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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 10-Q**

**Quarterly Report Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934  
for the Quarterly Period Ended September 30, 2008**

**Commission File Number 1-9608**

**NEWELL RUBBERMAID INC.**

(Exact name of registrant as specified in its charter)

DELAWARE  
(State or other jurisdiction of  
incorporation or organization)

36-3514169  
(I.R.S. Employer  
Identification No.)

Three Glenlake Parkway  
Atlanta, Georgia 30328  
(Address of principal executive offices)  
(Zip Code)

(770) 418-7000  
(Registrant's telephone number, including area code)

Newell Rubbermaid Inc.  
10B Glenlake Parkway, Suite 300  
Atlanta, Georgia 30328

(Former address)

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, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

Number of shares of common stock outstanding (net of treasury shares) as of September 30, 2008: 277.2 million.

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## PART I. FINANCIAL INFORMATION

### Item 1. Financial Statements

#### NEWELL RUBBERMAID INC. AND SUBSIDIARIES

#### CONDENSED CONSOLIDATED STATEMENTS OF INCOME (Unaudited)

(Amounts in millions, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Net sales	\$1,760.3	\$1,687.3	\$5,019.1	\$4,764.8
Cost of products sold	1,185.6	1,086.3	3,330.7	3,083.5
GROSS MARGIN	574.7	601.0	1,688.4	1,681.3
Selling, general and administrative expenses	394.3	364.5	1,148.2	1,060.2
Restructuring costs	13.5	22.7	101.3	53.7
OPERATING INCOME	166.9	213.8	438.9	567.4
Nonoperating expenses:				
Interest expense, net	38.8	28.0	103.3	82.9
Other expense, net	55.4	2.1	56.4	4.4
Net nonoperating expenses	94.2	30.1	159.7	87.3
INCOME BEFORE INCOME TAXES	72.7	183.7	279.2	480.1
Income taxes	17.7	13.8	74.3	101.9
INCOME FROM CONTINUING OPERATIONS	55.0	169.9	204.9	378.2
Gain (loss) from discontinued operations, net of tax	—	0.3	(0.5)	(16.5)
NET INCOME	\$ 55.0	\$ 170.2	\$ 204.4	\$ 361.7
Weighted average shares outstanding:				
Basic	277.1	276.0	277.0	276.0
Diluted	278.4	286.1	278.2	286.1
Earnings (loss) per share:				
Basic —				
Income from continuing operations	\$ 0.20	\$ 0.62	\$ 0.74	\$ 1.37
Loss from discontinued operations	—	—	—	(0.06)
Earnings per common share	\$ 0.20	\$ 0.62	\$ 0.74	\$ 1.31
Diluted —				
Income from continuing operations	\$ 0.20	\$ 0.61	\$ 0.74	\$ 1.36
Loss from discontinued operations	—	—	—	(0.06)
Earnings per common share	\$ 0.20	\$ 0.61	\$ 0.73	\$ 1.30
Dividends per share	\$ 0.21	\$ 0.21	\$ 0.63	\$ 0.63

See Notes to Condensed Consolidated Financial Statements (Unaudited).

**NEWELL RUBBERMAID INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited)**  
*(Amounts in millions)*

	September 30, 2008	December 31, 2007
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 220.6	\$ 329.2
Accounts receivable, net	1,144.8	1,166.4
Inventories, net	1,060.7	940.4
Deferred income taxes	129.6	102.0
Prepaid expenses and other	122.3	113.7
TOTAL CURRENT ASSETS	2,678.0	2,651.7
PROPERTY, PLANT AND EQUIPMENT, NET	656.0	688.6
DEFERRED INCOME TAXES	—	29.4
GOODWILL	3,034.8	2,608.7
OTHER INTANGIBLE ASSETS, NET	656.8	501.8
OTHER ASSETS	232.7	202.7
TOTAL ASSETS	<u>\$ 7,258.3</u>	<u>\$ 6,682.9</u>

