of September 30, 2007, approximately \$0.9 million has been paid and approximately \$1.1 million remains accrued. The remainder is expected to be paid over the next twelve to eighteen months.

The following is a reconciliation of the liability for the restructuring charge (in thousands):

	Process Equipment	Metrology	Corporate	Total
Charged to accrual	\$ 159	\$ 1,398	\$ 417	\$ 1,974
Cash payments during 2007	(93)	(692)	(70)	(855)
Balance as of September 30, 2007	<u>\$ 66</u>	<u>\$ 706</u>	<u>\$ 347</u>	<u>\$ 1,119</u>

Note 9—Subsequent Events

During the fourth quarter of 2007, the Company's Board of Directors approved a cost reduction plan that included a reduction in staff (employees, consultants and temporary workers), a reduction of discretionary expenses, realignment of the Company's sales organization to more closely match current market and regional opportunities, and consolidation of certain engineering groups. As a result, during the fourth quarter of 2007, the Company expects to reduce its employment level by approximately 100 employees and will recognize a restructuring charge of \$5.0 million, comprised predominantly of severance costs for the related employees.

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

Executive Summary

Veeco designs, manufactures, markets and services a broad line of equipment primarily used by manufacturers in the data storage, scientific and industrial research, semiconductor, high-brightness light emitting diode ("HB-LED") and wireless industries. These industries help create a wide range of information age products such as computer integrated circuits, personal computers, LEDs for backlighting and automotive applications, hard disk drives, network servers, digital cameras, wireless phones, TV set-top boxes, personal music/video players, and personal digital assistants. Veeco's broad line of products features leading edge technology and allows customers to improve time-to-market of their next generation products. Veeco's products are also enabling advancements in the growing fields of nanoscience, nanobiology, and other areas of scientific and industrial research.

Veeco's Process Equipment products precisely deposit or remove (etch) various materials in the manufacturing of thin film magnetic heads ("TFMHs") for the data storage industry, HB-LED/wireless devices (such as power amplifiers and laser diodes), and semiconductor mask reticles. Veeco's Metrology equipment is used to provide critical surface measurements on semiconductor devices and TFMHs. This equipment allows customers to monitor their products throughout the manufacturing process in order to improve yields, reduce costs and improve product quality. Veeco's Metrology solutions are also used by many universities, scientific laboratories, and industrial applications. Veeco sells its broad line of atomic force microscopes ("AFMs"), optical interferometers, and stylus profilers to thousands of universities, research facilities, and scientific centers worldwide.

Veeco currently maintains manufacturing facilities in Arizona, California, Colorado, Minnesota, New Jersey, and New York, with sales and service locations around the world.

Highlights of the Third Quarter of 2007

- Revenue was \$97.7 million, a 13% decrease from the third quarter of 2006.
- Orders were \$118.3 million, an increase of 3% from the third quarter of 2006.
- Net loss was \$(5.7) million, or \$(0.18) per share, compared to net income of \$4.5 million, or \$0.14 per share, in the third quarter of 2006.
- Gross margins were 36.7%, compared to 42.6% in the third quarter of 2006.

Highlights of the First Nine Months of 2007

- Revenue was \$295.7 million, a 7% decrease from the first nine months of 2006.
- Orders were \$336.7 million, a decrease of 13% from the first nine months of 2006.
- Net loss was \$(8.0) million, or \$(0.26) per share, compared to net income of \$7.3 million, or \$0.23 per share, in the first nine months of 2006.
- Gross margins were 41.2%, compared to 43.8% in the first nine months of 2006.

Current Business Conditions

Veeco reported revenue of \$97.7 million for the three months ended September 30, 2007, a 13% decrease from the prior year. Veeco expects continued fluctuations in data storage and semiconductor capital expenditure purchases as customers reassess their production ramps and timing of new technology transition plans. Veeco's revenues were in line with guidance of \$92 million to \$97 million; however, the Company continued to experience field acceptance delays of new data storage systems. In addition to the challenges in data storage, weakness in Veeco's semiconductor business also negatively impacted revenue and profitability.

Veeco's orders for the three months ended September 30, 2007 were \$118.3 million, an increase of 3% from the \$114.8 million reported in the same three-month period of 2006. Third quarter orders in the HB-LED/wireless segment remain strong at \$43.6 million, up 26% sequentially and 49% from last year's third quarter. This increased order rate compared to the prior year reflects positive customer interest in Veeco's next generation "K-Series" metal organic chemical vapor deposition ("MOCVD") tools, which were introduced in December 2006 and provide significant

advantages in uniformity and throughput to Veeco's older tools and those of its competitors. End market demand for this product line remains strong due to emerging LED applications such as PC backlighting and automotive applications. Veeco's data storage orders decreased 15% sequentially and 22% from last year's third quarter. While Veeco's data storage customers are undergoing a period of consolidation and Veeco often has limited visibility to their spending patterns, the Company believes that longer-term industry requirements for increased areal density and consumer electronic expansion will drive future investment in perpendicular head technology and conversion to larger wafer size. The weakest order segment for Veeco during the third quarter was semiconductor, down 22% sequentially and 54% from last year's third quarter. Veeco is in the process of beta testing its next generation automated AFM product, and currently expects the introduction of this product to help improve Veeco's semiconductor order and revenue stream in 2008.

Technology changes are continuing in all of Veeco's markets: the continued increase of 80 GB hard drives, the investment in 120 GB hard drives, and the transition to perpendicular recording in data storage; the increased usage of "mini" drives in consumer electronic applications; the reduction of feature sizes in the semiconductor industry to 45 nanometer and below; the growing applications in HB-LED such as automotive, architectural lighting, and backlighting for laptops; and emerging opportunities in the solar industry, which utilize Veeco's existing deposition and metrology technologies. Veeco believes that these trends, together with the continued funding of nanoscience research, will prompt customers to seek its next-generation solutions to address their manufacturing and technology challenges. In addition, consumer spending on many types of electronics has increased, and various worldwide economies, such as those in the Asia-Pacific region, are experiencing growth.

Outlook

The Company reviews a number of indicators to evaluate the strength of its markets going forward, such as plant utilization trends, capacity requirements and capital spending trends. Veeco is currently forecasting an increase in revenues on a sequential basis for the fourth quarter of 2007, with expectations for revenues to be in the range of approximately \$104 million to \$112 million, with bookings of \$105 million to \$115 million. Fourth quarter 2007 profitability is forecasted to improve from the weak third quarter levels on improved volume and pricing in both Process Equipment and Metrology. Additionally, management has initiated the first phase of a multi-quarter turn-around plan to improve Veeco's profitability through a combination of increased focus on its best growth opportunities, gross margin improvement and expense reduction and containment. While Veeco has a strong pipeline of new products for the data storage, HB-LED, semiconductor and scientific research markets, many of these are in the early stages of shipments and there is uncertainty associated with customer acceptance and the Company's ability to recognize revenue upon shipment of the products. The Company's current expectations for the fourth quarter, which are subject to uncertainties such as the timing of customer acceptance of shipped products, would bring revenue for the full year to approximately \$400 million to \$408 million, down approximately 10% from 2006.

The Company anticipates ending the year with significant backlog, which will set the stage for an improved 2008. This forecast is supported by favorable growth trends specifically in the HB-LED/wireless market driven by the Company's unique MOCVD and MBE technologies and LED applications, as well as early penetration in specific solar applications. The Company also anticipates the positive trend in scientific research to continue due to strong customer acceptance of several new instrumentation products.

During the fourth quarter of 2007, the Company engaged in a cost reduction plan that included a reduction in staff (employees, consultants and temporary workers), a reduction of discretionary expenses, the realignment of the Company's sales organization to more closely match current market and regional opportunities, and consolidation of certain engineering groups. As a result, during the fourth quarter of 2007, the Company expects to reduce its employment level by approximately 100 employees and will recognize a restructuring charge of \$5.0 million, comprised predominantly of severance costs for the related employees. Additional restructuring charges in the range of \$8.0 million to 13.0 million could potentially impact fourth quarter 2007 and first quarter 2008 earnings, depending upon the timing and extent of additional actions under consideration. Management expects that these potential additional charges will not result in a significant outlay of cash in the near term.

Results of Operations:

Three Months Ended September 30, 2007 and 2006

Consistent with prior years, the Company reports interim quarters, other than fourth quarters which end on December 31, on a 13-week basis ending on the last Sunday within such period. The interim quarter ends are determined at the beginning of each year based on the 13-week quarters. The 2007 interim quarter ends are April 1, July 1, and September 30. The 2006 interim quarter ends were April 2, July 2, and October 1. For ease of reference, the Company reports these interim quarter ends as March 31, June 30, and September 30 in its interim condensed consolidated financial statements.

The following tables show the details of Veeco's condensed consolidated statements of operations, percentages of sales and comparisons between the three months ended September 30, 2007 and 2006 and the analysis of sales and orders for the same periods by segment, industry, and region (in thousands):

	Three Months Ended September 30,				Dollar Change			
	2007		2006					
Net sales	\$	97,718	100.0%	\$	112,369	100.0%	\$	(14,651)
Cost of sales		61,824	63.3		64,513	57.4		(2,689)
Gross profit		35,894	36.7		47,856	42.6		(11,962)
Operating expenses:								
Selling, general and administrative expense		22,723	23.3		22,296	19.9		427
Research and development expense		15,049	15.4		15,716	14.0		(667)
Amortization expense		1,959	2.0		4,025	3.6		(2,066)
Write-off of purchased in-process technology		—	—		1,160	1.0		(1,160)
Restructuring expense		529	0.5		—	—		529
Other income, net		(179)	(0.2)		(310)	(0.3)		131
Total operating expenses		40,081	41.0		42,887	38.2		(2,806)
Operating (loss) income		(4,187)	(4.3)		4,969	4.4		(9,156)
Interest expense, net		665	0.7		1,056	0.9		(391)
(Loss) income before income taxes and noncontrolling interest		(4,852)	(5.0)		3,913	3.5		(8,765)
Income tax provision		954	0.9		612	0.5		342
Noncontrolling interest		(123)	(0.1)		(1,207)	(1.0)		1,084
Net (loss) income	\$	(5,683)	(5.8)%	\$	4,508	4.0%	\$	(10,191)

	Sales					Orders					Book to Bill Ratio	
	Three Months Ended September 30,		Dollar and Percentage Change Year to Year		Three Months Ended September 30		Dollar and Percentage Change Year to Year					
	2007	2006				2007	2006			2007	2006	
Segment Analysis												
Process Equipment	\$ 62,923	\$ 71,375	\$ (8,452)	(11.8) %	\$ 80,918	\$ 74,806	\$ 6,112	8.2 %	1.29	1.05		
Metrology	34,795	40,994	(6,199)	(15.1)	37,399	40,042	(2,643)	(6.6)	1.08	0.98		
Total	\$ 97,718	\$ 112,369	\$ (14,651)	(13.0) %	\$ 118,317	\$ 114,848	\$ 3,469	3.0 %	1.21	1.02		
Industry Analysis												
Data Storage	\$ 29,340	\$ 45,410	\$ (16,070)	(35.4) %	\$ 35,207	\$ 45,345	\$ (10,138)	(22.4) %	1.20	1.00		
HB-LED/wireless	31,495	27,657	3,838	13.9	43,636	29,207	14,429	49.4	1.39	1.06		
Semiconductor	11,804	15,978	(4,174)	(26.1)	6,489	14,193	(7,704)	(54.3)	0.55	0.89		
Research and Industrial	25,079	23,324	1,755	7.5	32,985	26,103	6,882	26.4	1.32	1.12		
Total	\$ 97,718	\$ 112,369	\$ (14,651)	(13.0) %	\$ 118,317	\$ 114,848	\$ 3,469	3.0 %	1.21	1.02		
Regional Analysis (1)												
North America	\$ 29,014	\$ 41,921	\$ (12,907)	(30.8) %	\$ 48,196	\$ 45,349	\$ 2,847	6.3 %	1.66	1.08		
Europe	18,244	14,882	3,362	22.6	22,220	15,558	6,662	42.8	1.22	1.05		
Japan	12,585	7,718	4,867	63.1	12,330	13,226	(896)	(6.8)	0.98	1.71		
Asia-Pacific	37,875	47,848	(9,973)	(20.8)	35,571	40,715	(5,144)	(12.6)	0.94	0.85		
Total	\$ 97,718	\$ 112,369	\$ (14,651)	(13.0) %	\$ 118,317	\$ 114,848	\$ 3,469	3.0 %	1.21	1.02		

(1) The prior period has been reclassified to conform to the current period presentation.

Net sales of \$97.7 million for the third quarter of 2007 were down \$14.7 million, or 13.0%, compared to the third quarter of 2006. By segment, Process Equipment sales were down \$8.5 million, or 11.8%. The decrease in Process Equipment sales is primarily due to a decrease in sales to the data storage market. Partially offsetting this decline was a continued increase in sales to the HB-LED/wireless market. Metrology sales declined \$6.2 million, or 15.1%, primarily due to decreased purchases of optical metrology products in the data storage market and automated AFM products in the semiconductor market. By region, in the third quarter of 2007, net sales increased by 63.1% and 22.6% in Japan and Europe, respectively, while sales in North America and Asia-Pacific declined by 30.8% and 20.8%, respectively. The Company believes that quarter-to-quarter variations in the geographic distribution of sales will continue.

Orders of \$118.3 million for the third quarter of 2007 represented an increase of \$3.5 million, or 3.0%, from the comparable 2006 period. By segment, the 8.2% increase in Process Equipment orders was primarily due to a \$9.8 million increase in orders for MBE equipment and \$9.1 million for MOCVD equipment, driven by the high growth currently being seen in the HB-LED/wireless, solar, and scientific research markets, offset by a decrease in orders for other process equipment as a result of a decrease in customer demand in the data storage industry. The 6.6% decrease in Metrology orders was driven by a 22% decrease in orders for optical metrology products, principally to data storage customers.

The Company's book-to-bill ratio for the third quarter of 2007, which is calculated by dividing orders received in a given time period by revenue recognized in the same time period, was 1.21, an increase from the comparable 2006 period. During the quarter ended September 30, 2007, the Company experienced no significant net backlog adjustments or order cancellations. However, the Company did experience rescheduling of order delivery dates by customers. Due to changing business conditions and customer requirements, the Company may continue to experience cancellations and/or rescheduling of orders.

Gross profit for the quarter ended September 30, 2007 was 36.7%, compared to 42.6% in the third quarter of 2006. Process Equipment sales represented 64.4% of total sales for the third quarter of 2007, up slightly from 63.5% in the prior year period. Metrology sales accounted for 35.6% of total sales for the third quarter of 2007, down from 36.5% in the prior year period. Process Equipment gross margins decreased to 33.5% from 38.1% in the prior year period, primarily due to a decline in the margin for Ion Beam products resulting from a lower volume of products sold and an unfavorable product mix as compared to the prior year period. This decrease is partially offset by an improvement in MOCVD product gross margins to 33.6% from 26.9% in the prior year period due to favorable pricing of new products sold in the current period. Metrology gross margins decreased to 42.6% from 50.3%, principally due to lower sales volume of optical metrology and automated AFM products and less favorable pricing of and overhead spending on the AFM products sold to scientific and research customers.

Selling, general and administrative expenses increased to \$22.7 million, or 23.3% of net sales, in the third quarter of 2007, compared with \$22.3 million, or 19.9% of net sales, in the comparable prior year period. The increase is attributable to executive stay and sign-on bonuses and an increase in non-cash stock-based compensation expense, offset by a decrease in sales commissions related to a reduction in domestic sales.

Research and development expense totaled \$15.0 million in the third quarter of 2007, a decrease of \$0.7 million from the third quarter of 2006, primarily due to prior year product development efforts for Process Equipment products that were released during 2007. As a percentage of sales, research and development increased to 15.4% in the third quarter of 2007, from 14.0% in the third quarter of 2006.

Amortization expense was \$2.0 million in the third quarter of 2007, compared to \$4.0 million in the third quarter of 2006. The decrease was principally due to certain technology-based intangibles becoming fully amortized during the second quarter of 2007.

During the third quarter of 2006, the Company finalized its purchase accounting for its acquisition of 19.9% of the stock of Fluens Corporation ("Fluens"), determining that Fluens is a variable interest entity and the Company is its primary beneficiary as defined by Financial Accounting Standards Board ("FASB") Financial Interpretation ("FIN") 46R, *Consolidation of Variable Interest Entities (revised December 2003)*—an interpretation of ARB No. 51. As such, the Company has consolidated the results of Fluens' operations from the acquisition date, and has attributed

the 80.1% portion that is not owned by Veeco to noncontrolling interest in the Company's consolidated financial statements (see below). As part of this acquisition accounting, the Company recorded \$1.2 million of in-process technology, which was written off during the third quarter of 2006. No such costs were recorded during the third quarter of 2007.

The restructuring expense of \$0.5 million for the quarter ended September 30, 2007, consisted of personnel severance costs incurred throughout the Company.

Net interest expense in the third quarter of 2007 was \$0.7 million, compared to \$1.1 million in the third quarter of 2006. This reduction in net interest expense is the result of less net debt outstanding during the period.

The income tax provision for the quarter ended September 30, 2007 was \$1.0 million compared to \$0.6 million in the third quarter of 2006. The 2007 provision for income taxes included \$0.6 million relating to Veeco's foreign operations, which continue to be profitable, and \$0.4 million relating to the Company's domestic operations. Due to significant domestic net operating loss carry forwards, which are fully reserved by a valuation allowance, Veeco's domestic operations are not expected to incur significant income taxes for the foreseeable future. The 2006 provision for income taxes included \$0.2 million relating to Veeco's foreign operations and \$0.4 million relating to the Company's domestic operations. The increase to the income tax provision is due to an increase in taxable income relating to the Company's foreign operations.

Noncontrolling interest was a credit to income of \$0.1 million for the three months ended September 30, 2007, and a credit of \$1.2 million for the comparable period in the prior year. As the Company is the primary beneficiary of Fluens, a variable interest entity, it is required to consolidate Fluens and eliminate the portion of its results attributable to noncontrolling interests. As a result, the Company eliminates from its net income 80.1% of Fluens' operating losses. The credit in the prior comparable period includes the elimination of 80.1% of the write-off of in-process technology recorded in the 2006 third quarter.

Nine Months Ended September 30, 2007 and 2006

The following tables show the details of Veeco's condensed consolidated statements of operations, percentages of sales and comparisons between the nine months ended September 30, 2007 and 2006 and the analysis of sales and orders for the same periods by segment, industry and region (in thousands):

	Nine Months Ended September 30,				Dollar Change
	2007		2006		
Net sales	\$ 295,653	100.0 %	\$ 317,922	100.0 %	\$ (22,269)
Cost of sales	173,819	58.8	178,585	56.2	(4,766)
Gross profit	121,834	41.2	139,337	43.8	(17,503)
Operating expenses:					
Selling, general and administrative expense	69,347	23.4	68,622	21.5	725
Research and development expense	46,341	15.7	45,554	14.3	787
Amortization expense	8,236	2.8	12,029	3.8	(3,793)
Restructuring expense	1,974	0.7	—	—	1,974
Write-off of purchased in-process technology	—	—	1,160	0.4	(1,160)
Other income, net	(605)	(0.2)	(243)	(0.0)	(362)
Total operating expenses	125,293	42.4	127,122	40.0	(1,829)
Operating income	(3,459)	(1.2)	12,215	3.8	(15,674)
Interest expense, net	2,256	0.7	3,583	1.1	(1,327)
Gain on extinguishment of debt	(738)	(0.2)	(330)	(0.1)	(408)
(Loss) income before income taxes and noncontrolling interest	(4,977)	(1.7)	8,962	2.8	(13,939)
Income tax provision	3,490	1.2	2,878	0.9	612
Noncontrolling interest	(482)	(0.2)	(1,207)	(0.4)	725
Net (loss) income	\$ (7,985)	(2.7) %	\$ 7,291	2.3 %	\$ (15,276)

	Sales				Orders					
	Nine Months Ended September 30,		Dollar and Percentage Change Year to Year		Nine Months Ended September 30,		Dollar and Percentage Change Year to Year		Book to Bill Ratio	
	2007	2006			2007	2006			2007	2006
Segment Analysis										
Process Equipment	\$ 181,028	\$ 191,927	\$ (10,899)	(5.7)%	\$ 227,285	\$ 252,608	\$ (25,323)	(10.0)%	1.26	1.32
Metrology	114,625	125,995	(11,370)	(9.0)	109,392	132,142	(22,750)	(17.2)	0.95	1.05
Total	<u>\$ 295,653</u>	<u>\$ 317,922</u>	<u>\$ (22,269)</u>	<u>(7.0)%</u>	<u>\$ 336,677</u>	<u>\$ 384,750</u>	<u>\$ (48,073)</u>	<u>(12.5)%</u>	<u>1.14</u>	<u>1.21</u>
Industry Analysis										
Data Storage	\$ 96,006	\$ 138,598	\$ (42,592)	(30.7)%	\$ 105,944	\$ 187,177	\$ (81,233)	(43.4)%	1.10	1.35
HB-LED/wireless	78,240	61,177	17,063	27.9	117,008	80,939	36,069	44.6	1.50	1.32
Semiconductor	32,755	39,735	(6,980)	(17.6)	26,562	44,288	(17,726)	(40.0)	0.81	1.11
Research and Industrial	88,652	78,412	10,240	13.1	87,163	72,346	14,817	20.5	0.98	0.92
Total	<u>\$ 295,653</u>	<u>\$ 317,922</u>	<u>\$ (22,269)</u>	<u>(7.0)%</u>	<u>\$ 336,677</u>	<u>\$ 384,750</u>	<u>\$ (48,073)</u>	<u>(12.5)%</u>	<u>1.14</u>	<u>1.21</u>
Regional Analysis (1)										
North America	\$ 95,516	\$ 109,180	\$ (13,664)	(12.5)%	\$ 121,696	\$ 138,251	\$ (16,555)	(12.0)%	1.27	1.27
Europe	53,199	49,332	3,867	7.8	63,396	42,374	21,022	49.6	1.19	0.86
Japan	43,732	34,016	9,716	28.6	42,125	44,400	(2,275)	(5.1)	0.96	1.31
Asia-Pacific	103,206	125,394	(22,188)	(17.7)	109,460	159,725	(50,265)	(31.5)	1.06	1.27
Total	<u>\$ 295,653</u>	<u>\$ 317,922</u>	<u>\$ (22,269)</u>	<u>(7.0)%</u>	<u>\$ 336,677</u>	<u>\$ 384,750</u>	<u>\$ (48,073)</u>	<u>(12.5)%</u>	<u>1.14</u>	<u>1.21</u>

(1) The prior period has been reclassified to conform to the current period presentation.

Net sales of \$295.7 million for the nine months ended September 30, 2007 were down \$22.3 million, or 7.0%, compared to the nine months ended September 30, 2006. By segment, Process Equipment sales were down \$10.9 million, or 5.7%. The decrease in Process Equipment sales is primarily due to a decrease in sales to customers in the data storage industry. Partially offsetting this decline was an increase in sales to the HB-LED/wireless market. Metrology sales decreased \$11.4 million, or 9.0%, primarily due to decreased purchases of optical metrology products in the data storage market and automated AFM products in the semiconductor market. By region, in the nine months ended September 30, 2007, net sales increased by 28.6% in Japan and 7.8% in Europe, while sales in Asia-Pacific and North America declined 17.7% and 12.5%, respectively. The Company believes that there will continue to be period-to-period variations in the geographic distribution of sales.

Orders of \$336.7 million for the nine months ended September 30, 2007 represented a decrease of \$48.1 million, or 12.5%, from the comparable 2006 period. By segment, the 10.0% decrease in Process Equipment orders was primarily due to a \$49.5 million decrease in orders for Ion Beam equipment as a result of a decrease in customer demand in the data storage industry, partially offset by a \$30.8 million increase in MOCVD orders resulting from an increase in purchases in the HB-LED/wireless market. The 17.2% decrease in Metrology orders was primarily due to a \$13.5 million decrease in orders for optical metrology products, principally to data storage customers, and a \$10.8 million decrease in orders for automated AFM products, principally to semiconductor customers.

The Company's book-to-bill ratio for the nine months ended September 30, 2007, which is calculated by dividing orders received in a given time period by revenue recognized in the same time period, was 1.14, a decrease from the comparable 2006 period. The Company's backlog as of September 30, 2007 was \$181.6 million, compared to \$140.8 million as of December 31, 2006. During the nine months ended September 30, 2007, the Company did not experience significant net backlog adjustments or order cancellations. However, the Company did experience rescheduling of order delivery dates by customers. Due to changing business conditions and customer requirements, the Company may continue to experience cancellations and/or rescheduling of orders.

Gross profit for the nine months ended September 30, 2007 was 41.2%, compared to 43.8% in the comparable prior year period. Process Equipment sales represented 61.2% of total sales for the nine months ended September 30, 2007, up from 60.4% in the prior year period. Metrology sales accounted for 38.8% of total sales for the nine months ended September 30, 2007, down from 39.6% in the comparable prior year period. Process Equipment gross margin was consistent with the prior year period. However, included in the margin was a significant improvement in MOCVD product gross margins from 23.0% in the prior year to 37.2% in the current year due to an increase in sales volume, as well as a significant improvement in mix and price. This was offset by a decrease in the margin for Ion Beam products from 46.9% in the 2006 period to 41.2% in the current comparable period due to an unfavorable product mix, as well as the decrease in sales to customers in the data storage market. Metrology gross margins decreased to 45.6% from

51.4%, principally due to less favorable product mix in AFM products sold to scientific and research customers and lower sales volume of automated AFM and optical metrology products.

Selling, general and administrative expenses were \$69.3 million, or 23.4% of sales, in the nine months ended September 30, 2007, compared with \$68.6 million, or 21.5% of sales, in the comparable prior year period. The \$0.7 million increase is primarily attributable to an increase in non-cash compensation expense related to stock options and restricted shares and an increase in selling expense due primarily to an investment in the AFM product line for life sciences applications. This is partially offset by a reduction in management incentive bonus expense and legal fees, as well as reduced sales commissions related to the reduction in domestic sales.

Research and development expense totaled \$46.3 million in the nine months ended September 30, 2007, an increase of \$0.8 million from the comparable prior year period, driven by an investment in life sciences applications in AFM as well as new product development efforts in the Company's MOCVD product platform for HB-LED/wireless applications and automated AFM products for the semiconductor industry. This is partially offset by a decrease in research and development expense in Ion Beam products from the prior comparable period, due to the release of these products during 2007. As a percentage of sales, research and development expense increased to 15.7% in the nine months ended September 30, 2007, from 14.3% in the comparable prior year period.

Amortization expense was \$8.2 million in the nine months ended September 30, 2007, compared to \$12.0 million in the comparable prior year period. The decrease was due to certain technology-based intangibles becoming fully amortized during the second quarter of 2007.

The restructuring expense of \$2.0 million for the nine months ended September 30, 2007, consisted of personnel severance costs incurred throughout the Company during the second and third quarters of 2007.

During the third quarter of 2006, the Company finalized its purchase accounting for its acquisition of 19.9% of the stock of Fluens determining that Fluens is a variable interest entity and the Company is its primary beneficiary. As such, the Company has consolidated the results of Fluens' operations from the acquisition date, and has attributed the 80.1% portion that is not owned by Veeco to noncontrolling interest in the Company's consolidated financial statements. As part of this acquisition accounting, the Company recorded \$1.2 million of in-process technology, which was written off during the third quarter of 2006. No such costs were recorded during 2007.

Net interest expense in the nine months ended September 30, 2007 was \$2.3 million compared to \$3.6 million in the comparable prior year period. This reduction in net interest expense is the result of less net debt outstanding during the period.

During the nine months ended September 30, 2007, the Company repurchased \$56.0 million of its convertible subordinated notes, reducing the amount outstanding from \$200.0 million to \$144.0 million. The repurchase amount was \$55.1 million in cash, of which \$54.8 million related to principal and \$0.3 million related to accrued interest. As a result of the repurchase, the Company recorded a net gain from the extinguishment of debt in the amount of \$0.7 million. In the comparable 2006 period, the Company repurchased \$20.0 million of its convertible subordinated notes reducing the amount outstanding from \$220.0 million to \$200.0 million. As a result of these repurchases, the Company recorded a net gain from the extinguishment of debt in the amount of \$0.3 million.

The income tax provision for the nine months ended September 30, 2007 was \$3.5 million compared to \$2.9 million in the comparable prior year period. The 2007 provision for income taxes included \$2.5 million relating to Veeco's foreign operations, which continue to be profitable, and \$1.0 million relating to the Company's domestic operations. Due to significant domestic net operating loss carry forwards, which are fully reserved by a valuation allowance, Veeco's domestic operations are not expected to incur significant income taxes for the foreseeable future. The 2006 provision for income taxes included \$1.9 million relating to Veeco's foreign operations and \$1.0 million relating to the Company's domestic operations.

Noncontrolling interest was a credit to income of \$0.5 million for the nine months ended September 30, 2007 and a credit of \$1.2 million in the comparable prior year period. As the Company is the primary beneficiary of Fluens, a variable interest entity, it is required to consolidate Fluens and eliminate the portion of its results attributable to noncontrolling interests. As a result, the Company eliminates from its net income 80.1% of Fluens' operating losses. The credit in the prior comparable period includes the elimination of 80.1% of the write-off of in-process technology recorded in the 2006 third quarter.

Liquidity and Capital Resources

Historically, Veeco's principal capital requirements have included the funding of acquisitions and capital expenditures. The Company traditionally has generated cash from operations and debt and stock issuances. Veeco's ability to generate sufficient cash flows from operations is dependent on the continued demand for the Company's products and services. A summary of the current period cash flow activity is as follows (in thousands):

	Nine Months Ended September 30,	
	2007	2006
Net (loss) income	\$ (7,985)	\$ 7,291
Net cash provided by operating activities	\$ 22,777	\$ 22,524
Net cash used in investing activities	(6,543)	(15,634)
Net cash used in financing activities	(54,443)	(4,598)
Effect of exchange rates on cash and cash equivalents	(435)	(226)
Net change in cash and cash equivalents	(38,644)	2,066
Cash and cash equivalents at beginning of period	147,046	124,499
Cash and cash equivalents at end of period	\$ 108,402	\$ 126,565

The Company had a net decrease in cash of \$38.6 million for the nine months ended September 30, 2007 from December 31, 2006, primarily due to the repurchase of \$56.0 million of its 4.125% convertible subordinated notes due 2008 (the "Old Notes"). Cash provided by operations was \$22.8 million for this period, as compared to cash provided by operations of \$22.5 million for the comparable 2006 period. Net (loss) income adjusted for non-cash items provided operating cash flows of \$14.6 million for the nine months ended September 30, 2007, compared to \$31.0 million for the comparable 2006 period. Net cash provided by operations for the nine months ended September 30, 2007 was favorably impacted by a decrease in net operating assets and liabilities of \$8.2 million. Accounts receivable decreased \$20.0 million during the nine months ended September 30, 2007, due to a \$25.4 million reduction in sales when comparing the fourth quarter of 2006 to the third quarter of 2007, and favorable cash collections during 2007. Inventories increased by approximately \$4.8 million during the same period, principally due to an increase in work in process and finished goods inventories for systems to be shipped during the fourth quarter of 2007 and the first quarter of 2008 in the Process Equipment segment. Accounts payable decreased \$5.0 million during the nine months ended September 30, 2007, due to the timing of payments.

Cash used in investing activities of \$6.5 million for the nine months ended September 30, 2007, was driven by capital expenditures of \$6.8 million, partially offset by \$0.3 million in proceeds from the sale of property, plant and equipment. During the fourth quarter of 2007, the Company expects to invest an additional \$5.3 million in capital equipment primarily related to engineering equipment and lab tools used in enhancing, testing and process development of Veeco's products.

Cash used in financing activities for the nine months ended September 30, 2007, totaled \$54.4 million, primarily consisting of \$55.4 million used to repurchase a portion of the Company's Old Notes and pay down other existing long-term debt and \$1.5 million in payments for debt issuance costs, partially offset by \$2.8 million from the issuance of common stock resulting from the exercise of employee stock options. The debt repurchase reduced the amount of Old Notes outstanding to \$144.0 million and the Company recorded a net gain of \$0.7 million.

In April and May of 2007, the Company issued new notes pursuant to privately negotiated exchange agreements with certain holders of the Old Notes. Under these agreements, such holders agreed to exchange \$118.8 million aggregate principal amount of the Old Notes for approximately \$117.8 million aggregate principal amount of a new series of 4.125% convertible subordinated notes due April 15, 2012 (the "New Notes"). Following the exchange transactions, approximately \$25.2 million of the Old Notes, with a conversion price of \$38.51 per common share, remained outstanding. No net gain or loss was recorded on the exchange transactions since the carrying value of the Old Notes, including unamortized deferred financing costs, approximated the exchange value of the New Notes.

The New Notes initially will be convertible into 36.7277 shares of common stock per \$1,000 principal amount of New Notes (equivalent to a conversion price of \$27.23 per share or a premium of 38% over the closing market price for Veeco's common stock on April 16, 2007). Holders may convert the New Notes at any time during the period beginning on January 15, 2012 through the close of business on the second day prior to April 15, 2012 and

earlier upon the occurrence of certain events including Veeco's common stock trading at prices 130% over the conversion price for a specified period.

During the third quarter of 2007, the Company entered into a Credit Agreement with HSBC. The New Credit Agreement amends and restates, and effectively replaces, the Prior Credit Agreement, dated as of March 15, 2005, with HSBC, which was set to expire on March 15, 2008. The New Credit Agreement provides for revolving credit borrowings of up to \$100.0 million. The annual interest rate under the New Credit Agreement is a floating rate equal to the prime rate of the agent bank. A LIBOR-based interest rate option is also provided. Borrowings may be used for general corporate purposes, including working capital requirements and acquisitions. The New Credit Agreement contains certain restrictive covenants substantially similar to those of the Prior Credit Agreement. These include limitations with respect to the incurrence of indebtedness, the payment of dividends, long-term leases, investments, mergers, acquisitions, consolidations and sales of assets. The Company is required to satisfy certain financial tests under the new Credit Agreement substantially similar to those of the prior Credit Agreement. Substantially all of the assets of the Company and its material domestic subsidiaries, other than real estate, have been pledged to secure the Company's obligations under the New Credit Agreement. The revolving credit facility under the New Credit Agreement expires on March 31, 2012. As of September 30, 2007, there were no borrowings outstanding under the New Credit Agreement.

The Company believes that existing cash balances together with cash generated from operations and amounts available under the Company's new revolving credit facility will be sufficient to meet the Company's projected working capital and other cash flow requirements for the next twelve months, as well as the Company's contractual obligations, over the next two years. The Company believes it will be able to meet its obligation to repay the outstanding \$25.2 million of the Old Notes that mature on December 21, 2008 through cash on hand and cash generated from operations. The Company believes it will be able to meet its obligation to repay the outstanding \$117.8 million of the New Notes due in April 2012 through a combination of refinancing, cash generated from operations and/or other means.

In 2006, Veeco purchased 19.9% of the common stock of Fluens. Veeco and Fluens are jointly developing a next-generation process for high-rate deposition of aluminum oxide for data storage applications. If this development is successful and upon the satisfaction of certain additional conditions by May 2009, Veeco will be obligated to purchase the balance of the outstanding stock of Fluens for \$3.5 million and pay an earn-out. Approximately 31% of Fluens is owned by a Vice President of one of Veeco's business units.

During the fourth quarter of 2007, the Company expects to recognize \$5.0 million of severance charges related to a cost reduction plan. Of this total amount, approximately \$1.4 million will be paid out during the fourth quarter of 2007, with the remainder paid out over the next twelve months.

Application of Critical Accounting Policies

General: Veeco's discussion and analysis of its financial condition and results of operations are based upon the Company's condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires Veeco to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an on-going basis, management evaluates its estimates and judgments, including those related to bad debts, inventories, intangible assets and other long-lived assets, income taxes, warranty obligations, restructuring costs and contingent liabilities, including potential litigation. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The Company considers certain accounting policies related to revenue recognition, the valuation of inventories, the impairment of goodwill and indefinite-lived intangible assets, the impairment of long-lived assets, warranty costs, the accounting for taxes and share-based compensation to be critical policies due to the estimation processes involved in each.

Revenue Recognition: The Company recognizes revenue in accordance with the Securities and Exchange Commission ("SEC") Staff Accounting Bulletin ("SAB") No. 104, *Revenue Recognition*. Certain of our product sales are accounted for as multiple-element arrangements in accordance with Emerging Issues Task Force ("EITF") 00-21, *Revenue Arrangements with Multiple Deliverables*. A multiple-element arrangement is a transaction which may involve the delivery or performance of multiple products, services, or rights to use assets, and performance may occur at different points in time or over different periods of time. The Company recognizes revenue when persuasive evidence of an arrangement exists, the sales price is fixed or determinable, and collectibility is reasonably assured.

For products manufactured according to the Company's published specifications, where no installation is required or installation is deemed perfunctory and no substantive customer acceptance provisions exist, revenue is recognized when title passes to the customer, generally upon shipment. For products produced according to a particular customer's specifications, revenue is recognized when the product has been tested, it has been demonstrated that it meets the customer's specifications and title passes to the customer. The amount of revenue recorded is reduced by the amount of any customer retention (generally 10% to 20%), which is not payable by the customer until installation is completed and final customer acceptance is achieved. Installation is not deemed to be essential to the functionality of the equipment

since installation does not involve significant changes to the features or capabilities of the equipment or building complex interfaces and connections. In addition, the equipment could be installed by the customer or other vendors and generally the cost of installation approximates only 1% to 2% of the sales value of the related equipment.

For new products, new applications of existing products, or for products with substantive customer acceptance provisions where performance cannot be fully assessed prior to meeting customer specifications at the customer site, revenue is recognized upon completion of installation and receipt of final customer acceptance. Since title to goods generally passes to the customer upon shipment and 80% to 90% of the contract amount becomes payable at that time, inventory is relieved and accounts receivable is recorded for the amount billed at the time of shipment. The profit on the amount billed for these transactions is deferred and recorded as deferred profit in the accompanying condensed consolidated balance sheets. At September 30, 2007 and December 31, 2006, \$1.3 million and \$0.3 million, respectively, are recorded in deferred profit.

Service and maintenance contract revenues are recorded as deferred revenue, which is included in other accrued expenses, and recognized as revenue on a straight-line basis over the service period of the related contract.

Inventory Valuation: Inventories are stated at the lower of cost (principally first-in, first-out method) or market. Management evaluates the need to record adjustments for impairment of inventory on a quarterly basis. The Company's policy is to assess the valuation of all inventories, including raw materials, work-in-process, finished goods and spare parts. Obsolete inventory or inventory in excess of management's estimated usage for the next 12 month's requirements is written down to its estimated market value, if less than its cost. Inherent in the estimates of market value are management's estimates related to Veeco's future manufacturing schedules, customer demand, technological and/or market obsolescence, possible alternative uses, and ultimate realization of excess inventory.

Goodwill and Indefinite-Lived Intangible Asset Impairment: The Company has significant intangible assets related to goodwill and other acquired intangibles. In assessing the recoverability of the Company's goodwill and other indefinite-lived intangible assets, the Company must make assumptions regarding estimated future cash flows and other factors to determine the fair value of the respective assets. If it is determined that impairment indicators are present and that the assets will not be fully recoverable, their carrying values are reduced to estimated fair value. Impairment indicators include, among other conditions, cash flow deficits, an historic or anticipated decline in revenue or operating profit, adverse legal or regulatory developments, and a material decrease in the fair value of some or all of the assets. Assets are grouped at the lowest levels for which there are identifiable cash flows that are largely independent of the cash flows generated by other asset groups. Changes in strategy and/or market conditions could significantly impact these assumptions, and thus Veeco may be required to record impairment charges for those assets not previously recorded.

Long-Lived Asset Impairment: The carrying values of long-lived assets are periodically reviewed to determine if any impairment indicators are present. If it is determined that such indicators are present and the review indicates that the assets will not be fully recoverable, based on undiscounted estimated cash flows over the remaining depreciation period, their carrying values are reduced to estimated fair value. Impairment indicators include, among other conditions, cash flow deficits, an historic or anticipated decline in revenue or operating profit, adverse legal or regulatory developments, and a material decrease in the fair value of some or all of the assets. Assets are grouped at the lowest level for which there is identifiable cash flows that are largely independent of the cash flows generated by other asset groups. Assumptions utilized by management in reviewing for impairment of long-lived assets could be effected by changes in strategy and/or market conditions which may require Veeco to record additional impairment charges for these assets, as well as impairment charges on other long-lived assets not previously recorded.

Warranty Costs: The Company estimates the costs that may be incurred under the warranty it provides and records a liability in the amount of such costs at the time the related revenue is recognized. Estimated warranty costs are determined by analyzing specific product and historical configuration statistics and regional warranty support costs. The Company's warranty obligation is affected by product failure rates, material usage, and labor costs incurred in correcting product failures during the warranty period. As the Company's customer engineers and process support engineers are highly trained and deployed globally, labor availability is a significant factor in determining labor costs. The quantity and availability of critical replacement parts is another significant factor in estimating warranty costs. Unforeseen component failures or exceptional component performance can also result in changes to warranty costs. If actual warranty costs differ substantially from the Company's estimates, revisions to the estimated warranty liability would be required.

Income Taxes: As part of the process of preparing Veeco's condensed consolidated financial statements, the Company is required to estimate its income taxes in each of the jurisdictions in which it operates. This process involves

estimating the actual current tax expense, together with assessing temporary differences resulting from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the Company's condensed consolidated balance sheets. The carrying value of deferred tax assets is adjusted by a valuation allowance to recognize the extent to which the future tax benefits will be recognized on a more likely than not basis. Veeco's net deferred tax assets consist primarily of net operating loss and tax credit carryforwards, and timing differences between the book and tax treatment of inventory and other asset valuations. Realization of these net deferred tax assets is dependent upon the Company's ability to generate future taxable income.

The Company records valuation allowances in order to reduce its deferred tax assets to the amount expected to be realized. In assessing the adequacy of recorded valuation allowances, it considers a variety of factors, including the scheduled reversal of deferred tax liabilities, future taxable income, and prudent and feasible tax planning strategies. Under Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes* ("SFAS 109"), factors such as current and previous operating losses are given significantly greater weight than the outlook for future profitability in determining the deferred tax asset carrying value.

At September 30, 2007, the Company had a valuation allowance of approximately \$68.5 million against substantially all of its domestic net deferred tax assets, which consist of net operating loss and tax credit carryforwards, as well as temporary deductible differences. The valuation allowance was calculated in accordance with the provisions of SFAS 109, which place primary importance on the Company's historical results of operations. Although the Company's results in prior years were significantly affected by restructuring and other charges, the Company's historical losses and the losses incurred in 2005 and 2004 represent negative evidence sufficient to require a full valuation allowance under the provisions of SFAS 109. If the Company is able to realize part or all of the deferred tax assets in future periods, it will reduce its provision for income taxes with a release of the valuation allowance in an amount that corresponds with the income tax liability generated.

In July 2006, the FASB issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"), an interpretation of *FASB Statement No. 109*, which became effective for Veeco on January 1, 2007. FIN 48 addresses the determination of how tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under FIN 48, the Company must recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such uncertain tax positions are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution. The application of income tax law is inherently complex. Laws and regulations in this area are voluminous and are often ambiguous. The Company is required to make many subjective assumptions and judgments regarding its income tax exposures. Interpretations of and guidance surrounding income tax laws and regulations change over time and changes in assumptions and judgments can materially affect the amounts recognized in the Company's condensed consolidated financial statements. The impact of the Company's reassessment of its tax positions in accordance with FIN 48 during the first quarter of 2007 resulted in a \$0.8 million reduction to the January 1, 2007 retained earnings balance.

Share-Based Compensation: In 2006, the Company adopted Statement of Financial Accounting Standards No. 123(R), *Share-Based Payment* ("SFAS 123(R)"), which is a revision of Statement of Financial Accounting Standards No. 123 ("SFAS 123"), *Accounting for Stock-Based Compensation*, supersedes Accounting Principles Board No. 25, *Accounting for Stock Issued to Employees* ("APB 25") and amends Statement of Financial Accounting Standards No. 95, *Statement of Cash Flows* ("SFAS 95"). Generally, the approach in SFAS 123(R) is similar to the approach described in SFAS 123. However, SFAS 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. Pro forma disclosure is no longer an alternative. SFAS 123(R) was adopted using the modified prospective method of application, which requires the recognition of compensation expense on a prospective basis. Under this method, in addition to reflecting compensation expense for new share-based awards, expense is also recognized to reflect the remaining service period of awards that had been included in the pro forma disclosures in periods reported prior to the adoption of SFAS 123(R).

Under SFAS 123(R), the Company is required to record the fair value of stock-based compensation awards as an expense. In order to determine the fair value of stock options on the grant date, the Company applies the Black-Scholes option-pricing model. Inherent in the model are assumptions related to expected stock-price volatility, option life, risk-free interest rate and dividend yield. While the risk-free interest rate and dividend yield are less subjective assumptions, typically based on factual data derived from public sources, the expected stock-price volatility and option life assumptions require a level of judgment which make them critical accounting estimates. Since the fourth quarter of 2005, the Company has used an expected stock-price volatility assumption that is a combination of both historical and implied volatilities of the underlying stock, which is obtained from public data sources. Prior to that time, the Company based this assumption solely on historical volatility. The Company considers the exercise behavior of past grants and models the pattern of aggregate exercises in determining the expected weighted-average option life.

Recent Accounting Pronouncements

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* ("SFAS 157"). SFAS 157 establishes a common definition for fair value to be applied to U.S. generally accepted accounting principles requiring use of fair value, establishes a framework for measuring fair value, and expands disclosure about such fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. The adoption of this statement is not expected to have a material impact on the Company's consolidated financial position or results of operations.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 permits entities to choose to measure financial assets and liabilities (except for those that are specifically scoped out of the Statement) at fair value. The election to measure a financial asset or liability at fair value can be made on an instrument-by-instrument basis and is irrevocable. The difference between carrying value and fair value at the election date is recorded as an adjustment to opening retained earnings. Subsequent changes in fair value are recognized in earnings. SFAS 159 is effective for fiscal years beginning after November 15, 2007. The adoption of this statement is not expected to have a material impact on the Company's consolidated financial position or results of operations.

In July 2007, the FASB issued an Exposure Draft on Proposed FASB Staff Position (FSP) No. APB 14-a, *Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (including partial cash settlement)*. The FSP will impact the accounting for certain structured convertible debt instruments that allow settlement in any combination of cash and shares at the issuer's option. The FSP would require bifurcation of a component of the debt associated with the conversion feature, reclassification of that component to stockholders' equity, and then accretion of the resulting discount on the debt over the remaining life of the obligation resulting in interest expense equal to the issuer's nonconvertible debt borrowing rate. The intent is that the amount allocated to equity represents the interest cost that was "paid" for the conversion option. The proposed FSP would make any final guidance effective for fiscal years beginning after December 15, 2007, would not permit early application, and would be applied retrospectively to all periods presented. The Company has reviewed the impact of the proposed FSP and has determined that if the guidance is issued as currently proposed, it would result in a non-cash increase in interest expense, which could have a material impact on net income.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Veeco's net sales to foreign customers represented approximately 71.1% and 68.4% of Veeco's total net sales for the three and nine months ended September 30, 2007, respectively, and 63.9% and 67.0% for the comparable 2006 periods, respectively. The Company expects that net sales to foreign customers will continue to represent a large percentage of Veeco's total net sales. Veeco's net sales denominated in foreign currencies represented approximately 21.1% and 20.7% of Veeco's total net sales for the three and nine months ended September 30, 2007, respectively, and 12.5% and 15.1% for the comparable 2006 periods, respectively.

The condensed consolidated results of operations for the three and nine months ended September 30, 2007 include aggregate foreign currency losses of less than \$0.1 million and approximately \$0.3 million, respectively. Included in those losses were losses of less than \$0.1 million and approximately \$0.1 million, respectively, related to forward contracts. The 2006 condensed consolidated results of operations include aggregate foreign currency impact of a gain of approximately \$0.1 million and a loss of approximately \$0.3 million for the three and nine months ended September 30, 2006, respectively. Included in this impact were losses of approximately \$0.3 million and \$0.2 million,

respectively, related to forward hedge contracts.

Veeco is exposed to financial market risks, including changes in foreign currency exchange rates. The changes in currency exchange rates that have the largest impact on translating Veeco's international operating profit are the Japanese Yen and the Euro. Veeco uses derivative financial instruments to mitigate these risks. Veeco does not use derivative financial instruments for speculative or trading purposes. The Company generally enters into monthly forward contracts to reduce the effect of fluctuating foreign currencies on short-term foreign currency-denominated intercompany transactions and other known currency exposures. The average notional amount of such contracts was approximately \$3.0 million for both the three and nine months ended September 30, 2007. As of September 30, 2007, the Company had entered into one forward contract for the month of October.

Assuming third quarter 2007 variable debt and investment levels, the effect of a one-point change in interest rates would not have a material effect on net interest expense.

Item 4. Controls and Procedures.

The Company's senior management is responsible for establishing and maintaining a system of disclosure controls and procedures (as defined in Rule 13a-15 and 15d-15 under the Securities Exchange Act of 1934 (the "Exchange Act")) designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

The Company has evaluated the effectiveness of the design and operation of its disclosure controls and procedures under the supervision of and with the participation of management, including the Chief Executive Officer and Chief Financial Officer, as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are effective in timely alerting them to material information required to be included in our periodic Securities and Exchange Commission filings.

The Company is presently in the process of implementing new company-wide integrated applications software and, as of September 30, 2007, has completed the conversion to this new platform in ten of Veeco's business locations with the remainder expected to be completed by the first half of 2008. As a result, certain changes have been made to the Company's internal controls, which management believes will strengthen the Company's internal control structure. There have been no other significant changes in our internal controls or other factors during the fiscal quarter ended September 30, 2007 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1. Legal Proceedings.

As previously reported, Veeco and certain of its officers have been named as defendants in a securities class action lawsuit consolidated in August 2005 that is pending in federal court in the Southern District of New York ("the Court"). The lawsuit arises out of the restatement in March 2005 of Veeco's financial statements for the quarterly periods and nine months ended September 30, 2004 as a result of the Company's discovery of certain improper accounting transactions at its TurboDisc business unit. On July 5, 2007, Veeco entered into a Memorandum of Understanding to settle and fully resolve this lawsuit for a payment of \$5.5 million. Veeco expects that insurance proceeds will cover the settlement amount and any significant legal expenses related to the settlement. The settlement agreement is subject to court approval and would dismiss all pending claims against Veeco and the other defendants with no admission or finding of wrongdoing by Veeco or any of the other defendants, and Veeco and the other defendants would receive a full release of all claims pending in the litigation.

Item 1A. Risk Factors.

Information regarding risk factors appears in the “Safe Harbor Statement” at the beginning of this Quarterly Report on Form 10-Q and in Part I—Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2006. There have been no material changes from the risk factors previously disclosed in our Annual Report on Form 10-K.

Item 6. Exhibits.

Unless otherwise indicated, each of the following exhibits has been previously filed with the Securities and Exchange Commission by the Company under File No. 0-16244.

Number	Description	Incorporated by Reference to the Following Document:
10.1	Credit Agreement, dated as of August 20, 2007, by and among Veeco Instruments Inc., HSBC Bank USA, National Association, as administrative agent, and the lenders named therein.	*
10.2	Amendment and Reaffirmation dated August 20, 2007 of Security Agreement dated as of March 15, 2005 among Veeco Instruments Inc., the subsidiaries of Veeco named therein and HSBC Bank USA, National Association, as administrative agent.	*
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities and Exchange Act of 1934.	*
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities and Exchange Act of 1934.	*
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	*
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	*

* Filed herewith

SIGNATURES

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

Date: October 30, 2007

Veeco Instruments Inc.

By: /s/ JOHN R. PEELER

John R. Peeler

Chief Executive Officer

By: /s/ JOHN F. REIN, JR.

John F. Rein, Jr.

*Executive Vice President, Chief Financial Officer
and Secretary*

INDEX TO EXHIBITS

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* Filed herewith

CREDIT AGREEMENT

Dated as of August 20, 2007

by and among

VEECO INSTRUMENTS INC.

and

**HSBC BANK USA, NATIONAL ASSOCIATION
as Administrative Agent,**

**NORTH FORK BANK
as Documentation Agent,**

and

THE LENDERS PARTY HERETO

Lead Arranger:

HSBC BANK USA, NATIONAL ASSOCIATION

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EXHIBITS

Exhibit A	-	Form of Revolving Credit Note
Exhibit B	-	Form of Swingline Note
Exhibit C	-	Intentionally omitted
Exhibit D	-	Intentionally omitted
Exhibit E-1	-	Form of Company Pledge Agreement
Exhibit E-2	-	Form of Guarantor Pledge Agreement
Exhibit F	-	Form of Assignment and Acceptance Agreement
Exhibit G	-	Form of Opinion of Counsel
Exhibit H	-	Form of U.S. Tax Compliance Certificate

CREDIT AGREEMENT dated as of August 20, 2007, by and among **VEECO INSTRUMENTS INC.**, a Delaware corporation (the “Company”), the **LENDERS** which from time to time are parties to this Agreement (individually, a “Lender” and, collectively, the “Lenders”), **HSBC BANK USA, NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States of America, as Administrative Agent (the “Administrative Agent”) and **NORTH FORK BANK**, a New York State chartered bank, as Documentation Agent (the “Documentation Agent”).

BACKGROUND

WHEREAS, the Company, the lenders named therein (the “Original Lenders”) and HSBC Bank USA, National Association, as Administrative Agent, are parties to a Credit Agreement, dated as of March 15, 2005 (as amended, the “Prior Credit Agreement”) pursuant to which the Original Lenders agreed to make Loans (as therein defined) to the Company;

WHEREAS, the Company has requested that the Prior Credit Agreement be amended and restated as hereinafter provided to, among other things, modify the group of Lenders;

WHEREAS, the Administrative Agent and the Lenders are willing to agree to such amendment and restatement and to extend credit to the Company on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the Company, the Administrative Agent and the Lenders hereby agree that the Prior Credit Agreement shall be, and hereby is, amended and restated in its entirety and the parties hereto agree as follows:

RECITALS

The Company has requested the Lenders to extend credit from time to time and the Lenders are willing to extend such credit to the Company, subject to the terms and conditions hereinafter set forth.

Accordingly, the parties hereto agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Definitions. As used herein, the following terms shall have the following meanings:

“Additional Lender” shall mean any financial institution which becomes a Lender hereunder pursuant to Section 10.05(c) hereof.

“Administrative Agent” or “Agent” shall mean HSBC Bank USA, National Association in its capacity as Administrative Agent for the Lenders under this Agreement or its successor Administrative Agent permitted pursuant to Section 9.08 hereof.

“Affiliate” shall mean, with respect to a specified Person, another Person which, directly or indirectly, controls or is controlled by or is under common control with such specified Person. For the purpose of this definition, “control” of a Person shall mean the power, direct or indirect, to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting

securities, by contract or otherwise; provided that, in any event, any Person who owns directly or indirectly 25% or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation or 25% or more of the partnership or other ownership interests of any Person (other than as a limited partner of such other Person) will be deemed to control such corporation or other Person.

“Aggregate Letters of Credit Outstandings” shall mean, on the date of determination, the sum of (a) the aggregate maximum stated amount at such time which is available or available in the future to be drawn under all outstanding Letters of Credit and (b) the aggregate amount of all payments on account of drawings under all outstanding Letters of Credit that has not been reimbursed by the Company.

“Aggregate Outstandings” shall mean, on the date of determination, the sum of (a) the Aggregate Letters of Credit Outstandings at such time, (b) the aggregate outstanding principal amount of all Revolving Credit Loans at such time, and (c) the aggregate outstanding principal amount of all Swingline Loans at such time.

“Agreement” shall mean this Credit Agreement, dated as of August 20, 2007, as it may hereafter be amended, restated, supplemented or otherwise modified from time to time.

“Applicable Currency” shall mean, as to any particular payment or Loan, Dollars or the other Approved Currency in which it is denominated or is payable.

“Applicable Currency Equivalent” shall mean, with respect to an amount denominated in Dollars which is to be converted to any other Applicable Currency, the amount of such Applicable Currency required to purchase such amount of Dollars at the Relevant Exchange Rate.

“Applicable Offshore Time” shall mean, with respect to borrowings and payments in Approved Currencies other than Dollars, the local times in the country of settlement for such Approved Currencies as specified from time to time by the Administrative Agent to the parties hereto.

“Applicable Rate” shall mean (a) with respect to each Eurocurrency Loan, the percentage set forth below under the heading “Eurocurrency Margin” opposite the applicable ratio of Consolidated Senior Funded Debt to Consolidated EBITA (the “Applicable Ratio”), (b) with respect to each Prime Rate Loan, the percentage set forth below under the heading “Prime Rate Margin” opposite the Applicable Ratio and (c) with respect to the Unused Fee payable pursuant to Section 3.04(a) of this Agreement, the percentage set forth below under the heading “Unused Fee Rate” opposite the Applicable Ratio:

Consolidated Senior Funded Debt to Consolidated EBITA	Eurocurrency Margin (360 day basis)	Prime Rate Margin (360 day basis)	Unused Fee Rate
Greater than 2.00:1.00	1.50%	-0-%	0.30%
Less than or equal to 2.00:1.00	1.25%	-0-%	0.25%

Notwithstanding the foregoing, during the period commencing on the Closing Date and ending on September 30, 2007, (a) the Applicable Rate with respect to each Eurocurrency Loan shall be 1.25% per annum, (b) the Applicable Rate with respect to each Prime Rate Loan shall be 0.00% per annum and (c) the Applicable Rate with respect to the Unused Fee payable pursuant to Section 3.04(a) hereof shall be .25% per annum. The Applicable Rate will be set or reset quarterly with respect to each Loan and the

Unused Fee on the first Business Day of the fiscal quarter of the Company that commences after the date on which the financial statements referred to in Section 6.03(a) or Section 6.03(b) hereof (i.e., the Applicable Rate to be set on October 1, 2007 shall be determined based upon the financial statements of the Company for the fiscal quarter ended June 30, 2007), as the case may be, are required to be delivered to the Administrative Agent, and shall (a) apply to all Eurocurrency Loans and Prime Rate Loans outstanding on such date or to be made on or after such date and (b) be used to calculate the Unused Fee as described in Section 3.04(a) hereof on or after such date, and, in the case of each of (a) and (b), until, but not including, the next date on which the Applicable Rate is reset in accordance with the provisions hereof; provided, however, that if any financial statements are not received by the Administrative Agent within the time period relating to such financial statements as provided in Section 6.03(a) or Section 6.03(b) hereof, as the case may be, the Applicable Rate used to calculate the Unused Fee as described in Section 3.04(a) hereof and the Applicable Rate with respect to all Eurocurrency Loans and Prime Rate Loans outstanding on such date or to be made on or after the date the Applicable Rate should have been reset in accordance with the foregoing provisions (i.e., assuming timely delivery of the requisite financial statements), until the day which is the first Business Day of the fiscal quarter of the Company which commences following the receipt by the Administrative Agent of such financial statements, will be set based on an Applicable Ratio of greater than 2.00:1.00; and further provided, however, that the Administrative Agent and the Lenders shall not in any way be deemed to have waived any Event of Default or any of their remedies hereunder (including, without limitation, remedies provided in Article VIII hereof) in connection with the provisions of the foregoing proviso. During the occurrence and continuance of an Event of Default, no downward adjustment, and only upward adjustments, shall be made to the Applicable Rate.

“Approved Currencies” shall mean Dollars, British pounds sterling, Japanese yen, and the Euro, and, with the consent of each of the Lenders, any other currencies which are freely transferable and convertible into Dollars and in which dealings in deposits are carried out in the London interbank market.

“Assignment and Acceptance Agreement” shall mean an Assignment and Acceptance Agreement entered into by a Lender and an assignee and accepted by the Administrative Agent and, so long as no Event of Default shall have occurred and be continuing, the Company (such consent not to be unreasonably withheld or delayed), in the form attached hereto as **Exhibit F** or any other form approved by the Administrative Agent.

“Auditor” shall have the meaning specified in Section 6.03(a) hereof.

“Borrowing Date” shall mean, with respect to any Loan or Letter of Credit, the date specified in any notice given pursuant to Section 2.01(b) and Section 2.03(a) hereof on which such Loan or Letter of Credit is requested by the Company.

“Business Day” shall mean any day not a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close, and

(a) if the applicable Business Day relates to any Eurocurrency Loan denominated in Dollars, means such a day on which dealings are carried on in the applicable offshore Dollar interbank market;

(b) if the applicable Business Day relates to an Obligation denominated in the Euro, any such day which is (i) for payments or purchases of the Euro, a TARGET Business Day, and (ii) for all other purposes, including the giving and receiving of notices hereunder, a TARGET Business Day on

which banks are generally open for business in London, Frankfurt and in any other principal financial center as the Administrative Agent may from time to time determine for this purpose; and

(c) if the applicable Business Day relates to an Obligation denominated in any Applicable Currency other than Dollars, a day on which commercial banks are open for foreign exchange business in London, England, and on which dealings in the relevant Applicable Currency are carried on in the applicable offshore foreign exchange interbank market in which disbursements of or payment in such Applicable Currency will be made or received hereunder.

A “TARGET Business Day” is a day when TARGET (Trans-European Automated Real-time Gross settlement Express Transfer system), or any successor thereto, is scheduled to be open for business.

“Capital Lease” shall mean, with respect to any Person, as of the date of determination, any lease the obligations of which are required to be capitalized on a balance sheet of such Person in accordance with Generally Accepted Accounting Principles applied on a consistent basis.

“Cash Collateral” shall mean a deposit by the Company made in immediately available funds to a cash collateral account at the Administrative Agent and the taking of all action required to provide the Administrative Agent, for the ratable benefit of the Lenders, a first priority perfected security interest in such deposit.

“Change of Control” shall mean any event or condition which results in any Person or “group” (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended), other than a Person or group that is actively involved in the day to day management of the Company on the Closing Date, (i) having acquired beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended), directly or indirectly, of securities of the Company (or other securities convertible into such securities) representing 40% or more of the combined voting power of all securities of the Company entitled to vote in the election of directors of the Company; or (ii) obtaining the power (whether or not exercised) to elect a majority of the Company’s directors.