*See Notes to Condensed Consolidated Financial Statements (Unaudited).*

**NEWELL RUBBERMAID INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited) (CONTINUED)**  
*(Amounts in millions, except par value)*

	September 30, 2008	December 31, 2007
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 608.1	\$ 616.9
Accrued compensation	112.3	170.7
Other accrued liabilities	797.7	744.7
Income taxes payable	36.1	44.0
Notes payable	27.3	15.3
Current portion of long-term debt	542.4	972.2
<b>TOTAL CURRENT LIABILITIES</b>	<b>2,123.9</b>	<b>2,563.8</b>
DEFERRED INCOME TAXES	38.7	—
LONG-TERM DEBT	2,296.7	1,197.4
OTHER NONCURRENT LIABILITIES	566.9	674.4
<b>STOCKHOLDERS' EQUITY:</b>		
Preferred stock, authorized shares, 10.0 at \$1.00 par value	—	—
None issued and outstanding		
Common stock, authorized shares, 800.0 at \$1.00 par value	293.1	292.6
Outstanding shares, before treasury:		
2008 - 293.1		
2007 - 292.6		
Treasury stock, at cost:	(418.0)	(415.1)
Shares held:		
2008 - 15.9		
2007 - 15.9		
Additional paid-in capital	599.7	570.3
Retained earnings	1,949.9	1,922.7
Accumulated other comprehensive loss	(192.6)	(123.2)
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>2,232.1</b>	<b>2,247.3</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 7,258.3</b>	<b>\$ 6,682.9</b>

*See Notes to Condensed Consolidated Financial Statements (Unaudited).*

**NEWELL RUBBERMAID INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)**  
*(Amounts in millions)*

	Nine Months Ended September 30,	
	2008	2007
<b>OPERATING ACTIVITIES:</b>		
Net income	\$ 204.4	\$ 361.7
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	137.5	134.4
Deferred income taxes	23.8	64.4
Non-cash restructuring costs	45.3	10.1
Gain on sale of assets	—	(0.8)
Stock-based compensation expense	27.5	27.9
Loss on disposal of discontinued operations	0.5	16.3
Income tax benefits	(3.5)	(41.3)
Other	53.9	(2.9)
Changes in operating assets and liabilities, excluding the effects of acquisitions:		
Accounts receivable	36.9	23.9
Inventories	(85.4)	(119.1)
Accounts payable	(44.5)	59.0
Accrued liabilities and other	(151.2)	(77.4)
Discontinued operations	(2.2)	—
<b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	<b>243.0</b>	<b>456.2</b>
<b>INVESTING ACTIVITIES:</b>		
Acquisitions, net of cash acquired	(660.4)	(101.5)
Capital expenditures	(122.1)	(110.0)
Disposals of noncurrent assets and sales of businesses	6.4	(3.1)
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(776.1)</b>	<b>(214.6)</b>
<b>FINANCING ACTIVITIES:</b>		
Proceeds from issuance of debt, net of debt issuance costs	1,317.6	354.9
Payments on notes payable and long-term debt	(711.0)	(474.3)
Cash dividends	(176.1)	(176.0)
Proceeds from exercised stock options and other	(2.5)	18.0
<b>NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES</b>	<b>428.0</b>	<b>(277.4)</b>
Currency rate effect on cash and cash equivalents	(3.5)	4.3
<b>DECREASE IN CASH AND CASH EQUIVALENTS</b>	<b>(108.6)</b>	<b>(31.5)</b>
Cash and cash equivalents at beginning of period	329.2	201.0
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>	<b>\$ 220.6</b>	<b>\$ 169.5</b>

*See Notes to Condensed Consolidated Financial Statements (Unaudited).*

**NEWELL RUBBERMAID INC. AND SUBSIDIARIES**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

**Footnote 1 — Basis of Presentation and Significant Accounting Policies**

The accompanying unaudited condensed consolidated financial statements of Newell Rubbermaid Inc. (collectively with its subsidiaries, the “Company”) have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission and do not include all the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements. In the opinion of management, the unaudited condensed consolidated financial statements include all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation of the financial position and the results of operations. It is recommended that these unaudited condensed consolidated financial statements be read in conjunction with the financial statements and the footnotes thereto included in the Company’s latest Annual Report on Form 10-K.