“Chief Financial Officer” shall mean the Chief Financial Officer of the Company or, in the event no such officership exists, the principal financial officer or principal accounting officer of the Company.

“Closing Date” shall mean August 20, 2007.

“Code” shall mean the Internal Revenue Code of 1986, and the regulations promulgated thereunder, each as amended from time to time.

“Commercial Letter of Credit” shall mean any sight letter of credit issued for the account of a Person for the purpose of providing the primary payment mechanism in connection with the purchase of materials, goods, or services by such Person.

“Commitment Proportion” shall mean, with respect to each Lender at the time of determination, the ratio, expressed as a percentage, which (a) such Lender’s Revolving Credit Commitments bear to the Total Commitment or (b) if the Revolving Credit Commitments have expired or have been terminated, the outstanding principal balance of the Revolving Credit Loans held by such Lender at such time bear to the principal balance of the Revolving Credit Loans held by all Lenders outstanding at such time.

“Commitments” shall mean, collectively, the Revolving Credit Commitments and the Swingline Commitments.

“Company” shall have the meaning set forth in the preamble hereto.

“Consolidated Capital Expenditures” shall mean, for any period, to the extent capitalized, the sum of all expenditures by the Company and its Subsidiaries on a consolidated basis, in respect of the purchase or acquisition of any fixed or capital assets, including, without limitation, obligations under Capital Leases, determined in accordance with Generally Accepted Accounting Principles applied on a consistent basis.

“Consolidated Current Liabilities” shall mean, on the date of determination, all liabilities of the Company and its Subsidiaries, which would be classified as current liabilities on a consolidated balance sheet of the Company and its Subsidiaries, as determined in accordance with Generally Accepted Accounting Principles applied on a consistent basis, provided that there shall be excluded from the calculation of current liabilities, 80% of “Deferred Gross Profit arising from SAB 104” as reflected on the most recent consolidated balance sheet of the Company and its Subsidiaries delivered to the Lenders pursuant to the terms of this Agreement.

“Consolidated EBITA” shall mean, for the Company and its Subsidiaries for any period, Consolidated EBITDA for such period minus depreciation expenses for such period, determined in accordance with Generally Accepted Accounting Principles applied on a consistent basis. All of the foregoing categories shall be calculated with respect to the Company and its Subsidiaries on a consolidated basis and shall be calculated (without duplication) over the four fiscal quarters ending on or most recently ended prior to the date of calculation thereof. Notwithstanding anything to the contrary herein, for purposes of determining compliance with the financial covenants set forth herein and in determining whether an acquisition shall be a Permitted Acquisition *only*, but not for purposes of calculating the Applicable Rate, Consolidated EBITA shall include the EBITA of any entity acquired in a Permitted Acquisition, which shall be calculated on a pro forma basis with respect to periods prior to consummation of such Permitted Acquisition.

“Consolidated EBITDA” shall mean, for any Person for any period, the Consolidated Net Income (Net Loss) of such Person and its Subsidiaries for such period before provision for federal and state income taxes, minus the sum of (x) Consolidated Interest Income and (y) all extraordinary gains, plus the sum, without duplication, of (a) one-time non-cash charges related to (i) write-downs of intangible assets (including the value of in-process research and development related to a Permitted Acquisition) and (ii) to the extent included in Consolidated Net Income before provision for federal and state income taxes, write-downs of, or reserves for, deferred tax assets, (b) Consolidated Interest Expense, (c) depreciation and amortization expenses, (d) non-cash non-recurring charges incurred in connection with accounting for stock-based compensation expense and changes to Statements of Financial Accounting Standards, all determined in accordance with Generally Accepted Accounting Principles applied on a consistent basis. All of the foregoing categories shall be calculated with respect to such Person and its Subsidiaries on a consolidated basis and shall be calculated (without duplication) over the four fiscal quarters ending on or most recently ended prior to the date of calculation thereof. Notwithstanding anything to the contrary herein, all gains associated with repurchases by the Company of the outstanding Subordinated Notes shall be deemed extraordinary gains for purposes of the calculation of Consolidated EBITDA.

“Consolidated EBITDAR” shall mean, for the Company and its Subsidiaries for any period,

Consolidated EBITDA plus rent expense, determined in accordance with Generally Accepted Accounting Principles applied on a consistent basis. All of the foregoing categories shall be calculated with respect to the Company and its Subsidiaries on a consolidated basis and shall be calculated (without duplication) over the four fiscal quarters ending on or most recently ended prior to the date of calculation thereof.

“Consolidated Fixed Charge Coverage Ratio” shall mean, the ratio of (a) the sum of (i) Consolidated EBITDAR minus (ii) Consolidated Net Unfunded Capital Expenditures during the four fiscal quarters ending on or most recently ended prior to the date of determination, minus (iii) income taxes paid to any government or governmental instrumentality by the Company or any of its Subsidiaries during the four fiscal quarters ending on or most recently ended prior to the date of determination to (b) the sum of (i) Consolidated Interest Expense plus (ii) rent expense for the four fiscal quarters ending on or most recently ended prior to the date of determination, plus (iii) the aggregate amount of all scheduled payments due during the next succeeding four fiscal quarters on Indebtedness for borrowed money, including, without limitation, Subordinated Debt, provided that Subordinated Debt shall be calculated net of Domestic Cash and Marketables, but only if the result is a positive number, minus (iv) an amount equal to 80% of all Revolving Credit Loans and Swingline Loans at such time due to be repaid during the next succeeding four (4) fiscal quarters.

“Consolidated Interest Expense” shall mean for any Person, on the date of determination, the sum of all interest expense on Indebtedness of such Person and its Subsidiaries, on a consolidated basis, during the four fiscal quarters ending on or most recently ended prior to the date of calculation thereof, as determined in accordance with Generally Accepted Accounting Principles applied on a consistent basis, provided that, the calculation of Consolidated Interest Expense shall include Consolidated Interest Income for all fiscal periods through September 30, 2007 but not thereafter.

“Consolidated Interest Income” shall mean for any Person, on the date of determination, the sum of all interest income of such Person and its Subsidiaries, on a consolidated basis, during the four fiscal quarters ending on or most recently ended prior to the date of calculation thereof, determined in accordance with Generally Accepted Accounting Principles applied on a consistent basis.

“Consolidated Net Income (Net Loss)” shall mean for any Person, for any period, the net income (or net loss) of such Person and its Subsidiaries on a consolidated basis for such period determined in accordance with Generally Accepted Accounting Principles applied on a consistent basis.

“Consolidated Net Unfunded Capital Expenditures” shall mean, for the Company and its Subsidiaries, Consolidated Unfunded Capital Expenditures less the net proceeds, not in excess of \$5,000,000, from the sale of fixed or capital assets realized by the Company and its Subsidiaries on a consolidated basis during the preceding four fiscal quarters.

“Consolidated Quick Assets” shall mean, on the date of determination, the sum of all cash, Marketable Securities and accounts receivable of the Company and its Subsidiaries, including, without limitation, Domestic Cash and Marketables, which have not been assigned, transferred, restricted, sold or are subject to any Lien, except Liens in favor of the Administrative Agent for the benefit of the Lenders in accordance with this Agreement, all as calculated on a consolidated basis in accordance with Generally Accepted Accounting Principles applied on a consistent basis.

“Consolidated Quick Ratio” shall mean, on the date of determination, the ratio of (a) Consolidated Quick Assets to (b) the sum, without duplication, of (i) Consolidated Current Liabilities, and (ii) 75% of the Aggregate Outstandings. In addition, for purposes of calculating the Consolidated

Quick Ratio, if, as of the date of determination, Consolidated EBITA on a rolling four-quarters basis is less than \$20,000,000, then accounts receivable of the Company and its Subsidiaries on a consolidated basis shall be excluded from Consolidated Quick Assets to the extent such accounts receivable exceed 50% of Consolidated Quick Assets.

“Consolidated Senior Funded Debt” shall mean, on the date of determination, the sum of all Indebtedness for borrowed money of the Company and its Subsidiaries (including, without limitation, the current portion of Subordinated Indebtedness net of Domestic Cash and Marketables, if a positive number), determined on a consolidated basis and including the current portion thereof and the Aggregate Letters of Credit Outstanding, but excluding the long term portion of the Existing Mortgage Debt and the long-term portion of Subordinated Indebtedness, all as determined in accordance with Generally Accepted Accounting Principles applied on a consistent basis.

“Consolidated Total Assets” shall mean, at any time, the total assets of the Company and its Subsidiaries, as would be set forth or reflected on a consolidated balance sheet of the Company and its Subsidiaries, prepared in accordance with Generally Accepted Accounting Principles applied on a consistent basis.

“Consolidated Total Revenues” shall mean, at any time, the total revenues of the Company and its Subsidiaries, as would be set forth or reflected on a consolidated balance sheet of the Company and its Subsidiaries, prepared in accordance with Generally Accepted Accounting Principles applied on a consistent basis.

“Consolidated Unfunded Capital Expenditures” shall mean those Consolidated Capital Expenditures of the Company and its Subsidiaries not funded by Indebtedness; provided that, for purposes of this definition only, “Indebtedness” shall not include Indebtedness arising under this Agreement.

“Default” shall mean any condition or event which upon notice, lapse of time or both would constitute an Event of Default.

“Determination Date” shall have the meaning specified in Section 4.03 hereof.

“Dollar” and the symbol “\$” shall mean lawful currency of the United States of America.

“Dollar Equivalent Amount” shall mean, (a) in relation to any amount denominated in Dollars, the amount thereof at such time, and (b) in relation to any amount denominated in any Applicable Currency other than Dollars, the amount in Dollars which such amount would equal when converted at the Exchange Rate then in effect.

“Domestic Cash and Marketables” shall mean the aggregate Dollar value of any cash, cash equivalents and Marketable Securities of the Company and its Domestic Subsidiaries maintained at, or held by, any financial institution located in the United States of America.

“Domestic Subsidiary” shall mean any Subsidiary of the Company organized under the laws of any state of the United States of America.

“Eligible Investments” shall mean (a) direct obligations of the United States of America or any governmental agency thereof which are fully guaranteed or insured by the United States of America;

(b) Dollar denominated certificates of time deposit issued by any bank organized and existing under the laws of the United States or any state thereof and having aggregate capital and surplus in excess of \$500,000,000 or by any Lender; (c) money market mutual funds having assets in excess of \$2,000,000,000; (d) money market mutual funds having assets in excess of \$500,000,000 managed by a Lender or an Affiliate of a Lender; (e) commercial paper rated not less than P-1 or A-1 or their equivalent by Moody's Investors Service, Inc. or Standard & Poor's Ratings Group, respectively; (f) tax exempt securities of a U.S. issuer rated A or better by Standard & Poor's Ratings Group or rated A-2 or better by Moody's Investors Service, Inc.; (g) cash, including, without limitation, Domestic Cash and Marketables; (h) asset-backed securities, mortgage-backed securities and auction-rate securities rated AAA (or its equivalent) by Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (i) bonds issued by corporations organized under the laws of any state of the United States rated A (or its equivalent) or better by Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; and (j) short-term investments by any Non-Domestic Subsidiary made in the ordinary course of its business and in accordance with the Company's guidelines and procedures provided that the aggregate amount of such investments by the Non-Domestic Subsidiaries shall not exceed the lesser of (1) \$25,000,000 or (2) fifty percent (50%) of the aggregate amount of Eligible Investments.

"EMU Legislation" shall mean legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

"Environmental Law" shall mean any applicable law, ordinance, rule, regulation, or policy having the force of law of any Governmental Authority relating to pollution or protection of the environment or to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.) and the rules and regulations promulgated pursuant thereto.

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

"ERISA Affiliate" shall mean each person (as defined in Section 3(9) of ERISA) which together with the Company or any Affiliate of the Company would be deemed to be a member of the same "controlled group" within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"Euro" shall mean the single currency of Participating Member States.

"Eurocurrency Base Rate" shall mean, for any Interest Period with respect to a Eurocurrency Loan, the rate of interest determined by the Administrative Agent as the rate for deposits in the Applicable Currency for a period equal to such Interest Period which appears on Telerate Page 3740 or 3750 as of 11:00 a.m. (London time) on the day which is two Business Days prior to the commencement of such Interest Period. (For purposes hereof, "Telerate Page 3740 or 3750" means the display designated as "3740" or "3750" by Bridge Information Systems, Inc. (formerly known as Dow Jones Market Service) or any replacement page thereof.) If the Administrative Agent is unable to obtain any quotation as provided above, the Eurocurrency Base Rate shall be the rate of interest per annum determined by the Administrative Agent to be the rate at which deposits in the Applicable Currency in the approximate amount of the amount of the Eurocurrency Loan to be made or continued as, or converted into, a Eurocurrency Loan and having a maturity comparable to such Interest Period would be offered by four

major banks selected by the Administrative Agent in the London interbank market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period. The principal London office of each of the four major banks will be requested to provide a quotation of its Applicable Currency deposit offered rate. If at least two such quotations are provided, the Eurocurrency Base Rate for that date will be the arithmetic mean of the quotations. If fewer than two quotations are provided as requested, it will be deemed that the Eurocurrency Base Rate cannot be determined.

“Eurocurrency Loans” shall mean Loans at such time as they are made and/or being maintained at a rate of interest based upon Reserve Adjusted Eurocurrency Rate.

“Eurocurrency Reserve Requirement” shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate (without duplication) of the rates (expressed as a decimal) of reserve requirements in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves, under any regulations of the Board of Governors of the Federal Reserve System or any other governmental authority having jurisdiction with respect thereto) as from time to time in effect, dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “eurocurrency liabilities” in Regulation D) maintained by any Lender.

“Eurocurrency Sublimit” shall mean \$25,000,000.

“Event of Default” shall have the meaning set forth in Article VIII hereof.

“Exchange Rate” shall mean, with respect to any currency (the “first currency”) on any date, the rate at which such currency may be exchanged into another currency (the “second currency”), as set forth on such date on the relevant Reuters currency page at or about 11:00 a.m. London time on such date. In the event that such rate does not appear on any Reuters currency page, the “Exchange Rate” shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Company or, in the absence of such agreement, such “Exchange Rate” shall instead be the Administrative Agent’s spot rate of exchange in the interbank market where its foreign currency exchange operations in respect of such first currency are then being conducted, at or about 10:00 a.m., local time, at such date for the purchase of the second currency with such first currency, for delivery two Business Days later provided, that if at the time of any such determination, no such spot rate can reasonably be quoted, the Administrative Agent may use any reasonable method as it deems applicable to determine such rate, and such determination shall be conclusive absent manifest error (without prejudice to the determination of the reasonableness of such method).

“Existing Guarantors” shall mean Veeco Compound Semiconductor Inc., Veeco Process Equipment Inc. (formerly known as Veeco Ion Beam Equipment Inc., successor by merger to Veeco Slider Process Equipment Inc.) and Veeco Metrology Inc. (formerly Veeco Tuscon Inc. and successor-by-merger to Veeco Metrology, LLC).

“Existing Indebtedness” shall mean all Indebtedness and other obligations of the Company arising pursuant to the Prior Credit Agreement.

“Existing Mortgage Debt” shall mean Indebtedness secured by real property, as described on Schedule 1.01(b) hereto.

“Federal Funds Rate” shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal fund brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three Federal fund brokers of recognized standing selected by the Administrative Agent.

“First-Tier Subsidiary” shall mean, with respect to any Person, a Subsidiary of such Person that is directly owned by such Person.

“Foreign Pledge Agreements” shall mean such pledge agreements or other documents, as may be required in order to grant to the Administrative Agent (for the benefit of the Lenders) a security interest in 65% of the issued and outstanding shares of stock or other ownership interest of any Material Non-Domestic Subsidiary.

“Generally Accepted Accounting Principles” shall mean those generally accepted accounting principles in the United States of America, as in effect from time to time.

“Governmental Authority” shall mean any nation or government, any state, province, city or municipal entity or other political subdivision thereof, and any governmental, executive, legislative, judicial, administrative or regulatory agency, department, authority, instrumentality, commission, board or similar body, whether federal, state, provincial, territorial, local or foreign.

“Guarantors” shall mean, collectively, those Material Domestic Subsidiaries set forth on Schedule 1.01(a) hereto and each other Material Domestic Subsidiary which, from time to time hereafter, is required to execute a Guaranty or an amendment thereto in accordance with Section 6.12 hereof, provided such Subsidiary’s status as a Guarantor shall be effective as of the date of such execution.

“Guaranty” shall mean the Guaranty, dated as of the Prior Closing Date, by the Existing Guarantors in favor of the Administrative Agent and the Lenders, as reaffirmed and amended as of the Closing Date to, among other things, add the New Guarantors as guarantors thereunder, as such Guaranty may be further amended to add any Material Domestic Subsidiary required to become a guarantor thereunder pursuant to Section 6.12 hereof or to release any Guarantor which subsequently becomes a Non-Material Subsidiary, as such Guaranty may hereafter be amended, restated, supplemented or otherwise modified from time to time.

“Hazardous Materials” shall mean any explosives, radioactive materials, or other materials, wastes, substances, or chemicals regulated as toxic or hazardous or as a pollutant, contaminant or waste under any applicable Environmental Law.

“Hedging Agreement” shall mean any interest rate swap, collar, cap, floor, option or forward rate agreement or other agreement regarding the hedging of interest rate risk exposure executed in connection with hedging the interest rate exposure of the Company and any confirming letter executed pursuant to such agreement, all as amended, supplemented, restated or otherwise modified from time to time.

“Indebtedness” shall mean, without duplication, as to any Person, (a) indebtedness for borrowed money; (b) indebtedness for the deferred purchase price of property or services; (c) indebtedness evidenced by bonds, debentures, notes or other similar instruments; (d) obligations and liabilities secured

by a Lien upon property owned by such Person, whether or not owing by such Person and even though such Person has not assumed or become liable for the payment thereof; (e) obligations or liabilities created or arising under any conditional sales contract or other title retention agreement with respect to property used and/or acquired by such Person; (f) the capitalized portion of obligations of such Person as lessee under Capital Leases; (g) net liabilities of such Person under Hedging Agreements and foreign currency exchange agreements, as calculated in accordance with accepted practice; (h) all obligations, contingent or otherwise of such Person as an account party or applicant in respect of letters of credit created for the account or upon the application of such Person; and (i) obligations and liabilities of the types described in clause (a) through (h) above, directly or indirectly, guaranteed by such Person.

“Indentures” shall mean, collectively, the Indenture, dated December 21, 2001 and the First Supplemental Indenture dated April 20, 2007, in each case by and between the Company and the trustee named therein providing for issuance of the Subordinated Notes.

“Interest Payment Date” shall mean (a) as to any Prime Rate Loan, the last day of each calendar month during the term hereof and the date on which such Prime Rate Loan is converted to a Eurocurrency Loan; (b) as to any Eurocurrency Loan, the last day of the Interest Period applicable thereto and, if such Interest Period exceeds three months, the date that falls three months after the beginning of such Interest Period; and (c) as to any Loan, the date such Loan is paid in full or in part, to the extent of such payment.

“Interest Period” shall mean with respect to any Eurocurrency Loan:

(a) initially, the period commencing on the date such Eurocurrency Loan is made and ending one, two, three or six months thereafter, as selected by the Company in its notice of borrowing or in its notice of conversion from a Prime Rate Loan, in each case in accordance with the terms of Articles II and III hereof; and

(b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurocurrency Loan and ending one, two, three or six months thereafter, as selected by the Company by irrevocable written notice to the Administrative Agent not later than the Applicable Offshore Time, four Business Days prior to the last day of the then current Interest Period with respect to a Eurocurrency Loan which is denominated in an Approved Currency other than Dollars, or 11:00 a.m. (New York, New York time) three Business Days prior to the last day of the then current Interest Period with respect to a Eurocurrency Loan which is denominated in Dollars, and the Administrative Agent shall promptly notify each of the Lenders of such notice; provided, however, that all of the foregoing provisions relating to Interest Periods are subject to the following:

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

(ii) if the Company shall fail to give notice as provided in clause (b) above, the Company shall be deemed to have requested conversion of the affected Eurocurrency Loan to a Prime Rate Loan on the last day of the then current Interest Period with respect thereto;

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

(iv) no more than ten (10) Interest Periods may exist at any one time.

“Issuing Lender” shall mean the Person which is the Administrative Agent, in its capacity as the issuer of Letters of Credit hereunder or its successor Issuing Lender permitted pursuant to Section 2.03(e) hereof. The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender, in which case the term “Issuing Lenders” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Lead Arranger” shall mean HSBC Bank USA, National Association.

“Lenders” shall have the meaning set forth in the preamble hereto and shall include the Swingline Lender and the Issuing Lender.

“Lending Office” shall mean, for each Lender, the office specified under such Lender’s name on the signature pages hereof with respect to each Type of Loan, or such other office as such Lender may designate in writing from time to time to the Company and the Administrative Agent with respect to such Type of Loan.

“Letter of Credit” shall mean any commercial or standby letter of credit issued by the Issuing Lender for the account of the Company pursuant to the terms of this Agreement.

“Letter of Credit Agreement” shall mean the Issuing Lender’s applicable form of Application for Letter of Credit, as in effect at the time that a request is made for a Letter of Credit. If there are any conflicts between the provisions of any Letter of Credit Agreement and this Agreement, the provisions of this Agreement shall govern.

“Lien” shall mean any mortgage, pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any Capital Lease and any financing lease having substantially the same economic effect as any of the foregoing).

“Loans” shall mean, collectively, the Revolving Credit Loans and the Swingline Loans.

“Loan Documents” shall mean, collectively, this Agreement, the Notes, the Guaranties, the Security Agreement, the Hedging Agreements (but only to the extent that such Hedging Agreements are between the Company and a Lender and relate to the Company’s hedging of interest rate exposure under this Agreement), the Pledge Agreements, and each other agreement executed in connection with the transactions contemplated hereby or thereby, as each of the same may hereafter be amended, restated, supplemented or otherwise modified from time to time.

“Marketable Securities” shall mean those securities described in the definition of “Eligible Investments”, that are classified as current assets, as would be set forth or reflected on a consolidated balance sheet of the Company and its Subsidiaries, prepared in accordance with Generally Accepted Accounting Principles applied on a consistent basis, provided that, for purposes of determining Consolidated Quick Assets, those securities described in clause (j) of the definition of “Eligible Investments” shall not exceed 20% of the aggregate amount of Marketable Securities, at any time.

“Material Adverse Effect” shall mean a material adverse effect upon (a) the business, operations, property or condition (financial or otherwise) of the Company and its Subsidiaries taken as a whole or (b) the ability of the Company or any Guarantor to perform in any material respect any obligations under any Loan Document to which it is a party.

“Material Domestic Subsidiary” shall mean a Material Subsidiary which is a Domestic Subsidiary.

“Material Non-Domestic Subsidiary” shall mean a Material Subsidiary which is a Non-Domestic Subsidiary.

“Material Subsidiary” shall mean any (a) Domestic Subsidiary of the Company which has assets constituting at least five percent (5%) of Consolidated Total Assets or has revenues consisting of at least five percent (5%) of Consolidated Total Revenues, or (b) Non-Domestic Subsidiary of the Company which has assets constituting at least ten percent (10%) of Consolidated Total Assets or has revenues consisting of at least ten percent (10%) of Consolidated Total Revenues, each as reflected on the most recent financial statements delivered pursuant to Section 6.03(a) or (b) hereof.

“Multiemployer Plan” means any Plan that is a “multiemployer plan” (as such term is defined in Section 4001(a)(3) of ERISA), which is covered by Title IV of ERISA.

“New Guarantors” shall mean Veeco APAC Inc. and Veeco Corporate LLC.

“Non-Domestic Subsidiary” shall mean any Subsidiary of the Company which is not a Domestic Subsidiary.

“Non-Material Domestic Subsidiary” shall mean any Non-Material Subsidiary which is a Domestic Subsidiary.

“Non-Material Subsidiary” shall mean any Subsidiary of the Company which is not a Material Subsidiary.

“Non-Excluded Taxes” shall have the meaning set forth in Section 3.10(a) hereof.

“Notes” shall mean, collectively, the Revolving Credit Notes and the Swingline Note.

“Obligations” shall mean all obligations, liabilities and indebtedness of the Company and any of its Subsidiaries to the Lenders, the Issuing Lender and the Administrative Agent, whether now existing or hereafter created, absolute or contingent, direct or indirect, due or not, whether created directly or acquired by assignment or otherwise, arising under this Agreement, the Notes or any other Loan Document including, without limitation, all obligations, liabilities and indebtedness of the Company with respect to the principal of and interest on the Loans (including any interest that accrues after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Company, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement of Letters of Credit, obligations under any Hedging Agreement relating to the Indebtedness of the Company arising under this Agreement, and all fees, costs, expenses and indemnity obligations of the Company and any of its Subsidiaries hereunder or under any other Loan Document (including all fees and expenses of the Administrative Agent and any Lender incurred pursuant to this Agreement or any other Loan Document).

“Participant” shall have the meaning set forth in Section 10.05(b) hereof.

“Participating Member States” shall mean each country which from time to time becomes a Participating Member State as described in EMU Legislation.

“Payment Office” shall mean (a) in the case of payments in Dollars, the Administrative Agent’s office located at 534 Broad Hollow Road, Melville, New York 11747 or such other office as the Administrative Agent may designate from time to time in writing and (b) in the case of payments in any Approved Currency other than Dollars, such address as the Administrative Agent may, from time to time, specify.

“PBGC” shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

“Permitted Acquisition” shall mean any acquisition (whether by merger or otherwise) by the Company or any Subsidiary of the Company of more than 50% of the outstanding capital stock, membership interests, partnership interests or other similar ownership interests of a Person which is engaged in a line of business similar to the business (or reasonable extensions thereof) of the Company or such Subsidiary or the purchase of all or substantially all of the assets owned by such Person or the purchase of a division, business unit or product line of a Person; provided (a) the Administrative Agent shall have received, within ten (10) Business Days of the closing of such Permitted Acquisition, (i) with respect to a Person which constitutes a Material Domestic Subsidiary, to the extent not previously received, duly executed amendments with respect to the Guaranty and the Security Agreement, pursuant to which such Subsidiary becomes a “Guarantor” and “Grantor” under the Guaranty and the Security Agreement, respectively, and (ii) with respect to a Person which constitutes a Material Non-Domestic Subsidiary, to the extent not previously received, a duly executed Pledge Agreement by the parent of such Material Non-Domestic Subsidiary, to the extent such documents are required to be delivered pursuant to Section 6.12 hereof; (b) the Administrative Agent shall have received evidence reasonably satisfactory to it that the shares or other interests in the Person, or the assets of the Person, which is the subject of the Permitted Acquisition are, or will be promptly following the closing of such Permitted Acquisition, free and clear of all Liens, except Permitted Liens, including, without limitation, with respect to the acquisition of shares or other equity interests, free of any restrictions on transfer other than restrictions applicable to the sale of securities under federal and state securities laws and regulations generally; (c) the Administrative Agent shall have received (i) within ten (10) Business Days following the closing of such Permitted Acquisition, if the Permitted Acquisition Purchase Price is less than \$15,000,000, and (ii) not less than five (5) Business Days preceding the closing of such Permitted Acquisition, if the Permitted Acquisition Purchase Price is greater than or equal to \$15,000,000, the documentation governing the proposed acquisition, including, without limitation, the purchase agreement with respect thereto, together with such other additional documentation or information with respect to the proposed acquisition as the Administrative Agent may reasonably require; (d) no Default or Event of Default shall have occurred and be continuing immediately prior to or would occur after giving effect to the acquisition on a *pro forma* basis and the Administrative Agent shall have received projections and *pro forma* financial statements showing that no Default or Event of Default shall have occurred after giving effect to such acquisition; (e) the acquisition has either (i) been approved by the Board of Directors or other governing body of the Person which is the subject of the acquisition or (ii) been recommended for approval by the Board of Directors or other governing body of such Person to the shareholders or other members of such Person and subsequently approved by the shareholders or such members if shareholder or such member approval is required under applicable law or the by-laws, certificate of incorporation or other governing

instruments of such Person; (f) prior to the closing of any such acquisition, the Company shall have delivered evidence to the Administrative Agent (with sufficient copies for each of the Lenders) that, on a pro forma basis, (i) the Company will be in compliance with the financial condition covenants of Section 7.13 hereof upon completion of such acquisition and (ii) the ratio of Consolidated Senior Funded Debt to Consolidated EBITA will not exceed 3.00:1.00 upon completion of such acquisition; (g) in the case of an acquisition of a Non-Domestic Subsidiary, the business to be acquired shall be acquired by the Company, a Guarantor or a Material Non-Domestic Subsidiary; (h) the aggregate Permitted Acquisition Purchase Price (excluding consideration consisting of the Company's common stock) paid in connection with all Permitted Acquisitions, collectively, during each rolling twelve (12) month period shall not exceed an amount equal to the product of three (3) times Consolidated EBITA for the trailing four fiscal quarters, provided, that, the Permitted Acquisition Purchase Price for any single Permitted Acquisition shall not exceed \$20,000,000 if the business which is the subject of such Permitted Acquisition has a negative Consolidated EBITDA or if Consolidated EBITDA cannot be reasonably determined by the Company or such Person; and (i) the Company and its Subsidiaries shall not close more than four (4) Permitted Acquisitions in any rolling twelve (12) month period.

"Permitted Acquisition Purchase Price" shall mean, with respect to any Permitted Acquisition, collectively, without duplication, (a) all cash paid by the Company or any of its Subsidiaries in connection with such Permitted Acquisition, including transaction costs, fees and other expenses incurred by the Company or such Subsidiary in connection with such Permitted Acquisition, (b) all Indebtedness created, and all Indebtedness assumed, by the Company or any of its Subsidiaries in connection with such Permitted Acquisition, including, without limitation, the maximum amount of any purchase price to be paid pursuant to any "earn out" provision contained in the applicable purchase agreements related to such Permitted Acquisition, (c) the value of all capital stock issued by the Company or any of its Subsidiaries in connection with such Permitted Acquisition, and (d) the deferred portion of the purchase price or any other costs paid by the Company or any of its Subsidiaries in connection with such Permitted Acquisition, including, but not limited to, consulting agreements and non-compete agreements. For purposes of this definition, if any "earn out" provision in any purchase agreement for any Permitted Acquisition does not provide for a maximum payment, the amount to be calculated pursuant to subsection (b) of this definition with respect to the maximum amount of any purchase price to be paid pursuant to any "earn out" provision, shall be determined by the Administrative Agent, on a reasonable basis, on the basis of the projections provided to the Administrative Agent.

"Permitted Equity Investment" shall mean any acquisition (other than a Permitted Acquisition) by the Company or any Subsidiary of the Company of the capital stock, membership interests, partnership interests or other similar interests of a Person, including any investment in a joint venture, provided that such acquisition does not result in the Company or such Subsidiary having the right to vote a majority of the outstanding capital stock or other ownership interests of such Person.

"Permitted Equity Investment Costs" shall mean, as of any date of determination, the aggregate amount of cash and other property invested by the Company or any Subsidiary in a Person, and/or loans made by the Company or any Subsidiary to such Person, in connection with all Permitted Equity Investments; provided, however, that the value of any property so invested by the Company or any Subsidiary shall be equal to the fair market value of such property as of the date of such investment and such value shall not be adjusted to give effect to the loss in value of any Permitted Equity Investment.

"Permitted Liens" shall mean the Liens specified in clauses (a) through (o) of Section 7.02 hereof.

“Person” shall mean any natural person, corporation, limited liability company, limited liability partnership, business trust, joint venture, association, company, partnership, unincorporated trade or business enterprise or Governmental Authority.

“Plan” shall mean any Multiemployer Plan or Single-Employer Plan, defined in and subject to Section 4001 of ERISA, which covers, or at any time during the five calendar years preceding the date of this Agreement covered, employees of the Company, any Guarantor or an ERISA Affiliate on account of such employees’ employment by the Company, any Guarantor or an ERISA Affiliate, provided that such term shall not include any Plan terminated prior to the date hereof and with respect to which the Company, such Guarantor or such ERISA Affiliate could not incur any material liability with respect thereto.

“Pledge Agreements” shall mean, collectively, (a) the Pledge Agreement, dated as of the Prior Closing Date, between the Company and the Administrative Agent, as amended and reaffirmed as of the Closing Date, (b) the Pledge Agreement, dated as of the Closing Date, between Veeco Metrology and the Administrative Agent, (c) with respect to the Company, the Pledge Agreement in the form attached hereto as **Exhibit E-1**, to be executed and delivered by the Company, from time to time, as required pursuant to Section 6.12 hereof, (d) with respect to any Domestic Subsidiary, as applicable, the Pledge Agreement in the form attached hereto as **Exhibit E-2**, to be executed and delivered by any Domestic Subsidiary which is the direct holder of capital stock of any Material Non-Domestic Subsidiary, who is required to execute the same pursuant to Section 6.12 hereof, and (e) the Foreign Pledge Agreements, as each of the same may hereafter be amended, restated, supplemented or otherwise modified, from time to time.

“Prime Rate” shall mean the rate per annum announced by the Person which is the Administrative Agent from time to time as its prime rate in effect at its principal office, each change in the Prime Rate shall be effective on the date such change is announced to become effective without notice or demand of any kind. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate charged by the Person which is the Administrative Agent to any customer.

“Prime Rate Loan” shall mean Loans at such time as they are being made and/or maintained at a rate of interest based upon the Prime Rate.

“Prior Credit Agreement” has the meaning set forth in the recitals hereto.

“Prior Closing Date” shall mean March 15, 2005.

“Purchasing Lender” shall have the meaning set forth in Section 10.05(c) hereof.

“Register” shall have the meaning set forth in Section 10.05(d) hereof.

“Regulation D” shall mean Regulation D of the Board of Governors of the Federal Reserve System as the same may be amended or supplemented from time to time.

“Relevant Exchange Rate” shall mean, with respect to any Eurocurrency Loan denominated in any Approved Currency other than Dollars, the Exchange Rate for the purchase of Dollars with such Approved Currency in effect on the date which is two Business Days prior to the later of (a) the date on which such Loan was first made, or (b) the date on which such Loan was continued, if applicable, pursuant to the terms of this Agreement.

“Reportable Event” shall mean an event described in Section 4043(c) of ERISA with respect to a Plan as to which the 30 day notice requirement has not been waived by the PBGC.

“Required Lenders” shall mean Lenders owed at least 51% of the sum of the aggregate unpaid principal amount of the Revolving Credit Loans or, if no Revolving Credit Loans are outstanding, Lenders having at least 51% of the Total Commitment.

“Reserve Adjusted Eurocurrency Rate” shall mean, with respect to the Interest Period for each Eurocurrency Loan, the rate per annum (rounded upwards to the next higher 1/16th of one percent) equal to the following:

Eurocurrency Base Rate
1.00 - Eurocurrency Reserve Requirement

“Revolving Credit Commitment” shall mean, with respect to each Lender at any time, the obligation of such Lender to make Revolving Credit Loans to the Company and to acquire participations in Letters of Credit in an aggregate amount not to exceed (i) with respect to a Lender party to this Agreement on the Closing Date, the amount set forth opposite such Lender’s name on the signature pages hereof under the caption Revolving Credit Commitment, as such amounts may be reduced or increased in accordance with the terms of this Agreement or in any Assignment and Acceptance Agreement executed by such Lender or, (ii) with respect to an Additional Lender, in an aggregate amount not to exceed the amount set forth in the Assignment and Acceptance Agreement pursuant to which such Additional Lender became a Lender, in each case, as such amounts may be reduced or increased in accordance with any Assignment and Acceptance Agreement executed by such Additional Lender.

“Revolving Credit Commitment Period” shall mean the period from and including the Closing Date to, but not including, the Revolving Credit Commitment Termination Date or such earlier date as the Revolving Credit Commitments shall terminate as provided herein.

“Revolving Credit Commitment Termination Date” shall mean March 31, 2012.

“Revolving Credit Loans” shall have the meaning set forth in Section 2.01(a) hereof.

“Revolving Credit Notes” shall have the meaning set forth in Section 2.02 hereof.

“Security Agreement” shall mean the Security Agreement, dated as of the Prior Closing Date, among the Company, the Existing Guarantors and the Administrative Agent, as reaffirmed and amended as of the Closing Date, to, among other things, add the New Guarantors as grantors thereunder, as such Security Agreement may be further amended to add any Material Domestic Subsidiary required to become a grantor thereunder pursuant to Section 6.12 hereof, as the same may hereafter be further amended, restated, supplemented or otherwise modified from time to time.

“Single-Employer Plan” shall mean a Plan that is a “single-employer plan” (as such term is defined in Section 4001(a)(15) of ERISA), which is covered by Title IV of ERISA.

“Solvent” shall mean with respect to any Person as of the date of determination thereof that (a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise,” as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the

insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature, in each case after giving effect to any right of indemnification and contribution of such Person from or to any Affiliate.

“Standby LC Disbursement” shall mean a payment made by the Issuing Lender pursuant to a Standby Letter of Credit.

“Standby LC Exposure” shall mean, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Standby Letters of Credit at such time, and (b) the aggregate amount of all Standby LC Disbursements that have not yet been reimbursed by or on behalf of the Company at such time.

“Standby LC Margin” shall mean the percentage indicated as the “Eurocurrency Margin” with respect to Eurocurrency Loans as set forth and determined in accordance with the definition of “Applicable Rate”.

“Standby Letter of Credit” shall mean any letter of credit issued to support an obligation of a Person and which may be drawn on only upon the failure of such Person to perform such obligation or other contingency.

“Subordinated Debt” or “Subordinated Indebtedness” shall mean all debt which is subordinated in right of payment to the prior final payment in full of the obligations of the Company and/or of its Subsidiaries to the Lenders hereunder and under any other Loan Document on subordination terms satisfactory to and approved in writing by the Required Lenders (not to be unreasonably withheld or delayed).

“Subordinated Notes” shall mean up to \$145,000,000 of 4-1/8% Convertible Subordinated Notes due 2008 and/or 4-1/8% Convertible Subordinated Notes due 2012, collectively, each issued by the Company as described in the Indentures.

“Subsidiary” shall mean, with respect to any Person, any corporation, association or other business entity 50% or more of the voting stock or other ownership interests (including, without limitation, membership interests in a limited liability company) of which is, at the time, owned or controlled, directly or indirectly, by such Person or one or more of its Subsidiaries or a combination thereof.

“Swingline Commitment” shall mean the obligation of the Swingline Lender to make Swingline Loans to the Company in an aggregate amount not to exceed \$5,000,000 at any time outstanding.

“Swingline Lender” shall mean the Person which is the Administrative Agent, in its capacity as lender of Swingline Loans.

“Swingline Loan” shall have the meaning set forth in Section 2.04(a) hereof.

“Swingline Note” shall have the meaning set forth in Section 2.04(e) hereof.

“Total Commitment” shall mean, at any time, the aggregate of the Revolving Credit Commitments in effect at such time which shall be \$100,000,000.

“TurboDisc Investigation” shall mean the investigation by the Company, its counsel and other agents, into improper accounting procedures at its TurboDisc business unit.

“Type” shall mean as to any Loan its status as a Prime Rate Loan or a Eurocurrency Loan.

“UCP” shall mean the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500 or any successor publication thereof.

“Unfunded Current Liability” of any Plan shall mean the amount, if any, by which the present value of the accrued benefits under such Plan as of the close of its most recent plan year exceeds the fair market value of the assets allocable thereto, determined in accordance with Section 412 of the Code.

“Unused Fee” shall have the meaning specified in Section 3.04(a) hereof.

SECTION 1.02. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter. Except as otherwise herein specifically provided, each accounting term used herein shall have the meaning given to it under Generally Accepted Accounting Principles. The term “including” shall not be limited or exclusive, unless specifically indicated to the contrary. The word “will” shall be construed to have the same meaning in effect as the word “shall”. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole, including the exhibits and schedules hereto and any amendments thereof, all of which are by this reference incorporated into this Agreement.

SECTION 1.03. Currency Equivalents Generally. Except to the extent expressly provided otherwise herein (including for purposes of any denomination of any Eurocurrency Loan not denominated in Dollars into a Loan in Dollars but not for purposes of the preparation of any financial statements delivered pursuant hereto or any exchange rate determinations expressly required to be done using a different method), the equivalent in any Approved Currency (or any other currency) of an amount in Dollars, and the equivalent in Dollars of any amount in any Approved Currency (or any other currency), shall be determined at the Exchange Rate.

ARTICLE II LOANS

SECTION 2.01. Revolving Credit Loans.

(a) Subject to the terms and conditions, and relying upon the representations and warranties, set forth herein, each Lender severally agrees to make loans (individually a “Revolving Credit Loan” and, collectively, the “Revolving Credit Loans”) in Dollars or any other Approved Currency to the Company from time to time during the Revolving Credit Commitment Period up to, but not exceeding, at any one time outstanding the aggregate Dollar Equivalent Amount of its Revolving Credit Commitment; provided, however, that no Revolving Credit Loan shall be made if, after giving effect to such Revolving Credit Loan, the Dollar Equivalent Amount of the Aggregate Outstandings would exceed the Total Commitment or the Dollar Equivalent Amount of all Eurocurrency Loans denominated in a currency other than Dollars would exceed the Eurocurrency Sublimit. During the Revolving Credit Commitment Period, the Company may from time to time borrow, repay and reborrow Revolving Credit Loans on or after the date hereof and prior to the Revolving Credit Commitment Termination Date, subject to the

terms, provisions and limitations set forth herein. The Revolving Credit Loans may be (i) Eurocurrency Loans, (ii) Prime Rate Loans or (iii) a combination thereof, provided that all Loans in Approved Currencies other than Dollars shall be Eurocurrency Loans.

(b) The Company shall give the Administrative Agent irrevocable written notice (or telephonic notice promptly confirmed in writing) not later than: (i) the Applicable Offshore Time, four Business Days prior to the date of each proposed Eurocurrency Loan under this Section 2.01 denominated in any Approved Currency other than Dollars, (ii) 11:00 a.m. (New York, New York time) three Business Days prior to the date of each proposed Eurocurrency Loan under this Section 2.01 denominated in Dollars, or (iii) prior to 11:00 a.m. (New York, New York time) on the date of each proposed Prime Rate Loan under this Section 2.01, provided that no Eurocurrency Loan shall be made less than one month prior to the Revolving Credit Commitment Termination Date. Such notice shall be irrevocable and shall specify (i) the amount and Type of the proposed borrowing, (ii) the proposed Borrowing Date, and (iii) if a Eurocurrency Loan, the initial Interest Period and the proposed currency thereof which shall be an Approved Currency. Upon receipt of such notice from the Company, the Administrative Agent shall promptly notify each Lender of such request, and shall promptly thereafter, upon determination thereof, notify each Lender of the amount of such Lenders' Commitment Proportion of such requested Loan and, if a Eurocurrency Loan denominated in an Approved Currency other than Dollars, the Dollar Equivalent Amount thereof and the applicable Exchange Rate used by the Administrative Agent to determine such Dollar Equivalent Amount. Except for borrowings which utilize the full remaining amount of the Total Commitment, each borrowing of a Prime Rate Loan (other than a Swingline Loan) shall be in an amount not less than \$1,000,000 or, if greater, whole multiples of \$1,000,000 in excess thereof. Each borrowing of a Eurocurrency Loan shall be in an amount not less than \$2,000,000 (or the Applicable Currency Equivalent thereof) or whole multiples of \$1,000,000 (or the Applicable Currency Equivalent thereof) in excess thereof. Funding of all Revolving Credit Loans shall be made in accordance with Section 3.12 of this Agreement.

(c) The Company shall have the right, upon not less than five Business Days' prior written notice to the Administrative Agent, to terminate the Total Commitment or from time to time to permanently reduce the amount of the Total Commitment; provided, however, that no such termination or reduction shall be permitted if, after giving effect thereto and to any payments of the Revolving Credit Loans and the Swingline Loans made on the effective date thereof, the Dollar Equivalent Amount of the Aggregate Outstandings would exceed the Total Commitment as then reduced; provided, further, that any such termination or reduction requiring prepayment of any Eurocurrency Loan shall be made only on the last day of the Interest Period with respect thereto or on the date of payment in full of all amounts owing pursuant to Section 3.08 hereof as a result of such termination or reduction. The Administrative Agent shall promptly notify each Lender of each notice from the Company to terminate or permanently reduce the amount of the Total Commitment pursuant to this Section 2.01(c). Any such reduction shall be in the amount of \$5,000,000 or whole multiples of \$1,000,000 in excess thereof, and shall reduce permanently the amount of the Total Commitment then in effect. The Total Commitment, once reduced or terminated, may not be reinstated except in the Lenders' sole discretion and subject to receipt of such credit approval and other authorizations that the Lenders may require.

(d) The several agreements of the Lenders to make Revolving Credit Loans pursuant to this Section 2.01 shall automatically terminate on the Revolving Credit Commitment Termination Date. Upon such termination, the Company shall immediately repay in full the principal amount of the Revolving Credit Loans then outstanding, together with all accrued interest thereon and all other amounts due and payable hereunder.

SECTION 2.02. Revolving Credit Note. The Revolving Credit Loans made by each Lender shall be evidenced by a promissory note of the Company (individually a “Revolving Credit Note” and, collectively, the “Revolving Credit Notes”), substantially in the form attached hereto as **Exhibit A**, each appropriately completed, duly executed and delivered on behalf of the Company and payable to the order of such Lender in a principal amount equal to the Revolving Credit Commitment of such Lender. Each Revolving Credit Note shall (a) be dated the Closing Date, (b) be stated to mature on the Revolving Credit Commitment Termination Date, and (c) bear interest from the date of the first Revolving Credit Loan until paid in full on the unpaid principal amount thereof from time to time outstanding as provided in Section 3.01 hereof. Each Lender is authorized to record the date, Type and amount of each Revolving Credit Loan, the Applicable Currency thereof, and the date and amount of each payment or prepayment of principal of each Revolving Credit Loan in such Lender’s records or on the grid schedule annexed to such Lender’s Revolving Credit Note; provided, however, that the failure of a Lender to set forth each such Revolving Credit Loan, payment and other information shall not in any manner affect the obligation of the Company to repay each Revolving Credit Loan made by such Lender in accordance with the terms of its Revolving Credit Note and this Agreement. The Revolving Credit Note, the grid schedule and the books and records of each Lender shall constitute presumptive evidence of the information so recorded absent demonstrable error.

SECTION 2.03. Letters of Credit.

(a) *Generally*. Subject to the terms and conditions set forth in this Agreement, upon the written request of the Company in accordance herewith, the Issuing Lender shall issue Letters of Credit at any time during the Revolving Credit Commitment Period with pro rata participation by all of the Lenders in accordance with their respective Commitment Proportions. Notwithstanding the foregoing, no Letter of Credit shall be issued if, after giving effect to the same, the Dollar Equivalent Amount of the Aggregate Outstandings would exceed the Total Commitment or Aggregate Letters of Credit Outstanding would exceed \$20,000,000. Furthermore, no Letter of Credit shall be issued without the consent of the Required Lenders during the occurrence and continuance of an Event of Default. Each request for issuance of a Letter of Credit shall be in writing and shall be received by the Issuing Lender by no later than 12:00 noon (New York, New York time) on the day which is at least two Business Days prior to the proposed date of issuance. Such issuance shall occur by no later than 5:00 p.m. on the proposed date of issuance (assuming proper prior notice as aforesaid). Subject to the terms and conditions contained herein, the expiry date, the type of Letter of Credit (i.e., Commercial Letter of Credit or Standby Letter of Credit) and the amount and beneficiary of the Letters of Credit will be as designated by the Company. The Issuing Lender shall promptly notify the Administrative Agent and the Lenders of the issuance of any Letter of Credit and of the amounts of all Letters of Credit issued hereunder and of any extension, reduction, termination or amendment of any Letter of Credit. Each Letter of Credit issued by the Issuing Lender hereunder shall be denominated in Dollars and shall identify: (i) the dates of issuance and expiry of such Letter of Credit, (ii) the amount of such Letter of Credit (which shall be a sum certain), (iii) the beneficiary of such Letter of Credit, and (iv) the drafts and other documents necessary to be presented to the Issuing Lender upon drawing thereunder. In no event shall any Letter of Credit expire (or by its terms be required to be renewed to a date) after the Revolving Credit Commitment Termination Date. The Issuing Lender will not issue a Letter of Credit hereunder which expires after the earlier to occur of (1) one (1) year from the date of issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (2) the Revolving Credit Commitment Termination Date. The Company agrees to execute and deliver to the Issuing Lender such further documents and instruments in connection with any Letter of Credit issued hereunder (including without limitation, applications therefor) as the Issuing Lender in accordance with its customary practices may reasonably request.

(b) *Drawings Under Letters of Credit* . The Company hereby absolutely and unconditionally promises to pay the Issuing Lender not later than 2:00 p.m. (New York, New York time) the amount of each drawing under a Letter of Credit if the Company receives notice of such drawing prior to 10:00 a.m. (New York, New York time) on the date of such drawing, or if such notice has not been received by the Company prior to such time on such date, then not later than 12:00 noon (New York, New York time) on the Business Day immediately following the day that the Company receives such notice; provided, however, (i) if any drawing was in an amount not less than \$1,000,000, the Company may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.01 hereof that such payment be financed with a Revolving Credit Loan which is a Prime Rate Loan in an equivalent amount, and, to the extent so financed, the Company's obligation to make such payment shall be discharged and replaced by such a Prime Rate Loan and (ii) if such drawing or payment was in an amount less than \$1,000,000, the Company may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.04 hereof that such payment be financed with a Swingline Loan in an equivalent amount and, to the extent so financed, the Company's obligation to make such payment shall be discharged and replaced by such Swingline Loan. Such request shall be made by the Company on the date of receipt of notice from the Issuing Lender of a drawing under a Letter of Credit as applicable. The Issuing Lender shall notify the Administrative Agent and each Lender of such request in accordance with Section 2.01 hereof. If the Company fails to make such payment when due, the Issuing Lender shall notify each Lender of the amount of the drawing under the applicable Letter of Credit. Each Lender agrees that on the first Business Day after receipt of such notice, it will immediately make available by no later than 12:00 noon (New York, New York time), to the Issuing Lender at the Payment Office by payment in Dollars and in immediately available funds, its Commitment Proportion of such drawing, provided (i) each Lender's obligation shall be reduced by its Commitment Proportion of any reimbursement by the Company in respect of any such drawing pursuant to this Section 2.03 and (ii) no Lender shall be required to make payments to the Issuing Lender with respect to a drawing or payment which the Company reimbursed with the proceeds of a Revolving Credit Loan, as contemplated above, if such Lender fully funded its Commitment Proportion of such Revolving Credit Loan in accordance with Section 3.12 hereof. Any payment made by a Lender pursuant to this Section 2.03(b) to reimburse the Issuing Lender for any drawing under a Letter of Credit (other than a Prime Rate Loan or a Swingline Loan as contemplated above) shall not constitute a Revolving Credit Loan or a Swingline Loan and shall not relieve the Company of its obligation to reimburse the Issuing Lender for such drawing or payment. Each drawing under a Letter of Credit which is not paid on the date such drawing is made shall accrue interest, for each day from and including the date of such drawing to but excluding the date that the Company reimburses the Issuing Lender in full for such drawing at the rate per annum then applicable to Prime Rate Loans; provided, however, that if the Company fails to reimburse such drawing when due pursuant to this paragraph (b), then the Company shall pay to the Issuing Lender interest on the amount of such drawing at the rate per annum set forth in Section 3.01(c) hereof. Interest accruing pursuant to the preceding sentence shall be for the account of the Issuing Lender, except that interest accrued on and after the date of payment by any Lender pursuant to this Section 2.03(b) to reimburse the Issuing Lender shall be for the account of such Lender to the extent of such payment. The Issuing Lender shall promptly notify the Administrative Agent (which shall notify each Lender) of each drawing under a Letter of Credit.

(c) *Letter of Credit Obligations Absolute* .

(i) The obligation of the Company to reimburse the Issuing Lender as provided hereunder in respect of drawings under Letters of Credit shall rank pari passu with the obligation of the Company to repay the Revolving Credit Loans hereunder, and shall be absolute and unconditional

under any and all circumstances subject to subsection (ii) below. Without limiting the generality of the foregoing, the obligation of the Company to reimburse the Issuing Lender in respect of drawings under Letters of Credit shall not be subject to any defense based on the non-application or misapplication by the beneficiary of the proceeds of any such drawing or the legality, validity, regularity or enforceability of the Letters of Credit or any related document, even though such document shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Company, the beneficiary of any Letter of Credit, or any financial institution or other party to which any Letter of Credit may be transferred. The Issuing Lender may accept or pay any draft presented to it under any Letter of Credit regardless of when drawn or made and whether or not negotiated, if such draft, accompanying certificate or documents and any transmittal advice are presented or negotiated on or before the expiry date of such Letter of Credit or any renewal or extension thereof then in effect, and is in substantial compliance with the terms and conditions of such Letter of Credit. Furthermore, neither the Issuing Lender nor any of its correspondents nor any Lender shall be responsible, as to any document presented under a Letter of Credit which appears to be regular on its face, and appears on its face to be in substantial compliance with the terms of such Letter of Credit, for the validity or sufficiency of any signature or endorsement, for delay in giving any notice or failure of any instrument to bear adequate reference to any Letter of Credit, or for failure of any Person to note the amount of any draft on the reverse of any Letter of Credit. The Issuing Lender shall have the right, in its sole discretion, to decline to accept any documents and to decline to make payment under any Letter of Credit if the documents presented are not in strict compliance with the terms of such Letter of Credit.

(ii) Any action, inaction or omission on the part of the Issuing Lender or any of its correspondents under or in connection with any Letter of Credit or the related instruments, documents or property, if in good faith and in conformity with such laws, regulations or customs as are applicable, shall be binding upon the Company and shall not place the Issuing Lender or any of its correspondents or any Lender under any liability to the Company in the absence of (x) gross negligence or willful misconduct by the Issuing Lender or its correspondents or (y) the failure by the Issuing Lender to pay under a Letter of Credit after presentation of a draft and documents strictly complying with such Letter of Credit unless the Issuing Lender is prohibited from making such payment pursuant to a court order. The Issuing Lender's rights, powers, privileges and immunities specified in or arising under this Agreement are in addition to any heretofore or at any time hereafter otherwise created or arising, whether by statute or rule of law or contract. All Letters of Credit issued hereunder will, except to the extent otherwise expressly provided hereunder, be governed by the UCP to the extent applicable and not inconsistent with the laws of the State of New York.

(d) *Obligations of Lenders in Respect of Letters of Credit.* Each Lender acknowledges that each Letter of Credit issued by the Issuing Lender pursuant to this Agreement is issued on behalf of and with the ratable participation of all of the Lenders (i.e., in accordance with their respective Commitment Proportions), and each Lender agrees to make the payments required by subsection (b) above and agrees to be responsible for its pro rata share of all liabilities incurred by the Issuing Lender with respect to each Letter of Credit issued, established, opened or extended by the Issuing Lender pursuant to this Agreement for the account of the Company hereunder. Each Lender agrees with the Issuing Lender and the other Lenders that its obligation to make the payments required by subsection (b) above shall not be affected in any way by any circumstances (other than the gross negligence or willful misconduct of the Issuing Lender) occurring before or after the making of any payment by the Issuing Lender pursuant to any Letter of Credit, including, without limitation: (i) any modification or amendment of, or any consent, waiver, release or forbearance with respect to, any of the terms of this Agreement or any other instrument or document referred to herein; (ii) the existence of any Default or Event of Default; or (iii) any change of any kind whatsoever in the financial position or credit worthiness

of the Company.

(e) *Replacement of the Issuing Lender.* The Issuing Lender may be replaced at any time by written agreement among the Company, the Administrative Agent, the replaced Issuing Lender and the successor Issuing Lender. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Lender. At the time any such replacement shall become effective, the Company shall pay all unpaid fees accrued for the account of the replaced Issuing Lender pursuant to Section 3.04 hereof. From and after the effective date of any such replacement, (i) the successor Issuing Lender shall have all the rights and obligations of the Issuing Lender under this Agreement with respect to Letters of Credit to be issued thereafter, and (ii) references herein to the term “Issuing Lender” shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the replacement of an Issuing Lender hereunder, the replaced Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit issued prior to such replacement, but shall not be required to issue additional Letters of Credit.

SECTION 2.04. Swingline Loans.

(a) Subject to the terms and conditions, and relying upon the representations and warranties, set forth herein, the Swingline Lender agrees to make loans in Dollars (individually a “Swingline Loan” and, collectively, the “Swingline Loans”) to the Company from time to time during the Revolving Credit Commitment Period up to, but not exceeding, at any one time outstanding the Swingline Commitment; provided, however, that no Swingline Loan shall be made if, after giving effect to such Swingline Loan, the Dollar Equivalent Amount of the Aggregate Outstandings would exceed the Total Commitment; and provided further that no Swingline Loan shall be made without the consent of the Required Lenders during the occurrence and continuance of an Event of Default. The proceeds from Swingline Loans may not be used to repay outstanding Revolving Credit Loans. During the Revolving Credit Commitment Period, the Company may from time to time borrow, repay and reborrow Swingline Loans on or after the date hereof and prior to the Revolving Credit Commitment Termination Date, subject to the terms, provisions and limitations set forth herein. Each Swingline Loan shall be a Prime Rate Loan.

(b) The Company shall give the Administrative Agent irrevocable written notice (or telephonic notice promptly confirmed in writing) not later than 2:00 p.m. (New York, New York time) on the date of each proposed Swingline Loan under this Section 2.04. Such notice shall be irrevocable and shall specify (i) the amount of the proposed borrowing, and (ii) the proposed Borrowing Date. Upon receipt of such notice from the Company, the Administrative Agent shall promptly notify the Swingline Lender and each Lender thereof. Each borrowing of a Swingline Loan shall be in an amount not less than \$100,000 or, if greater, whole multiples of \$100,000 in excess thereof. The Swingline Lender shall make each Swingline Loan available to the Company by means of a credit to the operating account of the Company with the Swingline Lender (or, in the case of a Swingline Loan made to finance or reimburse a Letter of Credit drawing in accordance with Section 2.03(b) hereof, by remittance to the Issuing Lender) by 4:00 p.m. (New York, New York time) on the requested date of such Swingline Loan.

(c) So long as no Default or Event of Default has occurred and is continuing, the Company may repay Swingline Loans with the proceeds of a Revolving Credit Loan. Each Swingline Loan shall be payable on demand. The Swingline Lender may, at any time, require the Lenders to acquire participations with respect to all or a portion of the Swingline Loans outstanding. If (i) the Company desires to repay such Swingline Loan with the proceeds of a Revolving Credit Loan or (ii) the Swingline

Lender desires to have the Lenders acquire participations, the Swingline Lender shall, by written notice given to the Administrative Agent not later than 10:00 a.m. (New York, New York time) on any Business Day, require the Lenders to acquire participations on such Business Day with respect to all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans which will become Revolving Credit Loans. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's Commitment Proportion of such Swingline Loan or Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Commitment Proportion of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire a participation in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 3.12 hereof with respect to Loans made by such Lender, and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Administrative Agent shall notify the Company of any participation in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Company (or other party on behalf of the Company) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of a participation therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of a participation in a Swingline Loan pursuant to this paragraph (c) shall not relieve the Company of any default in the payment thereof.

(d) The agreement of the Swingline Lender to make Swingline Loans pursuant to this Section 2.04 shall automatically terminate on the Revolving Credit Commitment Termination Date. Upon such termination, the Company shall immediately repay the Swingline Lender or the Administrative Agent (for the benefit of the applicable Lenders), as applicable, in full the principal amount of the Swingline Loans then outstanding, together with all accrued interest thereon and all other amounts due and payable hereunder.

(e) The Swingline Loans made by the Swingline Lender shall be evidenced by a promissory note of the Company (the "Swingline Note"), substantially in the form attached hereto as **Exhibit B**, appropriately completed, duly executed and delivered on behalf of the Company and payable to the order of the Swingline Lender in a principal amount equal to the Swingline Commitment. The Swingline Note shall (a) be dated the Closing Date, (b) be stated to mature on the Revolving Credit Commitment Termination Date, and (c) bear interest from the date thereof until paid in full on the unpaid principal amount thereof from time to time outstanding as provided in Section 3.01 hereof. The Swingline Lender is authorized to record the date and amount of each Swingline Loan and the date and amount of each payment or prepayment of principal of each Swingline Loan in the Swingline Lender's records or on the grid schedule annexed to the Swingline Note; provided, however, that the failure of the Swingline Lender to set forth each such Swingline Loan, payment and other information shall not in any manner affect the obligation of the Company to repay each Swingline Loan made by the Swingline Lender in accordance with the terms of the Swingline Note and this Agreement. The Swingline Note, the grid schedule and the books and records of the Swingline Lender shall constitute presumptive evidence of the information so recorded absent demonstrable error.

ARTICLE III
PROVISIONS RELATING TO ALL EXTENSIONS OF CREDIT;
FEES AND PAYMENTS

SECTION 3.01. Interest Rate; Continuation and Conversion of Loans.

(a) Each Prime Rate Loan shall bear interest for the period from the date thereof on the unpaid principal amount thereof at a fluctuating rate per annum equal to the Prime Rate plus the Applicable Rate.

(b) Each Eurocurrency Loan shall bear interest for the Interest Period applicable thereto on the unpaid principal amount thereof at a rate per annum equal to the Reserve Adjusted Eurocurrency Rate determined for each Interest Period thereof in accordance with the terms hereof plus the Applicable Rate.

(c) Upon the occurrence and during the continuance of an Event of Default the outstanding principal amount of the Loans shall, at the option of the Required Lenders, bear interest payable on demand at a rate of interest (i) with respect to payments of principal, 2% per annum plus the interest rate otherwise then in effect and (ii) with respect to payments of any other amount, 2% per annum plus the rate that would be applicable to Prime Rate Loans, from time to time.