**Seasonal Variations:** The Company’s sales and operating income in the first quarter are generally lower than any other quarter during the year, driven principally by reduced volume and the mix of products sold in the quarter.

**New Accounting Pronouncements:** In September 2006, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards (“SFAS”) No. 157, “Fair Value Measurements” (“SFAS 157”). SFAS 157 defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles, and requires expanded disclosures about fair value measurements. The Company prospectively adopted the effective provisions of SFAS 157 on January 1, 2008, as required for financial assets and liabilities. The adoption did not have a material impact on the consolidated financial statements. In accordance with SFAS 157, the Company expanded its disclosures regarding the fair values of financial assets and liabilities. See Note 12. The FASB deferred the effective date of SFAS 157 for one year as it relates to fair value measurement requirements for nonfinancial assets and nonfinancial liabilities that are not recognized or disclosed at fair value on a recurring basis. The implementation of SFAS 157 for the Company’s nonfinancial assets and nonfinancial liabilities is not expected to have a material impact on the Company’s consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141 (Revised 2007), “Business Combinations” (“SFAS 141(R)”). SFAS 141(R) significantly changes the accounting for business combination transactions by requiring an acquiring entity to recognize all the assets acquired and liabilities assumed in a transaction at the acquisition-date fair value. Additionally, SFAS 141(R) modifies the accounting treatment for certain specified items related to business combinations and requires a substantial number of new disclosures. SFAS 141(R) is effective for business combinations with an acquisition date in fiscal years beginning on or after December 15, 2008, and earlier adoption is prohibited. The Company will prospectively adopt SFAS 141(R) on January 1, 2009. The implementation of SFAS 141(R) could have a material effect on the way the Company accounts for future acquisitions.

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements — An Amendment of ARB No. 51” (“SFAS 160”). SFAS 160 establishes accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, the amount of consolidated net income attributable to the parent and to the noncontrolling interest, changes in a parent’s ownership interest and the valuation of retained noncontrolling equity investments when a subsidiary is deconsolidated. SFAS 160 also establishes reporting requirements that require sufficient disclosures that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. SFAS 160 is effective for fiscal years beginning on or after December 15, 2008, and earlier adoption is prohibited. SFAS 160 is effective for the Company on January 1, 2009. The Company is still in the process of evaluating the impact SFAS 160 will have on the Company’s consolidated financial statements. The Company will prospectively adopt SFAS 160 on January 1, 2009.

In March 2008, the FASB issued SFAS No. 161, “Disclosures about Derivative Instruments and Hedging Activities, an amendment to FASB Statement No. 133” (“SFAS 161”). SFAS 161 is intended to improve financial reporting by requiring enhanced disclosures for derivative instruments and hedging activities to enable investors to better understand how derivative instruments are accounted for under SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities” (“SFAS 133”) and their effects on an entity’s financial position, financial performance and cash flows. SFAS 161 is effective for the Company beginning January 1, 2009. The adoption of SFAS 161 is not expected to have a significant impact on the Company’s consolidated financial statements.

In April 2008, the FASB issued Staff Position No. 142-3, “Determination of the Useful Life of Intangible Assets” (“FSP SFAS 142-3”). FSP SFAS 142-3 amends the factors an entity should consider when developing renewal or extension assumptions for determining the useful lives of recognized intangible assets under SFAS No. 142, “Goodwill and Other Intangible Assets” (“SFAS 142”). FSP SFAS 142-3 is intended to improve the consistency between the useful lives of recognized intangible assets under SFAS 142 and the period of expected cash flows used to measure the fair value of acquired assets. The guidance also requires expanded disclosure related to an entity’s intangible assets. The guidance for determining the useful life of a recognized intangible asset shall be applied prospectively to intangible assets acquired after the effective date and the disclosure requirements shall be applied prospectively to all intangible assets recognized as of, and subsequent to, the effective date. FSP SFAS 142-3 is effective for fiscal years beginning after December 15, 2008 and interim periods within those fiscal years. FSP SFAS 142-3 is effective for the Company on January 1, 2009. The adoption of FSP SFAS 142-3 is not expected to have a significant impact on the Company’s consolidated financial statements.