(d) If the Company shall default in the payment of the principal or interest on any portion of any Loan or any other amount becoming due hereunder, whether with respect to the reimbursement of drawings under Letters of Credit, interest, fees, expenses or otherwise, the Company shall on demand from time to time pay interest on such defaulted amount accruing from the date of such default (without reference to any period of grace) up to and including the date of actual payment (after as well as before judgment) at a rate of two (2%) percent per annum plus the interest rate otherwise then in effect, or if no interest rate is in effect, two (2%) percent per annum plus the Prime Rate.

(e) The Company may elect from time to time to convert outstanding Revolving Credit Loans from Eurocurrency Loans denominated in Dollars to Prime Rate Loans by giving the Administrative Agent irrevocable written notice of such election not later than 11:00 a.m. (New York, New York time) three Business Day prior to the effective date of such election, provided that any such conversion of Eurocurrency Loans shall only be made on the last day of an Interest Period with respect thereto or upon the date of payment in full of any amounts owing pursuant to Section 3.08 hereof as a result of such conversion. Upon receipt of such notice, the Administrative Agent shall promptly notify each Lender thereof. The Company may elect from time to time to convert outstanding Revolving Credit Loans from Prime Rate Loans to Eurocurrency Loans by giving the Administrative Agent irrevocable written notice of such election not later than (i) the Applicable Offshore Time, four Business Days prior to the date of the proposed conversion if the conversion is to a Eurocurrency Loan denominated in any Approved Currency other than Dollars, or (ii) 11:00 a.m. (New York, New York time) three Business Days prior to the date of the proposed conversion if the conversion is to a Eurocurrency Loan denominated in Dollars. Upon receipt of such notice the Administrative Agent shall promptly notify each Lender thereof. All or any part of outstanding Prime Rate Loans (other than Swingline Loans) may be converted as provided herein, provided that each conversion shall be in the principal amount of \$2,000,000 (or the Applicable Currency Equivalent thereof) or whole multiples of \$1,000,000 (or the Applicable Currency Equivalent thereof) in excess thereof; and further provided that no Default or Event

of Default shall have occurred and be continuing. Any conversion to or from Eurocurrency Loans hereunder shall be in such amounts and be made pursuant to such elections so that, after giving effect thereto, the aggregate principal amount of all Eurocurrency Loans having the same Interest Period and denominated in the same currency shall not be less than \$2,000,000 (or the Applicable Currency Equivalent thereof).

(f) Any Eurocurrency Loan in a minimum principal amount of \$2,000,000 (or the Applicable Currency Equivalent thereof) may be continued as such upon the expiration of an Interest Period with respect thereto by compliance by the Company with the notice provisions contained in the definition of Interest Period. If the Company shall not have so notified the Administrative Agent of its intention to continue such Loan, upon the expiration of such Interest Period for (i) any Eurocurrency Loan denominated in Dollars, or any portion thereof, such Loan or portion thereof shall be automatically converted to a Prime Rate Loan, except to the extent that such Loan shall have been repaid hereunder or shall be required to be repaid hereunder, or (ii) any Eurocurrency Loan denominated in an Approved Currency other than Dollars, or any portion thereof, such Loan or portion thereof shall be required to be repaid. Notwithstanding anything to the contrary, no Eurocurrency Loan may be continued as such when any Default or Event of Default has occurred and is continuing, but shall be automatically converted to a Prime Rate Loan, if such Eurocurrency Loan is denominated in Dollars or repaid in full, if such Eurocurrency Loan is denominated in an Approved Currency other than Dollars, on the last day of the Interest Period in effect when the Administrative Agent is notified, or otherwise has actual knowledge, of such Default or Event of Default.

(g) If the Company shall fail to select the duration of any Interest Period for any Eurocurrency Loan in accordance with the definition of "Interest Period" set forth in Section 1.01 hereof, the Company shall be deemed to have selected an Interest Period of one month.

(h) No Revolving Credit Loan may be converted to or continued as a Eurocurrency Loan (i) with an Interest Period that extends beyond the Revolving Credit Commitment Termination Date, or (ii) less than one month before the Revolving Credit Commitment Termination Date. In addition, except as otherwise provided in Sections 3.01(e) and 3.06 hereof or in the definition of "Interest Period" in Section 1.01 hereof, no Loan in one Approved Currency may be converted to a Loan in another Approved Currency.

(i) Anything in this Agreement or in any Note to the contrary notwithstanding, the obligation of the Company to make payments of interest shall be subject to the limitation that payments of interest shall not be required to be paid to a Lender to the extent that the charging or receipt thereof would not be permissible under the law or laws applicable to such Lender limiting the rates of interest that may be charged or collected by such Lender. In each such event payments of interest required to be paid to such Lender shall be calculated at the highest rate permitted by applicable law until such time as the rates of interest required hereunder may lawfully be charged and collected by such Lender. If the provisions of this Agreement or any Note would at any time otherwise require payment by the Company to any Lender of any amount of interest in excess of the maximum amount then permitted by applicable law, the interest payments to such Lender shall be reduced to the extent necessary so that such Lender shall not receive interest in excess of such maximum amount.

(j) Interest on each Loan shall be payable in arrears on each applicable Interest Payment Date and shall be calculated on the basis of a year of 360 days and shall be payable for the actual days elapsed. Any rate of interest on the Loans or other Obligations which is computed on the basis of the Prime Rate shall change when and as the Prime Rate changes in accordance with the definition

thereof. Each determination by the Administrative Agent of an interest rate or fee hereunder shall, absent demonstrable error, be conclusive and binding for all purposes.

SECTION 3.02. Use of Proceeds. The proceeds of the Revolving Credit Loans shall be used (a) to refinance the Existing Indebtedness, (b) to finance Permitted Acquisitions, (c) for general working capital and other corporate purposes and (d) to finance repurchases by the Company of the Subordinated Notes. The Swingline Loans shall be used by the Company for general working capital and other corporate purposes. Letters of Credit shall be issued by the Issuing Lender for the account of the Company and shall be issued for purposes in connection with, and in the ordinary course of, the business of the Company or the Guarantors consistent with historical purposes of standby and commercial letters of credit issued for the account of the Company prior to the date hereof.

SECTION 3.03. Prepayments.

(a) Voluntary. The Company may, at any time and from time to time, prepay the then outstanding Loans (including, without limitation, Swingline Loans), in whole or in part, without premium or penalty, except as provided in Section 3.08 hereof, upon written notice to the Administrative Agent (or telephonic notice promptly confirmed in writing) not later than 11:00 a.m. (New York, New York time) three Business Days before the date of prepayment with respect to prepayments of Eurocurrency Loans, or 11:00 a.m. (New York, New York time) on the day of prepayment with respect to Prime Rate Loans. Each notice shall be irrevocable and shall specify the date and amount of prepayment and whether such prepayment is of Eurocurrency Loans or Prime Rate Loans or a combination thereof, and if a combination thereof, the amount of prepayment allocable to each. Upon receipt of such notice to repay Revolving Credit Loans, the Administrative Agent shall promptly notify each Lender thereof. If such notice is given, the Company shall make such prepayment, and the amount specified in such notice shall be due and payable, on the date specified therein. Each partial prepayment pursuant to this Section 3.03 shall be in a principal amount of (i) \$1,000,000 (or the Applicable Currency Equivalent thereof), or whole multiples of \$1,000,000 (or the Applicable Currency Equivalent thereof) in excess thereof with respect to Eurocurrency Loans, and (ii) \$500,000 or whole multiples of \$100,000 in excess thereof with respect to Prime Rate Loans.

(b) Mandatory. To the extent that (i) the Dollar Equivalent Amount of the Aggregate Outstandings exceeds the Total Commitment or (ii) the Dollar Equivalent Amount of all Obligations denominated in Approved Currencies other than Dollars exceeds the Eurocurrency Sublimit due to a change in applicable Exchange Rates, then the Company shall immediately prepay the Revolving Credit Loans to the extent necessary to cause compliance after repayment in full of the Loans with each of the foregoing. To the extent that such prepayments are insufficient to cause such compliance, the Company shall pledge to the Administrative Agent, for the ratable benefit of the Lenders, Cash Collateral in an amount equal to the amount of such short-fall, which Cash Collateral shall secure the reimbursement obligations of the Company to the Issuing Lender with respect to Letters of Credit. All such prepayments shall be applied, first, to Prime Rate Loans outstanding and second, to Eurocurrency Loans outstanding, in such order as the Administrative Agent shall determine in its sole and absolute discretion.

All prepayments shall be accompanied by accrued interest on the principal amount being prepaid to the date of prepayment.

SECTION 3.04. Fees.

(a) The Company agrees to pay to the Administrative Agent for the account of, and

pro rata distribution to, each Lender an unused fee (the “Unused Fee”) on the average daily unused portion of the Total Commitment (without giving effect to any Swingline Loans then outstanding) from the date of this Agreement until the Revolving Credit Commitment Termination Date at a rate per annum equal to the Applicable Rate, based on a year of 360 days, payable in arrears on the last day of March, June, September, and December of each year commencing September 30, 2007, on the Revolving Credit Commitment Termination Date and on each date the Revolving Credit Commitment is permanently reduced in whole or in part.

(b) The Company agrees to pay to the Administrative Agent for the account of, and pro rata distribution to, each Lender a closing fee equal to 0.125% of such Lender’s Revolving Credit Commitment on the Closing Date.

(c) The Company shall pay to the Administrative Agent for the account of, and pro rata distribution to, the Lenders a commission with respect to the Lenders’ participation in Standby Letters of Credit equal to the Standby LC Margin multiplied by the average daily amount of the Standby LC Exposure during the period from and including the Closing Date to but excluding the later of (a) the Revolving Credit Commitment Termination Date and (b) the date on which such Lender ceases to have any Standby LC Exposure. Such commissions with respect to Standby Letters of Credit shall be payable in arrears on the last Business Day of March, June, September and December of each year, commencing September 30, 2007; provided that all such fees shall be payable on the date on which the Total Commitment terminates and any such fees accruing after the date on which the Total Commitment terminates shall be payable on demand. All commissions with respect to Standby Letters of Credit shall be computed on the basis of a year of three hundred sixty (360) days and shall be payable for the actual number of days elapsed.

(d) The Company shall pay to the Administrative Agent for the account of, and pro rata distribution to each Lender, a payment fee equal to 0.25% of the amount paid on each Commercial Letter of Credit payable on the date of payment of such amount by the Issuing Lender.

(e) In addition, the Company shall pay to the Issuing Lender for its own account, upon issuance of any Letter of Credit hereunder, a fronting fee equal to the greater of (i) 0.125% of the face amount of each Letter of Credit issued hereunder, and (ii) \$250. In addition, the Company shall pay to the Issuing Lender, upon its demand and for its own account, the customary fees charged by the Issuing Lender with respect to the processing and administration of Letters of Credit (including, without limitation, amendments to Letters of Credit).

(f) In addition, the Company agrees to pay to the Administrative Agent and the Lead Arranger for the Administrative Agent’s and the Lead Arranger’s own account, such agency, arrangement and other fees as agreed to between the Administrative Agent, the Lead Arranger and the Company.

SECTION 3.05. Inability to Determine Interest Rate. In the event that the Administrative Agent shall have determined in good faith (which determination shall be conclusive and binding upon the Company, absent demonstrable error) that, by reason of circumstances affecting the London interbank market, adequate and reasonable means do not exist for ascertaining the Reserve Adjusted Eurocurrency Rate applicable pursuant to Section 3.01(b) hereof for any requested Interest Period with respect to (a) the making of a Eurocurrency Loan, (b) a Eurocurrency Loan that will result from the requested conversion of a Prime Rate Loan into a Eurocurrency Loan, or (c) the continuation of a Eurocurrency Loan beyond the expiration of the then current Interest Period with respect thereto, the Administrative Agent shall forthwith give notice by telephone of such determination, promptly confirmed

in writing, to the Company and each Lender. Until the Administrative Agent notifies the Company and the Lenders that the circumstances giving rise to the suspension described herein no longer exist, the Company shall not have the right to request or continue a Eurocurrency Loan or to convert a Prime Rate Loan to a Eurocurrency Loan.

SECTION 3.06. Illegality. Notwithstanding any other provisions herein, if any introduction of or change in, after the date hereof, any law, regulation, treaty or directive or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurocurrency Loans or if any Lender determines that it is unable to make a Eurocurrency Loan in any Approved Currency because such Approved Currency is unavailable as contemplated by this Agreement, such Lender shall forthwith give notice by telephone of such circumstances, promptly confirmed in writing, to the Administrative Agent, which notice the Administrative Agent shall promptly transmit to the Company and the other Lenders and, subject to the provisions of Section 3.09 hereof, (a) the commitment of such Lender to make and to allow conversion to or continuations of Eurocurrency Loans or of Eurocurrency Loans in such Approved Currency, as the case may be, shall forthwith be cancelled for the duration of such illegality, and (b) the Revolving Credit Loans then outstanding as Eurocurrency Loans, if any, shall be converted automatically to Prime Rate Loans on the next succeeding last day of each Interest Period applicable to such Eurocurrency Loans or within such earlier period as may be required by law. The Company shall pay to such Lender, upon demand, any additional amounts required to be paid pursuant to Section 3.08 hereof.

SECTION 3.07. Increased Costs.

(a) In the event that any introduction of or change in, after the date hereof, any applicable law, regulation, treaty, order, or directive, or in the interpretation or application thereof (including, without limitation, any request, guideline or policy, whether or not having the force of law, of or from any central bank or other governmental authority, agency or instrumentality and including, without limitation, Regulation D), by any authority charged with the administration or interpretation thereof shall occur, which:

(i) shall subject any Lender or the Issuing Lender to any Non-Excluded Taxes; or

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement (whether or not having the force of law) against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of any Lender or the Issuing Lender; or

(iii) shall impose on any Lender or the Issuing Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender or the Issuing Lender of making, renewing or maintaining or participating in advances or extensions of credit hereunder or to reduce any amount receivable hereunder, in each case by an amount which such Lender or the Issuing Lender deems reasonably material, then, in any such case, subject to the provisions of Section 3.10 hereof, the Company shall pay such Lender or the Issuing Lender, such additional amount or amounts as such Lender or the Issuing Lender shall have determined in good faith will compensate such Lender for such increased costs or reduction.

(b) If any Lender or the Issuing Lender shall have determined that the adoption of, or

any change in, any applicable law, rule or regulation regarding capital adequacy, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender or the Issuing Lender (or any lending office of any Lender or the Issuing Lender which funds Loans hereunder) or any Lender's or the Issuing Lender's holding company, with any request, guideline or directive regarding capital adequacy (whether or not having the force of the law) of any such authority, central bank or comparable agency, in each case adopted after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or the Issuing Lender's capital or on the capital of such Lender's or the Issuing Lender's holding company as a consequence of its obligations hereunder to a level below that which such Lender or the Issuing Lender (or such holding company) could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or the Issuing Lender's policies and the policies of such Lender's or the Issuing Lender's holding company with respect to capital adequacy) by an amount deemed by such Lender or the Issuing Lender to be material, then from time to time, the Company shall pay to such Lender or the Issuing Lender the additional amount or amounts as

such Lender or the Issuing Lender shall have determined will compensate such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company for such reduction.

(c) A certificate of a Lender setting forth the amount or amounts payable pursuant to Sections 3.07(a) and 3.07(b) hereof shall be conclusive and binding on the Company absent demonstrable error. The Company shall pay such Lender or the Issuing Lender the amount shown as due on any such certificate within fifteen days after receipt thereof.

(d) In the event any Lender or the Issuing Lender shall be entitled to compensation pursuant to Section 3.07(a) or Section 3.07(b) hereof, it shall promptly notify the Administrative Agent and the Company of the event by reason of which it has become so entitled; provided, however, no failure on the part of any Lender or the Issuing Lender to demand compensation under clause (a) or clause (b) above on one occasion shall constitute a waiver of its right to demand compensation on any other occasion.

SECTION 3.08. Indemnity. The Company agrees to indemnify each Lender and to hold each Lender harmless from any loss, cost or expense which such Lender may sustain or incur, including, without limitation, interest or fees payable by such Lender to lenders of funds obtained by it in order to maintain Eurocurrency Loans hereunder, as a consequence of (a) default by the Company in payment of the principal amount of or interest on any Eurocurrency Loan, (b) default by the Company to accept or make a borrowing of a Eurocurrency Loan or a conversion into or continuation of a Eurocurrency Loan after the Company has requested such borrowing, conversion or continuation, (c) default by the Company in making any prepayment of any Eurocurrency Loan after the Company gives a notice in accordance with Section 3.03 hereof and/or (d) the making of any payment or prepayment (whether mandatory or optional) of a Eurocurrency Loan or the making of any conversion of a Eurocurrency Loan to a Prime Rate Loan on a day which is not the last day of the applicable Interest Period with respect thereto. A certificate of a Lender setting forth such amounts shall be conclusive and binding on the Company absent demonstrable error. The Company shall pay such Lender the amount shown as due on any certificate within fifteen days after receipt thereof.

SECTION 3.09. Mitigation, Obligations; Replacement of Lenders.

(a) Each Lender agrees to use reasonable efforts to designate an alternate Lending Office with respect to any Type of Loan affected by the events or circumstances described in Section 3.05, Section 3.06, Section 3.07 or Section 3.10 hereof to avoid or minimize the Company's liability

thereunder; provided, however, that such efforts shall not cause the imposition on such Lender of any additional cost or legal, regulatory or administrative burdens deemed by such Lender, in its sole discretion, to be material.

(b) If any Lender is affected by the events or circumstances described in Section 3.05, 3.06, 3.07 or 3.10 hereof and requests additional compensation pursuant to the terms of this Agreement, or if any Lender defaults in its obligation to fund Loans hereunder, then the Company may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (and in accordance with the restrictions set forth in Section 10.05 hereof), all its interests, rights, and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if such Lender accepts such assignment); provided, that (i) the Company shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Lender and the Swingline Lender), which consent shall not be unreasonably withheld or delayed, (ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of its Loans and participation in Swingline Loans and Letters of Credit, accrued interest thereon, accrued fees and other amounts payable to it hereunder from the assignee (to the extent of the outstanding principal and accrued interest and fees) or the Company (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation pursuant to Section 3.05, 3.06 or 3.07 hereof or payments required to be made pursuant to Section 3.10 hereof, such assignment will result in a reduction of such compensation or payments. 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 Company to require such assignment and delegations cease to apply.

SECTION 3.10. Taxes.

(a) Except as set forth in clause (d) below or as required by law, all payments made by the Company under this Agreement shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding (i) income, branch profits and franchise taxes (imposed in lieu of income taxes) imposed on the Administrative Agent, the Issuing Lender or a Lender as a result of a present, former or future connection between the jurisdiction of the government or the taxing authority imposing such tax and the Administrative Agent, the Issuing Lender or a Lender or the lending office of the Administrative Agent, the Issuing Lender or a Lender (excluding a connection arising solely from the Administrative Agent, the Issuing Lender or a Lender having executed this Agreement, the Notes or the other Loan Documents) or any political subdivision or taxing authority thereof or therein, and (ii) taxes (including withholding taxes) imposed by reason of the failure of the Administrative Agent, the Issuing Lender or a Lender, if organized outside of the United States, to comply with Section 3.10(c) hereof (or the inaccuracy at any time of the certificates, documents or other evidence delivered thereunder) (such non-excluded taxes being called “Non-Excluded Taxes”). If any Non-Excluded Taxes are required to be withheld from any amounts payable to the Administrative Agent, the Issuing Lender or any Lender hereunder, or under the Notes, the amount so payable to the Administrative Agent, the Issuing Lender or such Lender shall be increased to the extent necessary to yield to the Administrative Agent, the Issuing Lender or such Lender (after payment of all Non-Excluded Taxes, and free and clear of all liability in respect of such Non-Excluded Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement and the Notes provided, however, that the Company shall not be required to increase any such amounts payable to any Lender with respect to any Non-Excluded Taxes (i) that are attributable to such Lender’s failure to comply with the requirements of Section 3.09 hereof, (ii) that are United States

withholding taxes imposed (or branch profits taxes imposed in lieu thereof) on amounts payable to such Lender at the time such Lender becomes a party to this Agreement, except to the extent that such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Company with respect to such Non-Excluded Taxes pursuant to this Section 3.10(a), or (iii) that are imposed as a result of any event occurring after such Lender becomes a Lender other than a change in law or regulation or the introduction of any law or regulation or a change in interpretation or administration of any law. Whenever any Non-Excluded Taxes are payable by the Company, as promptly as possible thereafter, the Company shall send to the Administrative Agent for its own account or for the account of the Issuing Lender or such Lender, as the case may be, a certified copy of an original official receipt showing payment thereof. If the Company fails to pay Non-Excluded Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Company shall indemnify the Administrative Agent, the Issuing Lender and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent, the Issuing Lender or such Lender as a result of any such failure together with any expenses payable by the Administrative Agent, the Issuing Lender or such Lender in connection therewith; provided that the Administrative Agent, Issuing Lender or such Lender has provided the Company with notice thereof as required by Section 10.01 hereof, accompanied by a demand for payment.

(b) If a Lender or the Administrative Agent becomes aware that it is entitled to claim a refund from a governmental authority in respect of any Non-Excluded Taxes as to which it has been indemnified by the Company or with respect to which the Company has paid additional amounts pursuant to this Section 3.10, it promptly shall notify the Company in writing of the availability of such refund claim and shall make a timely claim to such taxation authority for such refund at the Company's expense. If a Lender or the Administrative Agent receives a refund (including pursuant to a claim for refund made pursuant to the preceding sentence) or a permanent net tax benefit in respect of any Non-Excluded Taxes as to which it has been indemnified by the Company or with respect to which the Company has paid additional amounts pursuant to this Section 3.10, it shall within 30 days from the date of such receipt pay over the amount of such refund or permanent net tax benefit to the Company, net of all reasonable out-of-pocket expenses of such Lender or the Administrative Agent and without interest (other than interest paid by the relevant taxation authority with respect to such refund); provided that the Company, upon the request of such Lender or the Administrative Agent, agrees to repay the amount paid over to the Company (plus penalties, interest or other reasonable charges) to such Lender or the Administrative Agent in the event such Lender or the Administrative Agent is required to repay such refund to such taxation authority or loses such net tax benefit.

(c) On or before the date on which it becomes a party to this Agreement, each Lender that is not organized under the laws of the United States or a state thereof agrees that it will deliver to the Company and the Administrative Agent, as applicable: (i) two duly completed copies of United States Internal Revenue Service Form W-8BEN, or successor applicable form, certifying in each case under an applicable treaty that such Lender is entitled to receive all payments under this Agreement without deduction or withholding of any United States federal income taxes, (ii) two duly completed copies of United States Internal Revenue Service Form W-8ECI, or successor applicable form, or (iii) two duly completed copies of United States Internal Revenue Service Form W-8BEN, or successor applicable form, and a statement in the form of **Exhibit H** hereto. Each Lender which delivers to the Company and the Administrative Agent a Form W-8BEN or W-8ECI pursuant to the preceding sentence further undertakes to deliver to the Administrative Agent two further copies of the said statement and Form W-8BEN or W-8ECI, or successor applicable forms, and, if applicable, the statement, or other manner of certification, as the case may be, on or before the date that any such statement or form expires or becomes

obsolete or after the occurrence of any event requiring a change in the most recent statement or form previously delivered by it to the Administrative Agent, and such extensions or renewals thereof as may be requested by the Administrative Agent, certifying that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes. Each Lender shall promptly notify the Company and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered above-mentioned form or statement (or successor thereto) to the Company and the Administrative Agent.

(d) For any period with respect to which a Lender required to do so has failed to provide the Company with the appropriate form described in Section 3.10(c) above (other than if such failure is due to a change in law occurring subsequent to the date on which a form originally was required to be provided, or if such form otherwise is not required under Section 3.10(c) above), such Lender shall not be entitled to indemnification under this Section 3.10 with respect to Non-Excluded Taxes imposed by reason of such failure; provided, however, that should a Lender become subject to Non-Excluded Taxes because of its failure to deliver a form required hereunder, the Company shall take such steps as such Lender reasonably shall request to assist such Lender in recovering such Non-Excluded Taxes.

SECTION 3.11. Pro Rata Treatment and Payments. Each borrowing by the Company from the Lenders, each conversion of a Revolving Credit Loan pursuant to Section 3.01(d) hereof or continuation of a Revolving Credit Loan pursuant to Section 3.01(e) hereof, each payment by the Company on account of any fee (other than with respect to fees which are expressly payable to the Administrative Agent or the Issuing Lender for its own account), and any reduction of the Commitments of the Lenders hereunder shall be made pro rata according to the respective relevant Commitment Proportions of the Lenders. Each payment (including each prepayment) by the Company on account of principal of and interest on each Loan shall be made in the Applicable Currency in which such Loan is denominated and shall be made pro rata according to the respective outstanding principal amounts of such Loans held by each Lender. Except as otherwise provided in Section 2.04 hereof, all payments by the Company on account of principal of and interest on any Swingline Loan shall be made to the Swingline Lender at its office specified on its signature page hereof in Dollars in immediately available funds. All payments (including prepayments) to be made by the Company on account of principal, interest, fees and reimbursement obligations shall be made without set-off or counterclaim and, with respect to payments of the Loans, shall be made to the Administrative Agent, for the account of the Lenders (except as specified above), at the Payment Office, in Dollars or the other Applicable Currency, in immediately available funds. The Administrative Agent shall distribute such payments with respect to Loans to the Lenders promptly upon receipt in like funds by wire transfer of each Lender's portion of such payment to such Lender for the account of its Lending Office. The Administrative Agent may, in its sole discretion, directly charge principal and interest payments due in respect of the Loans to the Company's accounts at the Payment Office or any other office of the Administrative Agent. The Issuing Lender may, in its sole discretion, directly charge reimbursement obligations with respect to Letters of Credit to the Company's accounts at any office of the Issuing Lender. Except as otherwise provided in the definition of "Interest Period", if any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

SECTION 3.12. Funding and Disbursement of Loans.

(a) Each Lender shall make each Revolving Credit Loan denominated in Dollars to be made by it hereunder, at the Payment Office for the account of such office and the Administrative Agent, on the applicable Borrowing Date, in immediately available funds, by 2:00 p.m. (New York, New

York time). Each Lender shall make each Revolving Credit Loan denominated in an Approved Currency other than Dollars to be made by it hereunder, at the Payment Office for the account of such office and the Administrative Agent, on the applicable Borrowing Date, in immediately available funds, by the Applicable Offshore Time. Unless any applicable condition specified in Article V hereof has not been satisfied, the amount so received by the Administrative Agent will be made available to the Company at such Payment Office by crediting the account of the Company with such amount and in like funds as received by the Administrative Agent; provided, however, that if the proceeds of any Revolving Credit Loan or Swingline Loan or any portion thereof are to be used to prepay outstanding Revolving Credit Loans, Swingline Loans or Letter of Credit obligations, then the Administrative Agent shall apply such proceeds for such purpose to the extent necessary and credit the balance, if any, to the Company's account.

(b) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a proposed Borrowing Date that such Lender will not make the amount which would constitute its Commitment Proportion of the borrowing on such Borrowing Date available to the Administrative Agent, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such Borrowing Date, and the Administrative Agent may, in reliance upon such assumption, make available to the Company a corresponding amount. If such amount is not made available to the Administrative Agent until a date after such Borrowing Date, such Lender shall pay to the Administrative Agent on demand interest on such Lender's Commitment Proportion of such borrowing at a rate equal to the greater of (i) the daily average Federal Funds Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation during such period, from and including such Borrowing Date to the date on which such Lender's Commitment Proportion of such borrowing shall have become immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts due pursuant to this Section 3.12(b) shall be conclusive absent demonstrable error. Nothing herein shall be deemed to relieve any Lender from its obligations to fulfill its commitment hereunder or to prejudice any right which the Company may have against any Lender as a result of any default by such Lender hereunder.

SECTION 3.13. Judgment Currency. The currency in which each Loan made hereunder is denominated and the place of payment designated therefor is of the essence. The payment obligation of the Company hereunder in any designated currency and designated place of payment shall not be discharged by an amount paid in another currency or in another place, whether pursuant to a judgment or otherwise, to the extent that the amount so paid on prompt conversion to the currency in which such Loan is denominated and transfer to the designated place of payment under normal banking procedures does not yield the amount owing hereunder at the designated place of payment. In the event that any payment by the Company, whether pursuant to a judgment or otherwise, upon such conversion and transfer, does not result in payment of such amount in the currency in which such Loan is denominated at the designated place of payment, the Administrative Agent on behalf of the Lenders shall be entitled to demand immediate payment of, and shall have a separate cause of action against the Company for, the additional amount necessary to yield the amount of such currency owing hereunder.

SECTION 3.14. Foreign Exchange Indemnity. If any sum due from the Company or any Guarantor under this Agreement or any order or judgment given or made in relation hereto has to be converted from the currency (the "first currency") in which the same is payable hereunder or under such order or judgment into another currency (the "second currency") for the purpose of (a) making or filing a claim or proof against the Company or any Guarantor with any Governmental Authority or in any court or tribunal or (b) enforcing any order or judgment given or made in relation hereto, the Company or any

Guarantor, as the case may be, shall indemnify and hold harmless each of the Persons to whom such sum is due from and against any loss actually suffered as a result of any discrepancy between (i) the rate of exchange used to convert the amount in question from the first currency into the second currency, and (ii) the rate or rates of exchange at which such Person, acting in good faith, purchased the first currency with the second currency after receipt of a sum paid to it in the second currency in satisfaction, in whole or in part, of any such order, judgment, claim or proof. The foregoing indemnity shall constitute a separate obligation of the Company or any Guarantor distinct from its other obligations hereunder and shall survive the giving or making of any judgment or order in relation to all or any of such other obligations.