In May 2008, the FASB issued SFAS No. 162, “The Hierarchy of Generally Accepted Accounting Principles” (“SFAS 162”). SFAS 162 identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with U.S. generally accepted accounting principles. SFAS 162 is effective 60 days following the Securities and Exchange Commission’s approval of the Public Company Accounting Oversight Board amendments to remove the hierarchy of generally accepted accounting principles from the auditing standards. The adoption of SFAS 162 is not expected to have a material effect on the Company’s financial statements.

In June 2008, the FASB issued Staff Position EITF 03-06-1, “Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities” (“FSP EITF 03-06-1”). This Staff Position provides that unvested share-based payment awards that contain nonforfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and shall be included in the computation of earnings per share pursuant to the two-class method in SFAS No. 128, “Earnings per Share”. FSP EITF 03-06-1 is effective for fiscal years beginning after December 15, 2008 and interim periods within those years and requires all prior-period earnings per share data to be adjusted retrospectively. FSP EITF 03-06-1 is effective for the Company on January 1, 2009. The adoption of FSP EITF 03-06-1 is not expected to have a material impact on the Company’s consolidated financial statements.

## **Footnote 2 — Acquisitions**

### **Technical Concepts**

On April 1, 2008, the Company acquired 100% of the outstanding limited liability company interests of Technical Concepts Holdings, LLC (“Technical Concepts”) for \$452.5 million, which includes transaction costs and the repayment of Technical Concepts’ outstanding debt obligations at closing. Technical Concepts provides innovative touch-free and automated restroom hygiene systems in the away-from-home washroom category. The Technical Concepts acquisition gives the Company’s Commercial Products business an entry into the away-from-home washroom market and fits within the Company’s strategy of leveraging its existing sales and marketing capabilities across additional product categories. In addition, with approximately 40% of its sales outside the U.S., Technical Concepts increases the global footprint of the Company’s Commercial Products business. For the year ended December 31, 2007, Technical Concepts reported net sales of approximately \$137 million.

This acquisition was accounted for using the purchase method of accounting and accordingly, the Company allocated the total purchase price to the identifiable tangible and intangible assets acquired and liabilities assumed based on their estimated fair values on the date of acquisition. Based on the preliminary purchase price allocation, the Company allocated \$51.6 million of the purchase price to identified tangible net assets and \$93.5 million of the purchase price to identified intangible assets. The Company recorded the excess of the purchase price over the aggregate fair values of \$307.4 million as goodwill, which is included in the Condensed Consolidated Balance Sheet at September 30, 2008. Technical Concepts’ results of operations are included in the Company’s Condensed Consolidated Financial Statements since the acquisition date. Pro forma results of operations would not be materially different as a result of the acquisition and therefore are not presented.

### **Aprica**

On April 1, 2008, the Company acquired substantially all of the assets of Aprica Childcare Institute Aprica Kassai, Inc. (“Aprica”), a maker of strollers, car seats and other children’s products, headquartered in Osaka, Japan. The Company acquired Aprica’s assets for \$154.2 million, which includes transaction costs and the repayment of Aprica’s outstanding debt obligations at closing. Aprica is a Japanese brand of premium strollers, car seats and other related juvenile products. The acquisition provides the opportunity for the



Company's Baby & Parenting Essentials business to broaden its presence worldwide, including expanding the scope of Aprica's sales outside of Asia. For the fiscal year ended July 31, 2007, Aprica reported net sales of approximately \$122 million.

This acquisition was accounted for using the purchase method of accounting and accordingly, the Company allocated the total purchase price to the identifiable tangible and intangible assets acquired and liabilities assumed based on their estimated fair values on the date of acquisition. Based on the preliminary purchase price allocation, the Company allocated \$(28.0) million of the purchase price to identified tangible net liabilities and \$57.0 million of the purchase price to identified intangible assets. The Company recorded the excess of purchase price over the aggregate fair values of \$125.2 million as goodwill, which is included in the Condensed Consolidated Balance Sheet at September 30, 2008. Aprica's results of operations are included in the Company's Condensed Consolidated Financial Statements since the acquisition date. Pro forma results of operations would not be materially different as a result of the acquisition and therefore are not presented. The closing of the purchase of Aprica's operations in China occurred in October 2008 and impacts the amount of net liabilities acquired and goodwill recorded in the Aprica acquisition; however, the impact of the acquisition of Aprica's China operations is not expected to materially impact the overall Aprica purchase price allocation.

### Footnote 3 — Discontinued Operations

The following table summarizes the results of businesses reported as discontinued operations for the three and nine months ended September 30, *(in millions)*:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Net sales	\$ —	\$ —	\$ —	\$ 3.6
Loss from operations of discontinued operations, net of income tax expense of \$— million for all periods presented	\$ —	\$ —	\$ —	\$ (0.2)
Gain (loss) on disposal of discontinued operations, net of income tax benefit of \$— million and \$0.5 million for the three and nine months ended September 30, 2008, respectively, and income tax expense of \$0.1 million and income tax benefit of \$3.8 million for the three and nine months ended September 30, 2007, respectively	—	0.3	(0.5)	(16.3)
Gain (loss) from discontinued operations, net of tax	\$ —	\$ 0.3	\$ (0.5)	\$ (16.5)

No amounts related to interest expense have been allocated to discontinued operations.

#### *Home Décor Europe*

The Home Décor Europe business designed, manufactured and sold drapery hardware and window treatments in Europe under Gardinia® and other local brands. In September 2006, the Company entered into an agreement for the sale of portions of the Home Décor Europe business to a global manufacturer and marketer of window treatments and furnishings. The Central and Eastern European, Nordic and Portuguese operations of this business were sold on December 1, 2006. The sale of the operations in Poland and the Ukraine closed on February 1, 2007. In October 2006, the Company received a binding offer for the sale of the Southern European region of the Home Décor Europe business to another party. The sale of the operations in France and Spain closed on January 1, 2007 and in Italy on January 31, 2007.

In connection with these transactions, the Company recorded a loss of \$14.6 million, net of tax, in the nine months ended September 30, 2007 to complete the divestiture of Home Décor Europe. The loss is reported in the table above as part of the loss on disposal of discontinued operations. The remainder of the loss on disposal of discontinued operations for the nine months ended September 30, 2007, approximately \$1.7 million, net of tax, related to contingencies associated with other prior divestitures.

### Footnote 4 — Restructuring Costs

#### *Project Acceleration Restructuring Activities*

In the third quarter of 2005, the Company announced a global initiative referred to as Project Acceleration aimed at strengthening and transforming the Company's portfolio. Project Acceleration was designed to reduce manufacturing overhead, better align the Company's distribution and transportation processes to achieve logistical excellence, and reorganize the Company's overall business structure to align with the Company's core organizing concept, the global business unit, to achieve best total cost (the "Plan").

On July 15, 2008, the Company announced an expansion of Project Acceleration so that, in addition to the Plan's original objectives, it provides for divesting, downsizing or exiting certain product categories (the "Plan Expansion"). As a result of the Plan Expansion, the Company expects to create a more focused and more profitable platform for growth by eliminating selected low margin, commodity like, mostly resin intensive product categories, which represent approximately \$500 million in annual sales. In addition the Plan Expansion will reduce the Company's exposure to volatile commodity markets, particularly resin. The Plan Expansion is expected to be substantially complete by the middle of 2009, and is expected to result in cumulative pre-tax restructuring charges (including asset impairments) totaling between \$80 and \$100 million.