SECTION 3.15. Further Modifications. The Administrative Agent may, from time to time, further modify the terms of, and practices contemplated by, this Agreement with respect to the Euro to the extent the Administrative Agent determines, in its reasonable discretion, that such modifications are necessary or convenient to reflect new laws, regulations, customs, or practices developed in connection with the Euro. The Administrative Agent may effect such modifications, and this Agreement shall be deemed so amended, without the consent of the Company or the Lenders to the extent such modifications are not materially disadvantageous to the Company and the Lenders, upon notice thereto.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders to enter into this Agreement and to make the Loans and other extensions of credit herein provided for, the Company represents and warrants to the Administrative Agent and each Lender that:

SECTION 4.01. Organization, Powers . The Company and each Guarantor (a) is a corporation, limited liability company, partnership or other legal entity (as indicated on Schedule 4.11 hereto) duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its formation, (b) has the corporate, limited liability company, partnership or such other power and authority to own its properties and to carry on its business as being conducted, (c) is duly qualified to do business in every jurisdiction wherein the conduct of its business or the ownership of its properties are such as to require such qualification except those jurisdictions in which the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, and (d) has the corporate, limited liability company, partnership or other power to execute, deliver and perform each of the Loan Documents to which it is a party, including, without limitation, with respect to the Company, the power to obtain extensions of credit hereunder and to execute and deliver the Notes. Each other Subsidiary of the Company which is not a Guarantor (a) is a corporation, limited liability company, partnership or other legal entity (as indicated on Schedule 4.11 hereto) duly organized or formed, as applicable, validly existing and, in good standing under the laws of the jurisdiction of its formation, (b) has the corporate, limited liability company, partnership or other legal power and authority to own or lease its properties and to carry on its business as being conducted on the Closing Date and, (c) is duly qualified to do business in every jurisdiction wherein the conduct of its business or the ownership of its properties are such as to require such qualification, except in those jurisdictions where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.02. Authorization of Borrowing, Enforceable Obligations. The execution, delivery and performance by the Company of this Agreement, and the other Loan Documents to which it is a party, the borrowings and the other extensions of credit to the Company hereunder, and the execution, delivery and performance by each Guarantor of the Loan Documents to which such

Guarantor is a party, (a) have been duly authorized by all requisite corporate, limited partnership or limited liability company action, (b) will not violate or require any consent (other than consents as have been made or obtained and which are in full force and effect) under (i) any provision of law applicable to the Company or any Guarantor, any applicable rule or regulation of any Governmental Authority, or the Certificate of Incorporation or By-laws of the Company or the Certificate of Incorporation, By-Laws, or other organizational documents, as applicable, of any Guarantor or (ii) any order of any court or other Governmental Authority binding on the Company or any Guarantor, (c) will not be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under, any indenture, agreement or other instrument to which the Company or any Guarantor is a party, or by which the Company or any Guarantor or any of its property is bound, which conflict, breach or default could reasonably be expected to have a Material Adverse Effect, or result in the creation or imposition of any Lien of any nature whatsoever upon any of the property or assets of the Company or any Guarantor other than as contemplated by this Agreement or the other Loan Documents. This Agreement and each other Loan Document to which the Company or any Guarantor is a party constitutes a legal, valid and binding obligation of the Company and such Guarantor, as the case may be, enforceable against the Company and each such Guarantor, as the case may be, in accordance with its terms except to the extent that enforcement may be limited by applicable bankruptcy, reorganization, moratorium, insolvency and similar laws affecting creditors' rights generally or by equitable principles of general application, regardless of whether considered in a proceeding in equity or at law.

SECTION 4.03. Financial Condition.

(a) The Company has heretofore furnished to each Lender the audited consolidated balance sheets, statements of income, retained earnings and cash flow of the Company and its Subsidiaries, audited by Ernst & Young LLP, independent certified public accountants, as of and for the fiscal year ended December 31, 2006. Such financial statements were prepared in conformity with Generally Accepted Accounting Principles, applied on a consistent basis, and fairly present the consolidated financial condition and consolidated results of operations of the Company and its Subsidiaries as of the date of such financial statements and for the periods to which they relate and since December 31, 2006 (the "Determination Date"), no Material Adverse Effect has occurred, except as set forth on Schedule 5.01(j). Other than obligations and liabilities arising in the ordinary course of business since the Determination Date, there are no obligations or liabilities contingent or otherwise, of the Company or any of its Subsidiaries which are not reflected or disclosed on such audited statements other than obligations or liabilities of the Company and its Subsidiaries which are not required to be so disclosed. Notwithstanding anything to the contrary herein, on the date of delivery of any financial statements pursuant to Section 6.03(a) hereof, the Determination Date shall be deemed to be the date of the prior year's audited financial statements.

(b) Each of the Company and each Guarantor is Solvent.

SECTION 4.04. Taxes. Each of the Company and each Subsidiary of the Company has filed or has caused to be filed all tax returns (foreign, federal, state and local) required to be filed (including, without limitation, with respect to payroll and sales taxes) and each of the Company and each Subsidiary of the Company has paid all taxes (including, without limitation, all payroll and sales taxes), assessments and governmental charges and levies shown thereon to be due, including interest and penalties except (a) where the failure to file such tax returns or pay such taxes, charges or levies could not reasonably be expected to have a Material Adverse Effect and (b) taxes, assessments and governmental charges and levies being contested in good faith by appropriate proceedings and with respect to which adequate reserves in conformity with Generally Accepted Accounting Principles applied on a consistent

basis shall have been provided on the books of the Company and its Subsidiaries.

SECTION 4.05 Title to Properties. Each of the Company and each Subsidiary of the Company has good title to its respective properties and assets reflected on the financial statements referred to in Section 4.03 hereof, except for such properties and assets as have been disposed of since the date of such financial statements as no longer used or useful in the conduct of their respective businesses or as have been disposed of in the ordinary course of business or as permitted pursuant to Section 7.04(b) hereof, and all such properties and assets are free and clear of all Liens other than Permitted Liens.

SECTION 4.06 Litigation. (a) Except as set forth on Schedule 4.06, there are no actions, suits or proceedings (whether or not purportedly on behalf of the Company or any Subsidiary of the Company) pending or, to the knowledge of the Company, threatened against or affecting the Company or any such Subsidiary at law or in equity or before or by any Governmental Authority, which involve any of the transactions contemplated herein or which could reasonably be expected to result in a Material Adverse Effect; and (b) neither the Company nor any Subsidiary of the Company is in default with respect to any judgment, writ, injunction, decree, rule or regulation of any Governmental Authority which could reasonably be expected to result in a Material Adverse Effect.

SECTION 4.07. Agreements. Neither the Company nor any Subsidiary of the Company is a party to any agreement, indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any judgment, order, writ, injunction, decree or regulation which could reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary of the Company is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party, which default could reasonably be expected to have a Material Adverse Effect.

SECTION 4.08. Compliance with ERISA. Each Plan is in compliance in all material respects with ERISA; no Plan is insolvent or in reorganization (as defined in Section 4241 of ERISA), no Plan has an Unfunded Current Liability which could reasonably be expected to have a Material Adverse Effect or to result in the imposition of any Lien, and no Plan has an accumulated or waived funding deficiency within the meaning of Section 412 of the Code; neither the Company nor any ERISA Affiliate has incurred any material liability to or on account of a Plan pursuant to Section 515, 4062, 4063, 4064, 4201 or 4204 of ERISA or reasonably expects to incur any material liability under any of the foregoing Sections on account of the prior termination of participation in or contributions to any such Plan; no proceedings have been instituted to terminate any Plan which could reasonably be expected to have a Material Adverse Effect or to result in the imposition of any Lien; no condition exists which could reasonably be expected to present a risk to the Company or any ERISA Affiliate of incurring a liability to or on account of a Plan pursuant to the foregoing provisions of ERISA and the Code; and no lien imposed under the Code or ERISA on the assets of the Company or any of its ERISA Affiliates exists or to the knowledge of the Company is likely to arise on account of any Plan.

SECTION 4.09. Federal Reserve Regulations; Use of Proceeds.

(a) Neither the Company nor any Subsidiary of the Company is engaged principally in, nor has as one of its important activities, the business of extending, maintaining or arranging credit for the purpose of purchasing or carrying any “margin stock” (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States, as amended from time to time).

(b) No part of the proceeds of any Loan and no other extension of credit hereunder

will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or to carry margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock, or to refund indebtedness originally incurred for such purposes, or (ii) for any purpose which violates or is inconsistent with the provisions of Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

(c) The proceeds of each Loan, and each other extension of credit hereunder, shall be used solely for the purposes permitted under Section 3.02 hereof.

SECTION 4.10. Approvals. No registration with or consent or approval of, or other action by, any Governmental Authority or any other Person is required in connection with the execution, delivery and performance of this Agreement by the Company or any Guarantor, or with the execution, delivery and performance of other Loan Documents to which it is a party or, with respect to the Company, the borrowings and each other extension of credit hereunder other than registrations, consents and approvals received prior to the date hereof and disclosed to the Lenders and which are in full force and effect or such registrations, consents and approvals required pursuant to Section 5.01 hereof.

SECTION 4.11. Subsidiaries and Affiliates . Attached hereto as Schedule 4.11 is a correct and complete list of each of the Company's Subsidiaries and Affiliates as of the Closing Date showing as to each (a) Subsidiary, its name, the jurisdiction of its incorporation or formation, its shareholders or other owners of an interest in each Subsidiary and the number of outstanding shares or other ownership interest owned by each shareholder or other owner of an interest and (b) Affiliate in which the Company or any of its Subsidiaries owns an interest, the number of shares or other ownership interests of such Affiliate owned directly or indirectly by the Company.

SECTION 4.12. Hazardous Materials . The Company and each Subsidiary are in compliance in all material respects with all applicable Environmental Laws and neither the Company nor any Subsidiary has used Hazardous Materials on, from, or affecting any property now owned or occupied or hereafter owned or occupied by the Company or any such Subsidiary in any manner which violates any applicable Environmental Law. To the best actual knowledge of any officer of the Company, no prior owner of any such property or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from, or affecting such property in any manner which violates, in any material respect, any applicable Environmental Law.

SECTION 4.13. Investment Company Act . Neither the Company nor any Subsidiary of the Company is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

SECTION 4.14. No Default. No Default or Event of Default has occurred and is continuing.

SECTION 4.15. Credit Arrangements . Schedule 4.15 attached hereto is a complete and correct list of all credit agreements, indentures, purchase agreements (other than purchase orders), guaranties, Capital Leases and other investments, agreements and arrangements in effect on the Closing Date providing for or relating to extensions of credit to the Company or any Subsidiaries of the Company, or any of them (including agreements and arrangements for the issuance of letters of credit or for acceptance financing) in respect of which the Company or any Subsidiaries of the Company, or any of them, are in any manner directly or contingently obligated to make aggregate payments of \$1,000,000 or more; and the maximum principal or face amounts of the credit in question, outstanding and which can be

outstanding, are correctly stated, and all Liens of any nature given or agreed to be given as security therefor are correctly described or indicated in such Schedule 4.15.

SECTION 4.16. Permits and Licenses. Each of the Company and each Subsidiary of the Company has all permits, licenses, certifications, authorizations and approvals required for it lawfully to own and operate their respective businesses except those the failure of which to have could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.17. Compliance with Law. The Company and each Subsidiary of the Company are each in compliance with all laws, rules, regulations, orders and decrees which are applicable to the Company or any such Subsidiary, or to any of their respective properties, which the failure to comply with could reasonably be expected to have a Material Adverse Effect.

SECTION 4.18. Disclosure. Neither this Agreement, any other Loan Document, nor any other document, certificate or written statement furnished to the Administrative Agent, the Issuing Lender, or any Lender by or on behalf of the Company or any of its Subsidiaries for use in connection with the transactions contemplated by this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which they were made.

SECTION 4.19. Labor Disputes and Acts of God. Neither the business nor the properties of the Company or any Subsidiary of the Company 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), which could reasonably be expected to have a Material Adverse Effect.

SECTION 4.20. Pledge Agreements. Each Pledge Agreement executed by the Company and the Guarantors shall constitute a valid and continuing lien on and security interest in the Pledged Interests (as defined in such Pledge Agreement) referred to in such Pledge Agreement to the extent provided therein and under applicable law in favor of the Administrative Agent for the ratable benefit of the Lenders, prior to all Liens, other than Permitted Liens.

ARTICLE V CONDITIONS OF LENDING

SECTION 5.01. Conditions to Initial Extension of Credit. The obligation of each Lender to make its initial Loan hereunder, and the obligation of the Issuing Lender to issue the initial Letter of Credit, are subject to the following conditions precedent:

(a) **Notes.** On or prior to the Closing Date, the Administrative Agent shall have received (i) for the account of each Lender (other than the Issuing Lender and the Swingline Lender), a Revolving Credit Note and (ii) for the account of the Swingline Lender, a Swingline Note, each duly executed by the Company.

(b) **Guaranty; Security Agreement.** On or prior to the Closing Date, the Administrative Agent shall have received, with a counterpart for each Lender, (i) a Reaffirmation and Amendment to the Guaranty, duly executed by each Existing Guarantor, (ii) a Reaffirmation and Amendment to the Security Agreement, duly executed by the Company and each Existing Guarantor, and (iii) a Joinder Agreement, duly executed by each New Guarantor, each in form and substance satisfactory

to the Administrative Agent.

(c) **Pledge Agreements.** On or prior to the Closing Date, the Administrative Agent shall have received the Pledge Agreements duly executed by the Company and Guarantors, as applicable, together with all stock certificates, if any, evidencing the shares pledged under the Pledge Agreements and undated stock powers duly executed in blank by the Company or the Guarantors and UCC-1 financing statements required pursuant to the Pledge Agreements, as appropriate.

(d) **Opinion of Counsel.** On or prior to the Closing Date, the Administrative Agent shall have received a written opinion of Kaye Scholer, LLP substantially in the form of **Exhibit G** attached hereto.

(e) **Supporting Documents.** On or prior to the Closing Date, the Administrative Agent shall have received (i) a certificate of good standing for the Company and each Guarantor from the secretary of state of the states of their organizational jurisdiction dated as of a recent date; (ii) copies of the Certificate of Incorporation and By-laws or other organization documents, as applicable of the Company and each Guarantor, certified by the Secretary or an Assistant Secretary of such entity; and (iii) a certificate of the Secretary or an Assistant Secretary of the Company and each Guarantor dated the Closing Date and certifying: (x) that neither the Certificates of Incorporation, the By-laws nor any other applicable organizational documents of the Company or any Guarantor has been amended since the date of their certification (or if there has been any such amendment, attaching a certified copy thereof); (y) that attached thereto is a true and complete copy of resolutions adopted by the Board of Directors of the Company and by the board of directors or other governing body or Persons of each Guarantor authorizing the execution, delivery and performance of each Loan Document to which it is a party; and (z) the incumbency and specimen signature of each officer of the Company and of each officer or other authorized Person of each Guarantor executing each Loan Document to which the Company or any Guarantor is a party and a certification by another officer of the Company and each Guarantor as to the incumbency and signature of the Secretary or Assistant Secretary of the Company and each Guarantor.

(f) **Insurance.** On or prior to the Closing Date, the Administrative Agent shall have received a certificate or certificates of insurance from an independent insurance broker or brokers or other evidence confirming the insurance required to be maintained by the Company and its Domestic Subsidiaries pursuant to Section 6.01 hereof.

(g) **Fees and Expenses.** On or prior to the Closing Date, the Lenders shall have received all fees that may be payable to them pursuant to this Agreement and reimbursement of expenses in accordance with Section 10.03(b) hereof.

(h) **No Litigation.** Except as set forth on Schedule 4.06, there shall exist no action, suit, investigation, litigation or proceeding affecting the Company or any of its Subsidiaries pending or, to the knowledge of the Company, threatened before any court, governmental agency or arbiter that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(i) **Consents and Approvals.** All governmental and third party consents and approvals necessary in connection with the transactions contemplated by this Agreement and the other Loan Documents shall have been obtained (without the imposition of any conditions that are not reasonably acceptable to the Required Lenders) and shall remain in effect, and no law or regulation shall be applicable in the reasonable judgment of the Required Lenders that imposes materially adverse conditions upon the transactions contemplated hereby.

(j) **No Material Adverse Effect.** Except as set forth on Schedule 5.01(j) attached hereto, there shall not have occurred any Material Adverse Effect in the business, operations, properties or condition (financial or otherwise) of the Company and its Subsidiaries or the Company and the Guarantors, taken as a whole, since December 31, 2006.

(k) **Existing Indebtedness.** The Administrative Agent shall have received concurrently with the extension of the initial Loans described herein evidence that the Existing Indebtedness has been paid in full and that the agreements giving rise to such Existing Indebtedness have been terminated.

(l) **Other Information, Documentation .** The Administrative Agent and the Lenders shall have received such other and further information and documentation as any of them may reasonably require.

(m) **Completion of Proceedings .** All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by the Loan Documents, shall be reasonably satisfactory in form and substance to the Administrative Agent, the Lenders and their counsel.

SECTION 5.02. Conditions to Extensions of Credit. The obligation of each Lender to make each Loan hereunder and the obligation of the Issuing Lender to issue, amend, renew or extend any Letter of Credit, including, without limitation, the initial Loan and initial Letter of Credit, are further subject to the following conditions precedent:

(a) **Representations and Warranties .** The representations and warranties by the Company and each Guarantor pursuant to this Agreement and the other Loan Documents to which each is a party shall be true and correct in all material respects on and as of the Borrowing Date or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, with the same effect as though such representations and warranties had been made on and as of such date unless such representation is as of a specific date, in which case, as of such date.

(b) **No Default.** No Default or Event of Default shall have occurred and be continuing on the Borrowing Date or on the date of issuance, amendment, renewal or extension of a Letter of Credit or will result after giving effect to the Loan requested or the requested issuance, amendment, renewal or extension of a Letter of Credit.

(c) **Letter of Credit Documentation.** With respect to the issuance, amendment, renewal or extension of any Letter of Credit, the Issuing Lender shall have received the documents and instruments requested by the Issuing Lender in accordance with the last sentence of Section 2.03(a) hereof.

Each borrowing hereunder and each issuance, amendment, renewal or extension of a Letter of Credit shall constitute a representation and warranty of the Company that the statements contained in clauses (a), (b), and (c) of this Section 5.02 are true and correct on and as of the Borrowing Date or as of the date of issuance, amendment, renewal or extension of a Letter of Credit, as applicable, as though such representation and warranty had been made on and as of such date.

ARTICLE VI AFFIRMATIVE COVENANTS

The Company covenants and agrees with the Lenders that so long as the Commitments remain in effect, or any of the principal of or interest on the Notes or any other Obligations hereunder shall be unpaid it will, and will cause each of its Subsidiaries to:

SECTION 6.01. Existence, Properties, Insurance . Except to the extent permitted by Section 7.12 hereof, do or cause to be done all things necessary to preserve and keep in full force and effect its corporate, partnership, limited liability company, or other form of organization, as applicable (except as set forth on Schedule 6.01 hereto), existence (other than as expressly permitted herein) and comply, in all material respects, with all laws applicable to it; at all times maintain, preserve, protect or renew all trade names, patents, trademarks and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect and preserve all of its property, in each case, material to its business and keep the same in good repair, working order and condition (normal wear and tear excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, replacements, betterments and improvements thereto so that the business carried on in connection therewith may be properly and advantageously conducted in the ordinary course at all times in the manner and custom of similar businesses; at all times, preserve and maintain in full force and effect all rights (including governmental rights), privileges, qualifications, permits, licenses and franchises necessary for the normal conduct of its business; and at all times maintain insurance covering its assets and its business with financially sound and reputable insurance companies or associations in such amounts and against such risks (including, without limitation, hazard, business interruption, public liability and product liability) as are usually carried by companies engaged in the same or similar business. All casualty insurance policies shall contain standard lender's loss payable and mortgagee clauses, and, all liability and interruption insurance, additional insured clauses issued in favor of Lenders under which all losses thereunder shall be paid to the Administrative Agent, as agent for the Lenders, as Lenders interest may appear. All such policies shall expressly provide that the requisite insurance cannot be altered or canceled without thirty (30) days prior written notice to Administrative Agent and shall insure the Administrative Agent and the Lenders notwithstanding the act or neglect of Company.

SECTION 6.02. Payment of Indebtedness and Taxes . (a) Pay all material indebtedness and obligations, now existing or hereafter arising, as and when due and payable except where (i) the validity, amount, or timing thereof is being contested in good faith and by appropriate proceedings, which proceedings shall include good faith negotiations, and (ii) the Company or any Subsidiary of the Company has set aside on its books adequate reserves with respect thereto in accordance with Generally Accepted Accounting Principles, and (iii) the failure to make such payment pending such contest could not reasonably be expected to have a Material Adverse Effect, and (b) pay and discharge or cause to be paid and discharged promptly all taxes, assessments and government charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, as and when due and payable, as well as all lawful claims for labor, materials and supplies or otherwise which, if unpaid, might become a lien or charge upon such properties or any part thereof, except where the failure to make such payment could not reasonably be expected to have a Material Adverse Effect; provided, however, that neither the Company nor any Subsidiary of the Company shall be required to pay and discharge or cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the validity thereof shall be contested in good faith by appropriate proceedings, and the Company or such Subsidiary, as the case may be, shall have set aside on its books adequate reserves determined in accordance with Generally Accepted Accounting Principles with respect to any such tax, assessment, charge, levy or claim so contested; further, provided that, subject to the foregoing proviso, the Company

and each Subsidiary of the Company will pay or cause to be paid all such taxes, assessments, charges, levies or claims upon the commencement of proceedings to foreclose any lien which has attached as security therefor.

SECTION 6.03. Financial Statements, Reports, etc. Furnish to the Administrative Agent (with sufficient copies for each Lender):

(a) within the earlier of (i) ninety (90) days of the end of each fiscal year of the Company or (ii) five (5) days of the date on which the following is required to be filed with the Securities and Exchange Commission, audited consolidated financial statements of the Company and its Subsidiaries which shall include consolidated balance sheets of the Company and its Subsidiaries as of the end of such fiscal year, together with consolidated income statements and statements of cash flows for the Company and its Subsidiaries for such fiscal year and as of and for the prior fiscal year, all prepared in accordance with Generally Accepted Accounting Principles and accompanied by an opinion thereon of Ernst & Young, LLP or other nationally recognized independent certified public accountants reasonably acceptable to the Lenders (the “Auditor”) which opinion shall not include a going concern or like qualification or exception or a qualification or exception as to the scope of the audit (except with respect to any newly acquired Subsidiary), together with the corresponding consolidating balance sheets of the Company and its Subsidiaries and the consolidating statements of income for the Company and its Subsidiaries, all prepared under the supervision of the Chief Financial Officer of the Company in accordance with Generally Accepted Accounting Principles;

(b) within forty-five (45) days after the end of each of the first, second and third fiscal quarters of each fiscal year of the Company, unaudited consolidated and consolidating financial statements of the Company and its Subsidiaries, which shall include unaudited consolidated and consolidating balance sheets of the Company and its Subsidiaries as of the end of each such quarter, together with consolidated and consolidating income statements and consolidated statements of cash flows of the Company and its Subsidiaries for each such quarter and for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, all in reasonable detail stating in comparative form the respective figures for the corresponding date and period in the previous fiscal year, all prepared by or under the supervision of the Chief Financial Officer of the Company in accordance with Generally Accepted Accounting Principles (subject to year-end adjustments and except for the absence of notes thereto);

(c) (i) a certificate prepared and signed by the Auditor with each delivery required by clause (a), and (ii) a certificate prepared and signed by the Chief Financial Officer with each delivery required by clauses (a) and (b), stating whether the Auditor or Chief Financial Officer, as the case may be, shall have obtained knowledge of any Default or Event of Default, together with a certificate of the Chief Financial Officer of the Company demonstrating that as of the last day of the relevant fiscal year or quarter, as applicable, the Company was in compliance with the financial condition covenants set forth in Section 7.13 hereof;

(d) together with delivery of the statements referred to in clause (a) above, a copy of the management letter, if any, prepared by the Auditor, or if such management letter has not been received by the Company as of such date, promptly upon receipt thereof;

(e) together with delivery of the statements referred to in clauses (a) and (b) above, a certificate of the Chief Financial Officer indicating the “book-to-bill” ratio at the end of such fiscal quarter;

(f) promptly after filing thereof, copies of all financial statements and material reports that the Company sends to its shareholders, and copies of all regular, periodic and special financial information, proxy materials, reports and other information which the Company shall file with the Securities and Exchange Commission;

(g) promptly after submission to any government or regulatory agency, all documents and information (including Forms 8-K) furnished to such government or regulatory agency other than such documents and information prepared in the normal course of business and which could not reasonably be expected to result in a Material Adverse Effect;

(h) promptly upon execution thereof, copies of any amendments or modifications to any Indenture;

(i) promptly, from time to time, such other information regarding the operations, business affairs and condition (financial or otherwise) of the Company or any Subsidiary of the Company as any Lender may reasonably request.

Documents required to be delivered pursuant to clauses (a), (b), (c)(ii), (e), (f) and (g) of this Section 6.03 (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 the Company posts such documents, or provides a link thereto on the Company's website on the Internet at the website address named www.veeco.com; or (ii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (A) the Company shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Company to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Company shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Company shall be required to provide paper copies of the Compliance Certificates required by Section 6.03c(i) to the Administrative Agent. Except for such Compliance Certificates, the Administrative 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 Company 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.

The Company hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the Issuing Lender materials and/or information provided by or on behalf of the Company hereunder (collectively, "Company Materials") by posting the Company Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Company or its securities) (each, a "Public Lender"). The Company hereby agrees that (w) all Company Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Company Materials "PUBLIC", the Company shall be deemed to have authorized the Administrative Agent, the Issuing Lender and the Lenders to treat such Company Materials as not containing any material non-public information with respect to the Company or its

securities for purposes of United States Federal and state securities laws; (y) all Company Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor”; and (z) the Administrative Agent shall be entitled to treat any Company Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor”. In the event that any Lender desires to be deemed a “public-side Lender” it shall so notify the Company and the Administrative Agent and, only following such notification, shall the Company be required to mark Company Material as “PUBLIC”.

SECTION 6.04. Books and Records; Access to Premises .

(a) Maintain adequate records and proper books of record and account in which full, true and correct entries will be made in a manner to enable the preparation of financial statements in accordance with Generally Accepted Accounting Principles, and which shall reflect all material financial transactions of the Company and each of its Subsidiaries and material matters involving the assets and business of the Company and such Subsidiaries.

(b) At any time during normal business hours (and upon reasonable advance notice so long as no Default or Event of Default has occurred and is then continuing), permit the Administrative Agent or any Lender or any agents or representatives thereof to examine and make copies of and abstracts from the books and records of such information which the Administrative Agent or any Lender reasonably deems necessary or desirable (including, without limitation, the financial records of the Company and its Subsidiaries) and to visit the properties of the Company or any of its Subsidiaries and to discuss the affairs, finances and accounts of the Company or any of its Subsidiaries with any of their respective executive officers or the Company’s independent accountants, provided that the costs thereof shall be for the account of the Lenders so long as no Default or Event of Default shall have occurred and is then continuing. The Lenders shall use reasonable efforts to coordinate any such examinations, copying, visits or discussions.

SECTION 6.05. Notice of Adverse Change . Promptly notify the Administrative Agent (and the Administrative Agent shall promptly notify each Lender) in writing of (a) any change in the business or the operations of the Company or its Subsidiaries which could reasonably be expected to have a Material Adverse Effect, and (b) any information which indicates that any financial statements which are the subject of any representation contained in this Agreement, or which are furnished to the Administrative Agent or the Lenders pursuant to this Agreement, fail to present fairly, as of the date thereof and for the period covered thereby, the financial condition and results of operations purported to be presented therein, disclosing the nature thereof.

SECTION 6.06. Notice of Default . Promptly notify the Administrative Agent (and the Administrative Agent shall promptly notify each Lender) of any Default or Event of Default which shall have occurred or the occurrence or existence of any event or circumstance that in the reasonable judgment of the Company is likely to become a Default or Event of Default, which notice shall include a written statement as to such occurrence, specifying the nature thereof and the action (if any) which is proposed to be taken with respect thereto.

SECTION 6.07. Notice of Litigation and Investigations . Promptly notify the Administrative Agent (and the Administrative Agent shall promptly notify each Lender) of any action, suit, investigation or proceeding at law or in equity or by or before any governmental instrumentality or other agency which could reasonably be expected to have a Material Adverse Effect.

SECTION 6.08. Notice of Default in Other Agreements. Promptly notify the Administrative Agent (and the Administrative Agent shall promptly notify each Lender) of any default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which the Company or any Subsidiary of the Company is a party which default could reasonably be expected to have a Material Adverse Effect.

SECTION 6.09. Notice of ERISA Event. Promptly, and in any event within ten (10) days, after the Company or any Guarantor knows any of the following, deliver to the Administrative Agent (and the Administrative Agent shall promptly notify each Lender) a certificate of the Chief Financial Officer of the Company setting forth details as to the occurrence and the action, if any, which the Company, any Guarantor or any ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given to or filed with or by the Company, such Guarantor, such ERISA Affiliate, the PBGC, a Plan participant or the Plan administrator, with respect thereto: that a Reportable Event has occurred with respect to a Plan, that an accumulated funding deficiency (as defined in Section 412 of the Code) has been incurred or an application may be or has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard (including any required installment payments) or an extension of any amortization period under Section 412 of the Code with respect to a Single-Employer Plan, that a Plan has been terminated, reorganized, partitioned or declared insolvent under Title IV of ERISA, that one or more Single-Employer Plans have an Unfunded Current Liability in excess of \$1,000,000 in the aggregate, that involuntary proceedings may be or have been instituted to terminate a Plan, that a proceeding has been instituted pursuant to Section 515 of ERISA to collect a delinquent contribution to a Plan, or that the Company, any Guarantor or any ERISA Affiliate will incur any liability (including any contingent or secondary liability) to or on account of the termination of or withdrawal from a Plan under Section 4062, 4063, 4064, 4201 or 4204 of ERISA. Upon request of any Lender, the Company will deliver to each Lender a complete copy of the annual report (Form 5500) filed for each Single-Employer Plan.

SECTION 6.10. Notice of Environmental Law Violations. Promptly notify the Administrative Agent (and the Administrative Agent shall promptly notify each Lender) of the receipt of any notice of an action, suit, or proceeding before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, pending against the Company or any Subsidiary of the Company relating to any alleged violation of any Environmental Law which could reasonably be expected to have a Material Adverse Effect.

SECTION 6.11. Compliance with Applicable Laws. Comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority, the breach of which could reasonably be expected to have a Material Adverse Effect, including, without limitation, the rules and regulations of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

SECTION 6.12. Additional Subsidiaries. Give the Administrative Agent prompt written notice of the creation, establishment or acquisition, in any manner, of any Material Subsidiary not existing as a Material Subsidiary on the Closing Date. Subject to the last sentence of this Section 6.12, the Company or a Material Domestic Subsidiary, as appropriate, (a) shall execute a Pledge Agreement, in the form of **Exhibit E-1** or **Exhibit E-2** hereto (or such other agreement as shall be required by the Administrative Agent), as applicable, with respect to (i) all of the shares of capital stock or other ownership interest of each Subsidiary which is or becomes a Material Domestic Subsidiary and (ii) 65% of the capital stock or other ownership interest of each First-Tier Subsidiary of such Person which is or

becomes a Material Non-Domestic Subsidiary, (b) shall cause each Subsidiary of such Person which is a Material Domestic Subsidiary to execute amendments with respect to the Guaranty and the Security Agreement, pursuant to which such Subsidiary becomes a “Guarantor” and “Grantor” under the Guaranty and the Security Agreement, respectively, (c) shall deliver an opinion of counsel, (i) simultaneously with the delivery of any Pledge Agreement executed pursuant to clause (a)(i) above and (ii) within 90 days of the delivery of any Pledge Agreement executed pursuant to clause (a)(ii) above, that such Pledge Agreement is valid and enforceable in the jurisdiction of formation of such Material Domestic Subsidiary and Material Non-Domestic Subsidiary, as the case may be, provided that if such opinion, in connection with the delivery of any Pledge Agreement executed pursuant to clause (a)(ii) above, cannot be provided, the Company or such Material Non-Domestic Subsidiary, as appropriate, shall execute any additional documents that may be required in order to perfect the lien granted by such Pledge Agreement in such jurisdiction and to enable such counsel to deliver an acceptable opinion with respect thereto and (d) with respect to the pledge of capital stock or other ownership interest of any Material Domestic Subsidiary that is a “certificated security” within the meaning of Section 8-102(a)(4) of the Uniform Commercial Code, deliver certificates and powers with respect to such interests duly endorsed in blank, and, in the event of uncertificated interests, to the extent the Administrative Agent’s Lien therein is not already perfected by the filing of the UCC-1 financing statements referred to in Section 5.01(c) hereof, additional UCC-1 financing statements; in the case of both (a), (b) and (d), within ten (10) Business Days after the creation, establishment or acquisition of such Material Subsidiary and in connection therewith shall deliver or cause to be delivered such proof of corporate action, incumbency of officers and other documents as are consistent with those delivered as to each Subsidiary pursuant to Section 5.01 hereof on the Closing Date, or as the Administrative Agent may request, each in form and substance satisfactory to the Administrative Agent. In no event shall the Company be required to pledge any of the assets of a Subsidiary of the Company that is a controlled foreign corporation, as defined in Section 957(a) of the Code, including, but not limited to the stock of any Subsidiary of the Company held directly or indirectly by any such Subsidiary.