Project Acceleration includes the anticipated closures of certain of the Company's manufacturing and distribution facilities to optimize the Company's geographic footprint and is expected to result in cumulative restructuring costs over the life of the initiative totaling between \$475 and \$500 million (\$405 and \$425 million after-tax), which includes the expected \$80 to \$100 million of charges associated with the Plan Expansion. Specifically, in connection with Project Acceleration, the Company expects to incur approximately \$250 to \$270 million in employee-related costs, including severance, pension costs and other termination benefits and employee relocation; approximately \$155 to \$175 million in non-cash asset related costs; and approximately \$50 to \$70 million in other associated costs, including contract termination fees. Approximately 67% of the Project Acceleration restructuring costs are expected to be cash charges. The Company expects to incur between \$150 and \$200 million (\$110 and \$150 million after-tax) of Project Acceleration restructuring costs in 2008.

The savings generated from the Plan will allow the Company to increase investment in new product development, brand building and marketing. Annual savings from the Plan are projected to be between \$175 and \$200 million once fully implemented in 2010.

In total through September 30, 2008, the Company has recorded \$303.6 million of costs related to the Plan, including the Plan Expansion, of which \$139.2 million related to facility and other exit costs, \$122.6 million related to employee severance, termination benefits and employee relocation costs, and \$41.8 million related to exited contractual commitments and other restructuring costs.

The table below shows the restructuring (benefits) costs recognized for Project Acceleration restructuring activities for the three and nine months ended September 30, *(in millions)*:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Facility and other exit costs	\$ (1.1)	\$ 5.7	\$ 45.3	\$ 14.1
Employee severance, termination benefits and relocation costs	11.2	4.0	41.5	23.8
Exited contractual commitments and other	3.4	13.0	13.1	15.8
	<u>\$ 13.5</u>	<u>\$ 22.7</u>	<u>\$ 99.9</u>	<u>\$ 53.7</u>

Restructuring provisions were determined based on estimates prepared at the time the restructuring actions were approved by management, are periodically updated for changes and also include amounts recognized as incurred. Costs incurred include cash payments and the impairment of assets associated with vacated facilities. A summary of the Company's accrued restructuring reserves for continuing operations as of and for the nine months ended September 30, 2008 is as follows *(in millions)*:

	12/31/07 Balance	Provision	Costs Incurred	9/30/08 Balance
Facility and other exit costs	\$ —	\$ 45.3	\$(45.3)	\$ —
Employee severance, termination benefits and relocation costs	22.5	41.5	(39.4)	24.6
Exited contractual commitments and other	16.2	13.1	(7.3)	22.0
	<u>\$ 38.7</u>	<u>\$ 99.9</u>	<u>\$(92.0)</u>	<u>\$ 46.6</u>

The table below shows restructuring costs (benefits) recognized for Project Acceleration restructuring activities for the three and nine months ended September 30, aggregated by reportable business segment *(in millions)*:

Segment	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Cleaning, Organization & Décor	\$ (4.6)	\$ 1.0	\$ 36.0	\$ 3.6
Office Products	7.9	6.4	30.0	22.7
Tools & Hardware	6.3	14.1	19.6	23.3
Other (Home & Family)	2.2	0.1	3.0	1.1
Corporate	1.7	1.1	11.3	3.0
	<u>\$ 13.5</u>	<u>\$ 22.7</u>	<u>\$ 99.9</u>	<u>\$ 53.7</u>

The following table depicts the changes in accrued restructuring reserves for the Plan for the nine months ended September 30, 2008 aggregated by reportable business segment (*in millions*):