SECTION 6.13. Environmental Laws . Comply in all material respects with the requirements of all applicable Environmental Laws, provide to the Lenders all documentation in connection with such compliance that any of the Lenders may reasonably request, and defend, indemnify, and hold harmless the Administrative Agent and each Lender and their respective employees, agents, officers, and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, or release of any Hazardous Materials on any property at any time owned or occupied by the Company or any Subsidiary of the Company, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (d) any violation of applicable Environmental Laws, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

SECTION 6.14. Non-Material Subsidiaries . In the event that the assets or revenues of the Non-Material Subsidiaries, taken as a whole, shall, at any time, exceed twenty percent (20%) of Consolidated Total Assets or Consolidated Total Revenues, then, at such time one or more Non-Material Subsidiaries, as selected by the Company, shall be deemed Material Subsidiaries so that the Non-Material Subsidiaries, taken as a whole, shall no longer, account for more than twenty percent of Consolidated Total Assets or Consolidated Total Revenues. In the event that any Non-Material Subsidiary shall be deemed a Material Subsidiary, such Subsidiary or such Subsidiary’s parent shall comply with the relevant provisions of Section 6.12 hereof.

SECTION 6.15. Foreign Opinions of Counsel. Within 60 days of the Closing Date, the Company shall deliver to the Administrative Agent an acknowledgment with respect to each opinion of counsel previously delivered to the Administrative Agent for each Foreign Pledge Agreement delivered on the Prior Closing Date with respect to any Non-Domestic Subsidiary which, as of the Closing Date, is a Material Non-Domestic Subsidiary, that such Foreign Pledge Agreement remains valid and enforceable in the jurisdiction of formation of the applicable Material Non-Domestic Subsidiary whose capital stock or other ownership interest was pledged pursuant thereto, notwithstanding the execution and delivery of this Credit Agreement.

ARTICLE VII NEGATIVE COVENANTS

The Company covenants and agrees with the Lenders that so long as the Commitments remain in effect or any of the principal of or interest on any Note or any other Obligations hereunder shall be unpaid, it will not, and will not cause or permit any of its Subsidiaries, directly or indirectly, to:

SECTION 7.01. Indebtedness. Incur, create, assume or suffer to exist or otherwise become liable in respect of any Indebtedness, other than:

- (a) Indebtedness incurred prior to the date hereof as described in Schedule 7.01 attached hereto and any refinancing of such Indebtedness, provided that the aggregate principal amount of such Indebtedness is not increased (unless such increase is otherwise permitted under Sections 7.01(b) through 7.01(h) hereof;
- (b) Indebtedness to the Lenders under this Agreement, the Notes or any other Loan Document;
- (c) Indebtedness for trade payables incurred in the ordinary course of business; provided such payables shall be paid or discharged when due;
- (d) Indebtedness consisting of guarantees permitted pursuant to Section 7.03 hereof;
- (e) Subordinated Indebtedness, including without limitation, indebtedness evidenced by the Subordinated Notes, provided that such Subordinated Indebtedness shall not exceed \$300,000,000, in the aggregate, and provided further, that no Default or Event of Default shall have occurred and be continuing at the time of incurrence thereof or would occur after giving effect to the incurrence of such Subordinated Indebtedness;
- (f) Indebtedness secured by purchase money liens as permitted under Section 7.02(i) hereof and Indebtedness arising under Capital Leases; provided that the aggregate amount of such Indebtedness shall not exceed \$15,000,000 during any fiscal year of the Company, or \$30,000,000 at any one time outstanding, and, further, provided no Default or Event of Default shall have occurred and be continuing at the time of incurrence thereof or would occur after giving effect to the incurrence of such Indebtedness;
- (g) Indebtedness with respect to Hedging Agreements entered into by the Company, provided that the aggregate net liabilities under all Hedging Agreements shall not exceed \$5,000,000 at

the time of incurrence thereof, and provided further, that such Hedging Agreements shall be entered into only in the ordinary course of its business and not for speculative purposes;

(h) Indebtedness arising under or with respect to foreign exchange contracts entered into by the Company or any of its Subsidiaries in the ordinary course of its business and not for speculative purposes for the purchase or sale of foreign currency and with respect to which the net daily settlement amount of any particular date, shall not exceed \$25,000,000, in the aggregate;

(i) Indebtedness for taxes, assessments or other governmental charges or levies not yet delinquent or which are being contested in good faith by appropriate proceedings; provided, however, that adequate reserves with respect thereto are maintained on the books of the Company or any Subsidiary of the Company in accordance with Generally Accepted Accounting Principles;

(j) Indebtedness owing by (i) the Company to any of its Material Subsidiaries or (ii) any Material Subsidiary of the Company to the Company or any other Material Subsidiary of the Company;

(k) Indebtedness owing by (i) the Company to any of its Non-Material Subsidiaries or (ii) any Non-Material Subsidiary of the Company to the Company or any other Non-Material Subsidiary of the Company, provided such Indebtedness shall not exceed \$25,000,000, in the aggregate;

(l) unsecured Indebtedness of Non-Domestic Subsidiaries incurred in connection with performance standby letters of credit, bank guarantees, bonds or similar arrangements, incurred in the ordinary course of its business, the Dollar Equivalent Amount of which shall not exceed \$10,000,000 at any time;

(m) Indebtedness assumed in connection with any Permitted Acquisition, provided that such Indebtedness is secured only by those liens permitted under Section 7.02(h) hereof,

(n) additional Indebtedness assumed in connection with any Permitted Acquisition (not described in Section 7.01(m) or (o) hereof), not to exceed \$5,000,000, in the aggregate, provided that such Indebtedness is unsecured and shall be terminated within six months after the closing date of such Permitted Acquisition and, provided further that, no Default or Event of Default shall have occurred and be continuing or would occur after giving effect to the incurrence of such Indebtedness;

(o) additional Indebtedness incurred in connection with any Permitted Acquisition (not described in Section 7.01(m) or (n) hereof), not to exceed \$5,000,000, in the aggregate, provided that such Indebtedness is unsecured and shall solely consist of promissory notes issued by the Company or the Subsidiary of the Company, as applicable, in favor of the seller with respect to such Permitted Acquisition and, provided further that, no Default or Event of Default shall have occurred and be continuing or would occur after giving effect to the incurrence of such Indebtedness; and

(p) secured Indebtedness of Non-Domestic Subsidiaries, not to exceed \$5,000,000, in the aggregate; and

(q) additional unsecured Indebtedness of the Company and its Subsidiaries (not described in Section 7.01 (a) through (p) hereof), not to exceed \$5,000,000, in the aggregate.

SECTION 7.02. Liens. Incur, create, make, assume or suffer to exist any Lien on any of

their respective properties or assets, now or hereafter owned, other than:

(a) Liens existing on the date hereof (which are not described in Sections 7.02(b) through 7.02(i) hereof) as set forth on Schedule 7.02 attached hereto, securing Indebtedness outstanding on such date or incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by such existing Liens; provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase;

(b) Liens securing Indebtedness described in Section 7.01(i) hereof, provided that no notice of lien has been filed or recorded under the Code;

(c) carriers', warehousemen's, mechanics', suppliers' or other like Liens arising in the ordinary course of business and not overdue for a period of more than sixty (60) days or which are being contested in good faith and by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(d) Liens incurred or deposits to secure (i) the non-delinquent performance of tenders, bids, trade contracts (other than for borrowed money), leases and statutory obligations, (ii) contingent obligations on surety, performance and appeal bonds, and (iii) other non-delinquent obligations of similar nature; in each case, incurred in the ordinary course of business;

(e) any attachment, judgment or similar Lien arising in connection with any court or governmental proceeding, provided that the execution or other enforcement of such Lien is effectively stayed within thirty (30) days, provided, further that an Event of Default shall not be deemed to occur solely by reason of the continuance of such Liens beyond such thirty (30) day period so long as the aggregate amount secured by all such continuing Liens does not exceed \$500,000;

(f) easements, rights of way, restrictions and other similar charges or encumbrances incurred in the ordinary course of business which, in the aggregate, do not interfere in any material respect with the occupation, use and enjoyment by the Company or any Subsidiary of the Company of the property or assets encumbered thereby in the normal course of their respective business or materially impair the value of the property subject thereto;

(g) deposits or pledges required in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security laws;

(h) Liens upon assets acquired in Permitted Acquisitions, provided that such Liens encumber only (i) specific equipment or real property; or (ii) other assets acquired in such Permitted Acquisition, provided that Liens on such other assets do not secure more than \$5,000,000 of Indebtedness in the aggregate and provided further that such Liens on such other assets are released within six months after the closing date of such Permitted Acquisition;

(i) purchase money Liens on any property acquired or held by the Company or its Subsidiaries in the ordinary course of business, securing Indebtedness permitted pursuant to Section 7.01(f) hereof; provided in each case (i) no Default or Event of Default shall have occurred and be continuing at the time such Lien is created or shall occur after giving effect to such Lien, (ii) such purchase money lien does not secure more than 100% of the purchase price of, and encumbers only, the property acquired, and (iii) such purchase money Lien does not secure any Indebtedness other than in

respect of the purchase price of the asset acquired;

- (j) Liens arising in connection with Capital Leases permitted under Section 7.01(f) hereof; provided, that no such Lien shall extend to or cover any assets other than the assets subject to such Capital Lease;
- (k) Liens arising from precautionary Uniform Commercial Code financing statements filed solely for notice purposes in respect of operating leases, consignments and similar arrangements entered into by the Company or any of its Subsidiaries in the ordinary course of business;
- (l) statutory and common law landlord's liens under leases;
- (m) Liens in favor of banks or other depository institutions upon property or assets arising under the common law or pursuant to contractual rights of set off;
- (n) Liens securing Indebtedness described in Section 7.01(p) hereof, provided that such Liens extend only to assets of the applicable Non-Domestic Subsidiary; and
- (o) Liens granted to the Administrative Agent for the benefit of the Lenders pursuant to the Security Agreement.

SECTION 7.03. Guaranties. Guarantee, endorse, become surety for, or otherwise in any way become or be responsible for the Indebtedness or obligations of any Person, whether by agreement to maintain working capital or equity capital or otherwise maintain the net worth or solvency of any Person or by agreement to purchase the Indebtedness of any other Person, or agreement for the furnishing of funds, directly or indirectly, through the purchase of goods, supplies or services for the purpose of discharging the Indebtedness of any other Person or otherwise, or enter into or be a party to any contract for the purchase of merchandise, materials, supplies or other property if such contract provides that payment for such merchandise, materials, supplies or other property shall be made regardless of whether delivery of such merchandise, supplies or other property is ever made or tendered except:

- (a) guaranties executed or committed prior to the date hereof as described on Schedule 7.03 attached hereto including any renewals or extension thereof provided that such renewals or extension do not increase the maximum exposure pursuant to the guaranty (unless such increase is permitted by Section 7.03(d) hereof);
- (b) endorsements of negotiable instruments for collection or deposit in the ordinary course of business;
- (c) guaranties of any Indebtedness under this Agreement or any other Loan Document; and
- (d) guaranties by the Company of any Indebtedness permitted pursuant to Section 7.01 hereof of any Subsidiary of the Company or guaranties by any Subsidiary of the Company of such Indebtedness of the Company or any other Subsidiary.

SECTION 7.04. Sale of Assets. Sell, lease, transfer or otherwise dispose of their respective properties and assets, whether or not pursuant to an order of a federal agency or commission, except for (a) the sale of inventory disposed of in the ordinary course of business, or (b) so long as no

Event of Default shall have occurred and is continuing or could occur as a result thereof, (i) the sale or other disposition of properties or assets no longer used or useful in the conduct of their respective businesses, and (ii) the sale or disposition of assets in arms length transactions provided that the net proceeds of any such sale shall not exceed \$10,000,000, in any fiscal year, or \$20,000,000, in the aggregate.

SECTION 7.05. Sales of Receivables. Sell, transfer, discount or otherwise dispose of notes, accounts receivable or other obligations owing to the Company or any Subsidiary of the Company, with or without recourse, except for collection in the ordinary course of business.

SECTION 7.06. Loans and Investments. Make or commit to make any advance, loan, extension of credit or capital contribution to, or purchase or hold beneficially any stock or other securities, or evidence of Indebtedness, of, purchase or acquire all or a substantial part of the assets of, or make or permit to exist any interest whatsoever in, any other Person except for (a) Eligible Investments; (b) trade credit to customers, provided that such credit is extended in the ordinary course of the business of the Company or such Subsidiary or if such credit is not extended in the ordinary course, such credit does not exceed \$10,000,000, in the aggregate, at any time; (c) so long as no Default or Event of Default shall have occurred and is then continuing, Permitted Equity Investments by the Company or any Subsidiary of the Company in any Person which is not a Subsidiary of the Company and loans by the Company or any Subsidiary to such Person in connection with such Permitted Equity Investment, provided that such non-subsubsidiary entities are engaged in a business which is related to the business of the Company, and provided further that aggregate Permitted Equity Investment Costs incurred in connection with all Permitted Equity Investments shall not be in excess of \$20,000,000; (d) Permitted Acquisitions by the Company and any of its Subsidiaries; (e) distributions received by the Company solely as a result of the involuntary conversion of a contractual right to a stock or other investment; (f) investments, loans or advances by the Company in any of its Subsidiaries or by any Subsidiary of the Company in the Company or in any other Subsidiary of the Company; and (g) so long as no Default or Event of Default shall have occurred and is then continuing or would result therefrom, repurchases by the Company of the Subordinated Notes, provided that the Company shall notify the Lenders promptly following completion of any such repurchase.

SECTION 7.07. Nature of Business. Fail to carry on its business in substantially the same manner and in substantially the same fields as such business is carried on and maintained as of the Closing Date.

SECTION 7.08. Sale and Leaseback. Enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any personal property used or useful in its business, whether now owned or hereafter acquired, if at the time of such sale or disposition it intends to lease or otherwise acquire the right to use or possess (except by purchase) such property or like property for a substantially similar purpose.

SECTION 7.09. Federal Reserve Regulations. Permit any Loan or the proceeds of any Loan or any other extension of credit hereunder to be used for any purpose which violates or is inconsistent with the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

SECTION 7.10. Accounting Policies and Procedures. Permit any change in the accounting policies and procedures of the Company or any of its Subsidiaries, including a change in fiscal year, provided, however, that any policy or procedure required to be changed by the Financial Accounting Standards Board (or other board or committee thereof) in order to comply with Generally Accepted

Accounting Principles may be so changed; provided further, that any changes to the accounting practices and procedures of a Subsidiary acquired in a Permitted Acquisition shall be permitted only to the extent necessary or appropriate to conform the accounting practices and procedures of such Subsidiary with those of the Company and its other Subsidiaries.

SECTION 7.11. Hazardous Materials. Cause or permit any of its properties or assets to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Materials, except in compliance in all material respects, with all applicable federal, state and local laws or regulations, or cause or permit, as a result of any intentional or negligent act or omission on the part of the Company or any of its Subsidiaries, a release of Hazardous Materials onto such property or asset or onto any other property, except in compliance in all material respects with such laws and regulations.

SECTION 7.12. Limitations on Fundamental Changes, Limitations on Consideration; Amendments of Organizational Documents. Except as permitted by Section 7.04 hereof, (a) merge or consolidate with, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now or hereafter acquired) to, any Person, or (b) except with respect to a Permitted Acquisition, and except as set forth on Schedule 7.12 hereto, merge or consolidate with or acquire all of the stock or all or substantially all of the assets or the business of any Person or liquidate, wind up or dissolve or suffer any liquidation or dissolution, or (c) enter into or agree to any amendment, modification or waiver of any term or condition of its respective organizational documents which would adversely affect the rights and remedies of the Administrative Agent or the Lenders or would otherwise have a Material Adverse Effect. Notwithstanding the foregoing, (a) any Domestic Subsidiary may merge with and into the Company or any Domestic Subsidiary, (b) any Non-Domestic Subsidiary may merge with and into another Non-Domestic Subsidiary, provided, that no Non-Domestic Subsidiary with respect to which the Administrative Agent has received a pledge of stock shall merge with and into another Non-Domestic Subsidiary if 65% of the shares or other ownership interests of the surviving Subsidiary cannot be pledged to the Administrative Agent for the benefit of the Lenders.

SECTION 7.13. Financial Condition Covenants.

(a) Consolidated Senior Funded Debt to Consolidated EBITA. Permit the ratio of Consolidated Senior Funded Debt to Consolidated EBITA to be greater than 3.00:1.00.

(b) Consolidated Quick Ratio. Permit the Consolidated Quick Ratio to be less than 1.00:1.00.

(c) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio to be less than 1.25:1.00.

(d) Pre-tax Loss. Permit a pre-tax loss greater than (i) \$6,000,000, to exist for the fiscal quarter ending September 30, 2007, or (ii) \$5,000,000, on an aggregate basis, to exist during any two consecutive fiscal quarters of the Company, commencing with the two fiscal quarters ending December 31, 2007.

Compliance with all of the financial covenants in this Section 7.13 may be determined by reference to the consolidated financial statements of the Company delivered to the Administrative Agent in accordance with Section 6.03 hereof. All financial covenants will be applicable at all times and tested

quarterly, as of the last day of each fiscal quarter.

SECTION 7.14. Subordinated Debt. (a) Except as permitted in Section 7.06(g) hereof, directly or indirectly prepay, defease, purchase or redeem any Subordinated Debt, or (b) amend, supplement or otherwise modify any of the provisions governing such subordination in any way which would materially affect the interests of the Lenders, without the prior written consent of the Required Lenders.

SECTION 7.15. Dividends. Declare any cash dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of, any shares of any class of stock of the Company whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash, securities or property or in obligations of the Company or in any combination thereof, or permit any Affiliate to make any payment on account of, or purchase or otherwise acquire, any shares of any class of the stock of the Company from any Person, except for (a) so long as no Default or Event of Default shall have occurred and is then continuing or could occur as a result thereof, repurchase by the Company of its common stock and dividends and distributions by the Company to its shareholders provided that the aggregate amount of such permitted repurchases and dividends and distributions does not exceed \$10,000,000, in the aggregate, during the term of this Agreement and (b) dividends or distributions paid by any Subsidiary of the Company to its immediate parent.

SECTION 7.16. Transactions with Affiliates. Enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of the Company's or any of its Subsidiaries' business and upon fair and reasonable terms no less favorable to the Company or such Subsidiary than they would obtain in a comparable arms-length transaction with a Person not an Affiliate.

SECTION 7.17. Negative Pledge. Enter into any agreement with any Person other than the Lenders pursuant to this Agreement or any of the other Loan Documents which prohibits or limits the ability of the Company or any of its Subsidiaries to create, incur, assume or suffer to exist any Lien upon its property, assets or revenues, whether now owned or hereafter acquired, except to the extent that any such agreement relates only to specific property that is the subject of a Permitted Lien.

SECTION 7.18. Indentures. Amend or modify any of the provisions of any Indenture without the prior consent of the Required Lenders other than amendments or modifications which do not adversely affect the Lenders.

ARTICLE VIII EVENTS OF DEFAULT

SECTION 8.01. Events of Default. In the case of the happening of any of the following events (each an "Event of Default"):

(a) failure to pay (i) the principal of any Loan or any reimbursement obligations with respect to a drawing under any Letter of Credit as and when due and payable, or (ii) interest on any Loan or any fees or other amounts under this Agreement, as and when due and payable and, in the case of subclause (ii) only, such failure shall continue unremedied for a period of two (2) Business Days;

(b) any representation or warranty made or deemed made in this Agreement or any other Loan Document shall prove to be false or misleading in any material respect when made or given or when deemed made or given;

(c) any report, certificate, financial statement or other instrument furnished in connection with this Agreement or any other Loan Document or the extensions of credit hereunder, shall prove to be false or misleading in any material respect when furnished, made or given or when deemed made or given;

(d) default shall be made in the due observance or performance of any covenant, condition or agreement of the Company or any Subsidiary of the Company to be performed (i) pursuant to Article 6 of this Agreement (other than Section 6.03(a), (b), (c), or (d), Section 6.04(b) and Section 6.06 hereof) and, in the case of this subclause (i) only, such default shall continue unremedied for a period of thirty (30) consecutive days or (ii) pursuant to any other provision of this Agreement or any other Loan Document that is not specifically addressed in Sections 8.01(a), (b), (c) or (d)(i) hereof;

(e) default in the performance or compliance in respect of any agreement or condition relating to any Indebtedness of the Company or any Guarantor in excess of \$5,000,000 individually or in the aggregate (other than the Notes), if the effect of such default is to accelerate the maturity of such Indebtedness or to permit the holder or obligee thereof (or a trustee on behalf of such holder or obligee) to cause such Indebtedness to become due prior to the stated maturity thereof, or any such Indebtedness shall not be paid when due (beyond any applicable grace period);

(f) the Company or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code or any other federal or state bankruptcy, insolvency or similar law, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the employment of a receiver, trustee, custodian, sequestrator or similar official for the Company or any Material Subsidiary or for a substantial part of its property; (iv) file an answer admitting the material allegations of a petition filed against it in such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take corporate action for the purpose of effecting any of the foregoing; or the Company or any Material Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Company or any Material Subsidiary or of a substantial part of their respective property, under Title 11 of the United States Code or any other federal or state bankruptcy, insolvency or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Company or any Subsidiary of the Company or for a substantial part of their property, or (iii) the winding-up or liquidation of the Company or any Material Subsidiary and such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for sixty (60) days;

(h) one or more orders, judgments or decrees for the payment of money in excess of \$5,000,000 in the aggregate shall be rendered against the Company or any Subsidiary of the Company which is not covered by insurance and the same shall not have been paid in accordance with such judgment, order or decree or settlement and either (i) an enforcement proceeding shall have been

commenced by any creditor upon such judgment, order or decree, or (ii) there shall have been a period of sixty (60) days during which a stay of enforcement of such judgment, order or decree, by reason of pending appeal or otherwise, was not in effect;

(i) any Plan shall fail to maintain the minimum funding standard required under Section 412 of the Code for any Plan year or part thereof or a waiver of such standard or extension of any amortization period is applied for or granted under Section 412 of the Code, any Plan is terminated by the Company, any Subsidiary of the Company or any ERISA Affiliate or the subject of termination proceedings under ERISA, any Plan shall have an Unfunded Current Liability, a Reportable Event shall have occurred with respect to a Plan or the Company, any Subsidiary of the Company, or any ERISA Affiliate shall have incurred a liability to or on account of a Plan under Section 515, 4062, 4063, 4201 or 4204 of ERISA, and there shall result from any such event or events the imposition of a lien upon the assets of the Company or any Subsidiary of the Company, the granting of a security interest on such assets, or a liability to the PBGC or a Plan or a trustee appointed under ERISA or a penalty under Section 4971 of the Code, and in each case, such event or condition, together with all such events or conditions, if any, could reasonably be expected to result in liability of the Company and the Subsidiaries of the Company in an aggregate amount exceeding \$1,000,000;

(j) any material provision of any Loan Document shall for any reason cease to be in full force and effect in accordance with its terms or the Company or any Guarantor shall so assert in writing;

(k) a Change of Control shall have occurred;

(l) the Company shall designate any Indebtedness other than Indebtedness arising under the Credit Agreement as "Designated Senior Indebtedness" (as that term is defined in each Indenture) without the prior written approval of the Required Lenders; or

(m) an Event of Default (as defined in the Indenture) shall have occurred and be continuing;

then, at any time thereafter during the continuance of any such event, the Administrative Agent may, and, upon the request of the Required Lenders, shall, by written or telephonic notice to the Company, take either or both of the following actions, at the same or different times, (a) terminate the Commitments and (b) declare (i) the Notes, both as to principal and interest, (ii) an amount equal to the Aggregate Letters of Credit Outstanding and (iii) all other Obligations, to be forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding; provided, however, that if an event specified in Section 8.01(f) or (g) hereof shall have occurred, the Commitments shall automatically terminate and interest, principal and amounts referred to in the preceding clauses (i), (ii) and (iii) shall be immediately due and payable without presentment, demand, protest, or other notice of any kind, all of which are expressly waived, anything contained herein or in the Notes to the contrary notwithstanding. With respect to all Letters of Credit that shall not have expired or presentment for honor shall not have occurred, the Company shall provide the Administrative Agent with Cash Collateral in an amount equal to the aggregate undrawn amount of such Letters of Credit. Such Cash Collateral shall be applied by the Administrative Agent to reimburse Issuing Lender for drawings under Letters of Credit for which the Issuing Lender has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Company at such time or, if the maturity of the Loans has been

accelerated, be applied to satisfy other Obligations, with any amount remaining after such satisfactions to be returned to the Company or paid to such other party as may legally be entitled to the same.

ARTICLE IX THE ADMINISTRATIVE AGENT

SECTION 9.01. Appointment, Powers and Immunities. Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to act as its agent hereunder and under the other Loan Documents with such powers as are specifically delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents together with such other powers as are reasonably incidental thereto. The Administrative Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and the other Loan Documents and shall not be a trustee for any Lender, nor is the Administrative Agent acting in a fiduciary capacity of any kind under this Agreement or the other Loan Documents or in respect thereof or in respect of any Lender. The Administrative Agent shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in this Agreement or the other Loan Documents, in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or the other Loan Documents, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or the other Loan Documents or any other document referred to or provided for herein or therein or for the collectibility of the Loans or for the validity or effectiveness of any assignment, mortgage, pledge, security agreement, financing statement, document or instrument, or for the filing, recording, re-filing, continuing or re-recording of any thereof or for any failure by the Company or any Guarantor to perform any of its obligations hereunder or under the other Loan Documents. The Administrative Agent may take all actions by itself and/or it may employ agents and attorneys-in-fact, and shall not be responsible to any Lender, except as to money or the securities received by it or its authorized agents, for the negligence or misconduct of itself or its employees or of any such agents or attorneys-in-fact, if such agents or attorneys-in-fact are selected by it with reasonable care. Neither the Administrative Agent nor any of its directors, officers, employees or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or under the other Loan Documents or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct.

SECTION 9.02. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability to any Lender for relying upon, any certification, notice or other communication (including any thereof by telephone, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Administrative Agent. As to any matters not expressly provided for by this Agreement or the other Loan Documents, the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under the other Loan Documents in accordance with instructions signed by the Required Lenders, or such other number of Lenders as is specified in Section 10.04 hereof, and such instructions of the Required Lenders or other number of Lenders as aforesaid and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

SECTION 9.03. Events of Default. The Administrative Agent shall not be deemed to have knowledge of the occurrence of a Default or Event of Default (other than the non-payment of principal of or interest on the Loans, of amounts payable in respect of draws under Letters of Credit, or of fees to the extent the same are required to be paid to the Administrative Agent for the account of the Lenders), unless the Administrative Agent has received notice from a Lender or the Company specifying

such Default or Event of Default and stating that such notice is a "Notice of Default". In the event that the Administrative Agent receives such a notice of the occurrence of a Default or Event of Default, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall (subject to Section 9.07 hereof) take such action with respect to such Default or Event of Default as shall be directed by the Required Lenders, except as otherwise provided in Section 10.04 hereof; provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but is not obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Lenders.

SECTION 9.04. Rights as a Lender. With respect to its Commitment and the Loans made by it, the Person which is the Administrative Agent, in its capacity as a Lender hereunder, shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as the Administrative Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include each entity which is the Administrative Agent in its individual capacity. The Person which is the Administrative Agent and its Affiliates may (without having to account therefor to any Lender) accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with the Company or its Affiliates, as if it were not acting as the Administrative Agent, and, except to the extent otherwise herein specifically set forth, the Administrative Agent may accept fees and other consideration from the Company or its Affiliates, for services in connection with this Agreement or any of the other Loan Documents or otherwise without having to account for the same to the Lenders.

SECTION 9.05. Indemnification. The Lenders shall indemnify the Administrative Agent (to the extent not reimbursed by the Company under Section 10.03 hereof), ratably in accordance with the aggregate outstanding principal amount of the Loans made by the Lenders (or, if no Loans are at the time outstanding, ratably in accordance with their respective Commitments), for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent in its capacity as the Administrative Agent in any way relating to or arising out of this Agreement or any of the other Loan Documents or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby and thereby (including, without limitation, the costs and expenses which the Company is obligated to pay under Section 10.03 hereof or under the applicable provisions of any other Loan Document) or the enforcement of any of the terms hereof or of any other Loan Document, provided that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Administrative Agent.

SECTION 9.06. Non-Reliance on Administrative Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Company and decision to enter into this Agreement and that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or under the other Loan Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Company of this Agreement or the other Loan Documents or any other document referred to or provided for herein or therein or to inspect the properties or books of the Company. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent hereunder or under the other Loan Documents, or furnished to the Administrative Agent with counterparts or copies for the Lenders, the Administrative Agent shall not have any duty or ability to provide any

Lender with any credit or other information concerning the affairs, financial condition or business of the Company, which may come into the possession of the Administrative Agent or any of its Affiliates.

SECTION 9.07. Failure to Act. Except for action expressly required of the Administrative Agent hereunder or under any other Loan Documents, the Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder or thereunder unless it shall be indemnified to its satisfaction by the Lenders against any and all liability (except gross negligence and willful misconduct) and expense which may be incurred by it by reason of taking or continuing to take any such action.

SECTION 9.08. Resignation of the Administrative Agent. Subject to the appointment and acceptance of a successor Administrative Agent as provided in this Section 9.08, the Administrative Agent may resign at any time by notifying the Lenders and the Company. Upon any such resignation, the Required Lenders shall have the right, with the approval of the Company provided no Default or Event of Default shall have occurred and then be continuing, such approval not to be unreasonably withheld, delayed or conditioned, to appoint a successor to the Administrative Agent. If no successor shall have been so appointed by the Required Lenders (with the approval of the Company) and shall have accepted such appointment within 30 days after the resigning Administrative Agent gives notice of its resignation, then the resigning Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank of similar standing with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent, and the resigning Administrative Agent shall be discharged from its duties and obligations hereunder as of such date. The fees payable by the Company to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 10.03 hereof shall continue in effect for the benefit of such resigning Administrative Agent in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent.

SECTION 9.09. Sharing of Collateral and Payments. In the event that at any time any Lender shall obtain payment in respect of the Obligations, or receive any collateral in respect thereof, whether voluntarily or involuntarily, through the exercise of a right of banker's lien, set-off or counterclaim against the Company or otherwise, which results in it receiving more than its pro rata share of the aggregate payments with respect to all of the Obligations (other than any payment expressly provided hereunder to be distributed on other than a pro rata basis), then such Lender shall be deemed to have simultaneously purchased from the other Lenders a share in their Obligations so that the amount of the Obligations held by each of the Lenders shall be pro rata; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from the Lender which received the proportionate over-payment, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. The Company agrees, to the extent it may do so under applicable law, that each Lender so purchasing a portion of another Lender's Loan or participation in any Letter of Credit may exercise all rights of payment (including, without limitation, rights of set-off) with respect to such portion as fully as if such Lender were the direct holder of such portion.

**ARTICLE X
MISCELLANEOUS**

SECTION 10.01. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including telecopy), and unless otherwise expressly provided herein, shall be conclusively deemed to have been received by a party hereto and to be effective on the day on which delivered by hand to such party or one Business Day after being sent by overnight mail to the address set forth below, or, in the case of telecopy notice, when acknowledged as received, or if sent by registered or certified mail, three (3) Business Days after the day on which mailed in the United States, addressed to such party at such address:

- (a) if to the Administrative Agent, at:

HSBC Bank USA, National Association
534 Broad Hollow Road
Melville, New York 11747
Attention: Christopher J. Mendelsohn or Relationship Manager - Veeco Instruments Inc.
Telecopy: (631) 752-4340
E-mail: chris.mendelsohn@us.hsbc.com

With a copy to:

Farrell Fritz, P.C.
1320 Reckson Plaza
Uniondale, New York 11556-1320
Attention: Robert C. Creighton, Esq.
Telecopy: (516) 227-0777
E-Mail: rcreeghton@farrellfritz.com

- (b) if to the Company, at:

Veeco Instruments Inc.
100 Sunnyside Boulevard, Suite B
Woodbury, New York 11797
Attention: Chief Financial Officer
Telecopy: (516) 677-0380
E-Mail: jrein@veeco.com

With a copy to:

Veeco Instruments Inc.
100 Sunnyside Boulevard, Suite B
Woodbury, New York 11797
Attention: General Counsel
Telecopy: (516) 714-1208
E-Mail: grobbins@veeco.com

- (c) if to any Lender, to its address set forth in the signature page of this Agreement and to the person so designated

- and -

(d) as to each such party at such other address as such party shall have designated, (i) if such party is a Lender, by written notice to the Administrative Agent and the Company, (ii) if such party is the Company, by written notice to the Administrative Agent and each Lender, and (iii) if such party is the Administrative Agent, by written notice to the Company and each Lender, in each case delivered in accordance with the provisions of this Section 10.01.

(e) Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by e-mail pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Lender pursuant to Article II hereof if such Lender or the Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Company may, in its 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.

(f) Unless the Administrative 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.

(g) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE ADMINISTRATIVE AGENT AND ITS AFFILIATES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMPANY MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE COMPANY 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 THE ADMINISTRATIVE AGENT OR ITS AFFILIATES IN CONNECTION WITH THE COMPANY MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Affiliates have any liability to the Company, any Lender, the Issuing Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Company's or the Administrative Agent's transmission of Company 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 the Agent; provided, however, that in no event shall the Agent or any of its Affiliates have any liability to the Company, any Lender, the Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

SECTION 10.02. Effectiveness; Survival; Integration. This Agreement shall become effective on the date on which all parties hereto shall have signed a counterpart copy hereof and shall have delivered the same to the Administrative Agent. All representations and warranties made herein and in the other Loan Documents and in the certificates delivered pursuant hereto or thereto shall survive the making by the Lenders of the Loans and the issuance by the Issuing Lender of Letters of Credit, in each case, as herein contemplated and the execution and delivery to the Lenders of the Notes evidencing the Loans and shall continue in full force and effect so long as the Obligations hereunder are outstanding and unpaid and the Commitments are in effect. The obligations of the Company pursuant to Section 3.07, Section 3.08, Section 3.10, Section 3.13, Section 3.14, Section 6.13, and Section 10.03 hereof shall,

notwithstanding anything herein to the contrary, survive termination of this Agreement and payment of the Obligations. This Agreement and any separate letter agreements with respect to fees payable to the Administrative Agent 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.

SECTION 10.03. Expenses. The Company agrees (a) to indemnify, defend and hold harmless the Administrative Agent, the Issuing Lender and each Lender and their respective officers, directors, employees, and affiliates (each, an “indemnified person”) from and against any and all losses, claims, damages, liabilities or judgments to which any such indemnified Person may be subject and arising out of or in connection with the Loan Documents, the financings contemplated hereby, the use of any proceeds of such financings or any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any of such indemnified persons is a party thereto, and to reimburse each of such indemnified persons upon demand for any reasonable legal or other expenses incurred in connection with the investigation or defending any of the foregoing; provided that the foregoing indemnity will not, as to any indemnified person, apply to losses, claims, damages, liabilities, judgments or related expenses to the extent arising from the willful misconduct or gross negligence of such indemnified person, (b) to pay or reimburse the Administrative Agent for all its out-of-pocket costs and reasonable expenses incurred in connection with the preparation and execution of and any amendment, supplement or modification to this Agreement, the Notes any other Loan Documents, and any other documents prepared in connection herewith or therewith, and the consummation of the transactions contemplated hereby and thereby, including without limitation, the reasonable fees and disbursements of Farrell Fritz, P.C., counsel to the Administrative Agent, and (c) to pay or reimburse each Lender and the Administrative Agent for all their costs and expenses incurred in connection with the enforcement and preservation of any rights under this Agreement, the Notes and the other Loan Documents, including, without limitation, the reasonable fees and disbursements of counsel (including, without limitation, in-house counsel) to the Administrative Agent and to the several Lenders, including all such out-of-pocket expenses incurred during any work-out, restructuring or negotiations in respect of the Obligations.

SECTION 10.04. Amendments and Waivers. With the written consent of the Required Lenders, the Administrative Agent and the Company may, from time to time, enter into written amendments, supplements or modifications hereto for the purpose of adding any provisions to this Agreement or the Notes or any of the other Loan Documents or changing in any manner the rights of the Lenders or of the Company hereunder or thereunder, and with the written consent of the Required Lenders, the Administrative Agent on behalf of the Lenders may execute and deliver to the Company a written instrument waiving, on such terms and conditions as the Administrative Agent or the Required Lenders may specify in such instrument, any of the requirements of this Agreement or the Notes or any of the other Loan Documents or any Default or Event of Default; provided, however, that no such waiver and no such amendment, or supplement or modification shall (a) extend the maturity of any Note or any installment thereof or the Revolving Credit Commitment Termination Date; (b) reduce the rate or extend the time of payment of interest on any Note or any fees payable to the Lenders hereunder; (c) reduce the principal amount of any Note or the amount of any reimbursement due in respect of any Letter of Credit; (d) amend, modify or waive any provision of this Section 10.04 or Sections 3.11 or 9.09 (to the extent that such revisions would affect the pro rata sharing of the Lenders, other than changes resulting from permitted assignments); (e) reduce the percentage specified in the definition of Required Lenders or amend or modify any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination granting consent hereunder; (f) consent to the assignment or transfer by the Company of any of its rights or obligations under this Agreement; (g) except as expressly permitted pursuant to this Agreement or any other Loan Document

release any collateral security granted to the Administrative Agent, if any; (h) release any Guarantor from its Guaranty, or limit any Guarantor's liability with respect to its Guaranty, except with respect to the release of any Guarantor which subsequently becomes a Non-Material Subsidiary; or (i) increase the amount of the Total Commitment; or (j) permit any Letter of Credit issued hereunder to expire on or after the Revolving Credit Commitment Termination Date, in each case specified in clauses (a) through (j) above without the written consent of all the Lenders; and provided, further, that no such waiver and no such amendment, supplement or modification shall (i) amend, modify, supplement or waive any provision of Article IX hereof with respect to the Administrative Agent without the written consent of the Administrative Agent or (ii) increase the amount of any Lender's Commitment without the written consent of such Lender. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Company, the Lenders, the Administrative Agent and all future holders of the Notes.

SECTION 10.05. Successors and Assigns; Participations.

(a) This Agreement shall be binding upon and inure to the benefit of the Company, the Lenders, the Administrative Agent, all future holders of the Notes and their respective successors and assigns, except that the Company may not assign or transfer any of its rights or obligations under this Agreement or any other Loan Document without the prior written consent of each Lender (and any such assignment or transfer without such consent shall be null and void).

(b) Any Lender may, in the ordinary course of its commercial banking business and in accordance with applicable law, at any time sell to one or more banks or other financial institutions ("Participants") participating interests in any Loan owing to such Lender, any Note held by such Lender, any Commitment of such Lender or any other interest of such Lender hereunder. In the event of any such sale by a Lender of participating interests to a Participant, such Lender's obligations under this Agreement to the other parties under this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Note for all purposes under this Agreement, and the Company and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. The Company agrees that each Participant shall be entitled to the benefits of Sections 3.07, 3.08, 3.10, 3.13 and 3.14 hereof with respect to its participation in the Commitments and in the Loans and Letters of Credit outstanding from time to time; provided, however, that no Participant shall be entitled to receive any greater amount pursuant to such Sections than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred. No Participant shall have the right to consent to any amendment to, or waiver of, any provision of this Agreement, except the transferor Lender may provide in its agreement with the Participant that such Lender will not, without the consent of the Participant, agree to any amendment or waiver described in clause (a) through clause (k) of Section 10.04 hereof.

(c) Subject to the last sentence of this paragraph (c) any Lender may, in the ordinary course of its commercial banking business and in accordance with applicable law, at any time sell to any Lender or any domestic banking affiliate thereof, and, with the consent of the Administrative Agent, and, so long as no Default or Event of Default shall have occurred and be continuing, the Company (which in each case shall not be unreasonably withheld, delayed or conditioned), to one or more additional banks or financial institutions ("Purchasing Lenders") all or any part of its rights and obligations under this Agreement and the other Loan Documents pursuant to an Assignment and Acceptance Agreement, executed by such Purchasing Lender, such transferor Lender and the Administrative Agent (and, in the case of an Assignment and Acceptance Agreement relating to a Purchasing Lender that is not then a

Lender or a domestic banking affiliate thereof, also executed by the Company), and delivered to the Administrative Agent for its acceptance. Upon such execution, delivery and acceptance from and after the effective date specified in such Assignment and Acceptance Agreement, (i) the Purchasing Lender thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance Agreement, have the rights and obligations of a Lender hereunder with Commitments as set forth therein and (ii) the transferor Lender thereunder shall, to the extent provided in such Assignment and Acceptance Agreement, be released from its obligations under this Agreement arising after such transfer (and, in the case of an Assignment and Acceptance Agreement covering all or the remaining portion of a transferor Lender's rights and obligations under this Agreement, such transferor Lender shall cease to be a party hereto except as to Sections 3.07, 3.08, 3.10 and 10.03 hereof for the period prior to the effective date). Such Assignment and Acceptance Agreement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing Lender and the resulting adjustment of Commitment Proportions arising from the purchase by such Purchasing Lender of all or a portion of the rights and obligations of such transferor Lender under or in respect of this Agreement and the Notes. On or prior to the effective date specified in such Assignment and Acceptance Agreement, the Company, at its own expense, shall execute and deliver to the Administrative Agent, in exchange for the surrendered Note, a new Revolving Credit Note to the order of such Purchasing Lender in an amount equal to each Commitments assumed by it pursuant to such Assignment and Acceptance Agreement and, if the transferor Lender has retained any Commitment hereunder, a new Revolving Credit Note to the order of the transferor Lender in an amount equal to such Commitment retained by it hereunder. Such new Notes shall be in a principal amount equal to the principal amount of such surrendered Notes, shall be dated the effective date specified in the Assignment and Acceptance Agreement and shall otherwise be in the form of the Notes replaced thereby. The Notes surrendered by the transferor Lender shall be returned by the Administrative Agent to the Company marked "cancelled". Anything in this Section 10.05 to the contrary notwithstanding, no transfer to a Purchasing Lender shall be made pursuant to this paragraph (c) if (x) such transfer by any one transferor Lender to any one Purchasing Lender (other than a Purchasing Lender which is a Lender hereunder prior to such transfer) is in respect of less than \$10,000,000 of the Commitments of such transferor Lender or (y) if less than all of the Commitment of such transferor Lender is transferred, after giving effect to such transfer the amount held by any transferor Lender would be less than \$10,000,000.

(d) The Administrative Agent, on behalf of the Company, shall maintain at its address referred to in Section 10.01 hereof a copy of each Assignment and Acceptance Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the commitments of, and principal amount of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of demonstrable error and the Company, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Loans recorded therein for all purposes of this Agreement. The Register shall be available for inspection by the Company or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of an Assignment and Acceptance Agreement executed by a transferor Lender and a Purchasing Lender (and, in the case of a Purchasing Lender that is not then a Lender or an Affiliate thereof, by the Company) together with payment by the Purchasing Lender to the Administrative Agent of a registration and processing fee of \$3,500 if the Purchasing Lender is not a Lender prior to the execution of an Assignment and Acceptance Agreement and \$2,500 if the Purchasing Lender is a Lender prior to the execution of an Assignment and Acceptance Agreement, the Administrative Agent shall (i) accept such Assignment and Acceptance Agreement, (ii) record the information contained therein in the Register, and (iii) give prompt notice of such acceptance and

recording to the Lenders and the Company.

(f) The Company authorizes each Lender to disclose to any Participant or Purchasing Lender (each, a “Transferee”) and any prospective Transferee any and all financial information in such Lender’s possession concerning the Company and its Affiliates which has been delivered to such Lender by or on behalf of the Company pursuant to this Agreement or which has been delivered to such Lender by the Company in connection with such Lender’s credit evaluation of the Company and its Subsidiaries prior to entering into this Agreement.

(g) If, pursuant to this Section 10.05, any interest in this Agreement, a participation agreement, or any Note is transferred to any transferee which is organized under the laws of any jurisdiction other than the United States or any State thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, (i) to represent to the transferor Lender (for the benefit of the transferor Lender, the Administrative Agent and the Company) that under applicable law and treaties no taxes will be required to be withheld by the Administrative Agent, the Company, or the transferor Lender with respect to any payments to be made to such Transferee in respect of the Loans, (ii) to furnish to the Administrative Agent, the transferor Lender and the Company the documentation required of Lenders under Section 3.10(c) hereof, and (iii) to agree (for the benefit of the Administrative Agent, the transferor Lender and the Company) to provide the Administrative Agent, the transferor Lender and the Company such additional documentation required by Lenders in the future under Section 3.10(c) hereof.

(h) Any Lender may at any time pledge or assign or grant a security interest in all or any part of its rights under this Agreement and the other Loan Documents, including any portion of its Notes, to any of the twelve (12) Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. Section 341, provided that no such assignment shall release the transferor Lender from its Commitments or its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party to this Agreement.

SECTION 10.06. No Waiver; Cumulative Remedies. Neither any failure nor any delay on the part of any Lender, the Issuing Lender or the Administrative Agent in exercising any right, power or privilege hereunder or under any Note or any other Loan Document shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege. The rights, remedies, powers and privileges herein provided or provided in the other Loan Documents are cumulative and not exclusive of any rights, remedies powers and privileges provided by law.

SECTION 10.07. APPLICABLE LAW. THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OR CHOICE OF LAW.

SECTION 10.08. SUBMISSION TO JURISDICTION; JURY WAIVER. THE COMPANY HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT IN THE STATE OF NEW YORK, COUNTY OF NEW YORK, COUNTY OF NASSAU OR COUNTY OF SUFFOLK IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT AND RELATED TO OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, AND TO THE EXTENT

PERMITTED BY APPLICABLE LAW, THE COMPANY HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR PROCEEDING ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH FEDERAL OR STATE COURTS, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY OTHER DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR THEREIN OR THE SUBJECT MATTER HEREOF OR THEREOF MAY NOT BE LITIGATED IN OR BY SUCH FEDERAL OR STATE COURTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY AGREES NOT TO (i) SEEK AND HEREBY WAIVES THE RIGHT TO ANY REVIEW OF THE JUDGMENT OF ANY SUCH COURT BY ANY COURT OF ANY OTHER NATION OR JURISDICTION WHICH MAY BE CALLED UPON TO GRANT AN ENFORCEMENT OF SUCH JUDGMENT OR (ii) ASSERT ANY COUNTERCLAIM IN ANY SUCH SUIT, ACTION OR PROCEEDING UNLESS SUCH COUNTERCLAIM IS A COMPULSORY OR MANDATORY COUNTERCLAIM UNDER APPLICABLE LAWS GOVERNING CIVIL PROCEDURE. THE COMPANY AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS AGREEMENT OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK. EACH PARTY HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES TO THE EXTENT PERMITTED BY APPLICABLE LAW THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE NOTES OR ANY OTHER LOAN DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING THERETO, AND AGREES THAT NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, THE COMPANY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE COMPANY CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE ADMINISTRATIVE AGENT, THE ISSUING LENDER OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THEY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR THE LENDERS TO ENTER INTO THIS AGREEMENT AND TO MAKE THE LOANS AND OTHER EXTENSIONS OF CREDIT.

SECTION 10.09. Severability. In case any one or more of the provisions contained in this Agreement, any Note or any other Loan Document should be invalid, illegal or unenforceable in any respect in any jurisdiction, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby in such jurisdiction nor shall such invalidity, illegality or unenforceability invalidate such affected provision in any other jurisdiction.

SECTION 10.10. Right of Setoff. The Company and the Guarantors hereby grant to the Administrative Agent, the Issuing Lender, each Lender and each Affiliate of each Lender, a continuing lien, security interest and right of setoff as security for all liabilities and obligations to the Administrative Agent, the Issuing Lender and each Lender, whether now existing or hereafter arising, upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or

control of the Administrative Agent, the Issuing Lender, any Lender or any Affiliate of such Lender and their respective successors or assigns or in transit to any of them. At any time, without demand or notice (any such notice being expressly waived by the Company), the Administrative Agent, the Issuing Lender, each Lender and each Affiliate of each Lender may set off the same or any part thereof and apply the same to any liability or obligation of the Company or any Guarantor even though unmatured and regardless of the adequacy of any other collateral securing this Agreement. **ANY AND ALL RIGHTS TO REQUIRE THE ADMINISTRATIVE AGENT, THE ISSUING LENDER, EACH LENDER OR ANY AFFILIATE OF EACH LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THIS AGREEMENT, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE COMPANY OR ANY GUARANTOR, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.**

SECTION 10.11. Confidentiality. Each of the Administrative Agent and each Lender agrees to keep confidential all non-public information, materials and documents furnished by the Company to the Administrative Agent and the Lenders pursuant to this Agreement (the “Confidential Information”). Notwithstanding the foregoing, such party shall be permitted to disclose Confidential Information (a) to such of its officers, directors, employees, agents, representatives and professional advisors in any of the transactions contemplated by, or the administration of, this Agreement; (b) to the extent such Confidential Information (i) becomes publicly available other than as a result of a breach of this Section 10.11 by the disclosing party, or (ii) becomes available to such party on a non-confidential basis from a source other than the Company or its Subsidiaries which to such party’s knowledge is not prohibited from disclosing such Confidential Information to such party by a contractual or other legal obligation; (c) to the extent the Company or any of its Subsidiaries shall have consented to such disclosure in writing; or (d) to any prospective transferee or participant in connection with any contemplated transfer of the Notes or any interest therein provided such transferee or participant agrees to treat the Confidential Information in a manner consistent with this Section 10.11. Nothing herein shall prohibit the disclosure of Confidential Information required in connection with any litigation or where such disclosure is required pursuant to applicable laws, regulations, court order or similar legal process or requested by any governmental agency or authority; provided, however, in the event that such party is requested or required by law to disclose any of the Confidential Information, such party shall provide the Company with written notice, unless notice is prohibited by law, of any such request or requirement so that the Company may seek a protective order or other appropriate remedy; provided that no such notification shall be required in respect of any disclosure to regulatory authorities having jurisdiction over such party.

SECTION 10.12. Headings. Section headings used herein are for convenience of reference only and are not to affect the construction of or be taken into consideration in interpreting this Agreement.

SECTION 10.13. Construction. This Agreement is the result of negotiations between, and has been reviewed by, the Company, the Administrative Agent, the Lenders and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of each party hereto, and no ambiguity shall be construed in favor of or against either the Company, the Administrative Agent, or any Lender.

SECTION 10.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument.

SECTION 10.15. Special Provisions with Respect to Subordinated Notes. The parties acknowledge and agree that the indebtedness of the Company to the Lenders hereunder shall constitute “Designated Senior Indebtedness” for purposes of the Indentures.

SECTION 10.16. US Patriot Act . Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”) hereby notifies the Company that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Company, which information includes the name and address of the Company and other information that will allow such Lender to identify the Company in accordance with the Act. The Company will provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist such party in maintaining compliance with the Act.

SECTION 10.17. Documentation Agent . North Fork Bank, in its capacity as Documentation Agent, shall have no responsibilities or obligations hereunder, provided that the provisions of this Section 10.17 shall not affect or limit their responsibilities, rights or obligations as Lenders hereunder.

[next page is signature page]

IN WITNESS WHEREOF , the Company, the Administrative Agent and the Lenders have caused this Agreement to be duly executed by their duly authorized officers, as of the day and year first above written.

VEECO INSTRUMENTS INC.

By: /s/ John F. Rein, Jr.
Name: John F. Rein, Jr.
Title: Executive Vice President/Chief
Financial Officer

H-71

Revolving Credit
Commitment: \$30,000,000

**HSBC BANK USA, NATIONAL
ASSOCIATION, as Administrative Agent, as a
Lender, as Swingline Lender and as Issuing Lender**

By: /s/ Christopher Mendelsohn
Name: Christopher Mendelsohn
Title: First Vice President

Lending Office for Prime Rate Loans:

HSBC Bank USA, National Association
Special Lending Dept., 26th Floor
1 HSBC Center
Buffalo, New York 14203

Lending Office for Eurocurrency Loans:

HSBC Bank USA, National Association
Special Lending Dept., 26th Floor
1 HSBC Center
Buffalo, New York 14203

Address for Notices:

HSBC Bank USA, National Association
534 Broad Hollow Road
Melville, New York 11747
Attention: Relationship Manager -
Veeco Instruments Inc.
Telecopy: (631) 752-4340

Revolving Credit
Commitment: \$20,000,000

NORTH FORK BANK, as a Lender

By: /s/ Jed Pomerantz

Name: Jed Pomerantz

Title: VP

Lending Office for Prime Rate Loans:

North Fork Bank
275 Broadhollow Road
Melville, NY 11747
Attention: Jed Pomerantz

Lending Office for Eurocurrency Loans:

North Fork Bank
275 Broadhollow Road
Melville, NY 11747
Attention: Jed Pomerantz

Address for Notices:

North Fork Bank
275 Broadhollow Road
Melville, NY 11747
Attention: Jed Pomerantz

Telecopy: (631) 531-2797

Revolving Credit
Commitment: \$17,500,000

SOVEREIGN BANK, as a Lender

By: /s/ Christine Gerula
Name: Christine Gerula
Title: Senior Vice President

Lending Office for Prime Rate Loans:

Sovereign Bank
3 Huntington Quadrangle
Melville, NY 11747
Attention: Christine Gerula, Sen. VP

Lending Office for Eurocurrency Loans:

Sovereign Bank
3 Huntington Quadrangle
Melville, NY 11747
Attention: Christine Gerula, Sen. VP

Address for Notices:

Sovereign Bank
3 Huntington Quadrangle
Melville, NY 11747
Attention: Christine Gerula, Sen. VP

Telecopy: (631) 531 0685

Revolving Credit
Commitment: \$17,500,000

WACHOVIA BANK, N.A. as a Lender

By: /s/ Robert J. Milas

Name: Robert J. Milas

Title: Vice President

Lending Office for Prime Rate Loans:

Wachovia Bank. N.A.
LI Commercial Lending
58 South Service Road
Melville, NY 11747
Attention: Robert Milas
Vice President
Telecopy: (516) 577-8333

Lending Office for Eurocurrency Loans:

Wachovia Bank. N.A.
LI Commercial Lending
58 South Service Road
Melville, NY 11747
Attention: Robert Milas
Vice President
Telecopy: (516) 577-8333

Address for Notices:

Wachovia Bank. N.A.
LI Commercial Lending
58 South Service Road
Melville, NY 11747
Attention: Robert Milas
Vice President
Telecopy: (516) 577-8333

- and -

Wachovia
Global Corporate Loan Administration
201 S. College St., CP9, NC1183
Charlotte, NC 28288-1183
Attention: Daniel Ogent
Telecopy: (704) 715-0099

Revolving Credit
Commitment: \$15,000,000

CITIBANK, N.A., as a Lender

By: /s/ Anthony V. Pantina
Name: Anthony V. Pantina
Title: Senior Vice President

Lending Office for Prime Rate Loans:

Citibank NA
666 Fifth Avenue
New York, NY 10103
Attention: Anthony V. Pantina

Lending Office for Eurocurrency Loans:

Citibank NA
666 Fifth Avenue
New York, NY 10103
Attention: Anthony V. Pantina

Address for Notices:

Citibank NA
666 Fifth Avenue
New York, NY 10103
Attention: Anthony V. Pantina

Telecopy: (212) 783-6266

**AMENDMENT AND REAFFIRMATION
OF SECURITY AGREEMENT**

As of August 20, 2007

HSBC BANK USA, NATIONAL ASSOCIATION,
as Administrative Agent
290 Broadhollow Road
Melville, New York 11747

Gentlemen:

Reference is made to that certain (a) Credit Agreement, dated as of the date hereof, among Veeco Instruments Inc. (the "Company"), HSBC Bank USA, National Association, as Administrative Agent, and the various Lenders as are or may from time to time become parties thereto (as the same may be amended, modified, restated or supplemented from time to time, the "Credit Agreement") which Credit Agreement amends and restates that certain Credit Agreement, dated as of March 15, 2005, among the Company, the Lenders party thereto and HSBC Bank USA, National Association, as Administrative Agent (as amended, the "Original Credit Agreement"), and (b) the Security Agreement, dated as of March 15, 2005, by and among the Company, Veeco Compound Semiconductor Inc., Veeco Process Equipment Inc. (formerly known as Veeco Ion Beam Equipment Inc., successor by merger to Veeco Slider Process Equipment Inc.) and Veeco Metrology Inc. (formerly Veeco Tuscon Inc. and successor-by-merger to Veeco Metrology, LLC) (with the Company, collectively, the "Grantors") and the Administrative Agent (as the same may be amended, modified, restated or supplemented, from time to time, the "Security Agreement"). Capitalized terms not otherwise defined herein shall have the meanings given to them in the Credit Agreement.

As a condition precedent to the effectiveness of the Credit Agreement, the Company and each Grantor hereby:

(a) acknowledges, confirms and agrees that Paragraph "A" of the Recitals of the Security Agreement is hereby amended in its entirety to provide as follows:

"Veeco Instruments Inc., a Delaware corporation (the "Company"), HSBC Bank USA, National Association, as Administrative Agent, and the Lenders as are or may from time to time become parties thereto have entered into a Credit Agreement, dated as of August 20, 2007 (as the same may be amended, modified, restated or supplemented from time to time, the "Credit Agreement"), pursuant to which the Company will receive Loans and other financial accommodations from the Administrative Agent and Lenders and will incur Obligations (as hereinafter defined)."

(b) acknowledges, confirms and agrees that (i) all terms and provisions contained in the Security Agreement are, and shall remain, in full force and effect in accordance with their respective terms, (ii) the liens in the Collateral heretofore granted, pledged and/or assigned to the Bank as security for each Grantor's obligations to the Administrative Agent and the Lenders Bank shall not be impaired, limited or affected in any manner whatsoever by reason of the Credit Agreement or this Agreement; and (iii) all such liens shall be deemed granted, pledged and/or assigned to the Administrative Agent for the benefit of the Lenders as security for each Grantor's obligations to the Bank, including those arising

under and in connection with the Credit Agreement and the Notes, all whether now existing or hereafter arising;

(c) confirms that the representations and warranties contained in Section 2.01 of the Security Agreement are true and correct as of the date hereof and the Administrative Agent and the Lenders are entitled to rely on such representations and warranties to the same extent as though the same were set forth in full herein;

(d) agrees to perform the covenants contained in Article III of the Security Agreement and the Administrative Agent and the Lenders are entitled to rely on such agreement to perform such covenants to the same extent as though the same were set forth in full herein; and

(e) represents, warrants and confirms the non-existence of any offsets, defenses, or counterclaims to its obligations under the Security Agreement.

Except as expressly provided herein, the execution, delivery and effectiveness of this letter shall not operate as a waiver of any right, power or remedy of the Administrative Agent or any Lender, nor constitute a waiver of any provision of the Credit Agreement, the Notes or the Security Agreement.

IN WITNESS WHEREOF , the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

VEECO INSTRUMENTS INC.

By: /s/ John F. Rein, Jr.
Name: John F. Rein, Jr.
Title: Executive Vice President/Chief
Financial Officer

**VEECO COMPOUND SEMICONDUCTOR INC.
VEECO METROLOGY, INC.
VEECO PROCESS EQUIPMENT INC.**

By: /s/ John F. Rein, Jr.
Name: John F. Rein, Jr.
Title: Vice President of each of the foregoing
corporations

Acknowledged and Agreed:

**HSBC BANK USA, NATIONAL
ASSOCIATION, as Administrative Agent**

By: /s/ Christopher J. Mendelsohn
Name: Christopher J. Mendelsohn
Title: First Vice President

**CERTIFICATION PURSUANT TO
RULE 13a-14(a) or RULE 15d-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, John R. Peeler, Chief Executive Officer of Veeco Instruments Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended September 30, 2007 of Veeco Instruments Inc.;
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 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (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 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 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 functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control 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 control over financial reporting.

/s/ JOHN R. PEELER

John R. Peeler
Chief Executive Officer
Veeco Instruments Inc.
October 30, 2007

**CERTIFICATION PURSUANT TO
RULE 13a-14(a) or RULE 15d-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, John F. Rein, Jr., Executive Vice President, Chief Financial Officer and Secretary of Veeco Instruments Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended September 30, 2007 of Veeco Instruments Inc.;
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 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (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 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 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 functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control 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 control over financial reporting.

/s/ JOHN F. REIN, JR.

John F. Rein, Jr.
Executive Vice President, Chief Financial Officer and Secretary
Veeco Instruments Inc.
October 30, 2007

**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 Veeco Instruments Inc. (the "Company") on Form 10-Q for the period ended September 30, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John R. Peeler, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 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/ JOHN R. PEELER

John R. Peeler

Chief Executive Officer Veeco Instruments Inc.

October 30, 2007

A signed original of this written statement required by Section 906 has been provided to Veeco Instruments Inc. and will be retained by Veeco Instruments Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

**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 Veeco Instruments Inc. (the "Company") on Form 10-Q for the period ended September 30, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John F. Rein, Jr., Executive Vice President, Chief Financial Officer and Secretary of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 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/ JOHN F. REIN, JR.

John F. Rein, Jr.
Executive Vice President, Chief Financial Officer
and Secretary
Veeco Instruments Inc.
October 30, 2007

A signed original of this written statement required by Section 906 has been provided to Veeco Instruments Inc. and will be retained by Veeco Instruments Inc. and furnished to the Securities and Exchange Commission or its staff upon request.