Segment	12/31/07 Balance	Provision	Costs Incurred	9/30/08 Balance
Cleaning, Organization & Décor	\$ 0.8	\$ 36.0	\$(35.2)	\$ 1.6
Office Products	23.1	30.0	(35.9)	17.2
Tools & Hardware	13.9	19.6	(14.1)	19.4
Other (Home & Family)	—	3.0	(1.7)	1.3
Corporate	0.9	11.3	(5.1)	7.1
	<u>\$ 38.7</u>	<u>\$ 99.9</u>	<u>\$(92.0)</u>	<u>\$ 46.6</u>

The table below shows total restructuring costs for the Plan since inception through September 30, 2008, aggregated by reportable business segment (*in millions*):

Segment	Provision
Cleaning, Organization & Décor	\$ 91.8
Office Products	122.3
Tools & Hardware	59.7
Other (Home & Family)	12.6
Corporate	17.2
	<u>\$ 303.6</u>

#### *Pre-Project Acceleration Restructuring Activities*

The Company announced a restructuring plan in 2001 (the “2001 Plan”). The specific objectives of the 2001 Plan were to streamline the Company’s supply chain to become the best-cost global provider throughout the Company’s portfolio by reducing worldwide headcount and consolidating duplicative manufacturing facilities. During the first quarter of 2008, the Company recorded an additional provision relating to the 2001 Plan of \$1.4 million, which is included in total restructuring costs for the nine months ended September 30, 2008. Approximately \$1.9 million of pre-Acceleration restructuring reserves remain as of September 30, 2008.

Cash paid for all restructuring activities was \$11.6 million and \$46.7 million for the three and nine months ended September 30, 2008, respectively, and \$9.5 million and \$37.8 million for the three and nine months ended September 30, 2007, respectively.

#### **Footnote 5 — Inventories, Net**

Inventories are stated at the lower of cost or market value. The components of net inventories were as follows (*in millions*):

	September 30, 2008	December 31, 2007
Materials and supplies	\$ 174.1	\$ 178.8
Work in process	210.5	179.8
Finished products	676.1	581.8
	<u>\$ 1,060.7</u>	<u>\$ 940.4</u>

**Footnote 6 — Long-Term Debt**

The following is a summary of long-term debt (*in millions*):

	September 30, 2008	December 31, 2007
Medium-term notes	\$ 1,900.4	\$ 1,075.0
Commercial paper	39.1	197.0
Floating rate note	448.0	448.0
Junior convertible subordinated debentures	436.7	436.7
Other long-term debt	14.9	12.9
Total Debt	2,839.1	2,169.6
Current portion of long-term debt	(542.4)	(972.2)
Long-Term Debt	\$ 2,296.7	\$ 1,197.4

In September 2008, the Company entered into a \$400.0 million credit agreement (the “Agreement”), under which the Company received an unsecured three-year term loan in the amount of \$400.0 million (the “Loan”). The Company is required to repay the outstanding principal amount of the Loan according to the following schedule: \$50.0 million in September 2009; \$100.0 million in September 2010; and \$250.0 million in September 2011, the maturity date. Borrowings under the Agreement bear interest at a rate of LIBOR plus a spread that is determined based on the credit rating of the Company, and interest is payable quarterly. The \$400 million of outstanding borrowings under the Agreement at September 30, 2008 bear interest at a weighted average interest rate of 4.7%. The Agreement has covenants similar to those in the Company’s \$750.0 million five-year syndicated revolving credit facility, including, among other things, the maintenance of interest coverage and total indebtedness to total capital ratios and a limitation on the amount of indebtedness subsidiaries may incur. Net proceeds from the Loan were used to repay outstanding commercial paper and for general corporate purposes.

In September 2006, in accordance with the terms of the Company’s 2001 receivables facility with a financial institution, the Company’s financing entity caused its \$450.0 million outstanding preferred debt securities to be exchanged for a two year floating rate note in an aggregate principal amount of \$448.0 million (the “Note”) and other consideration. The Note must be repaid before the Company can have access to the financing entity’s receivables. In September 2008, the Company’s wholly owned and consolidated financing entity obtained an extension of the maturity of the Note from September 2008 to September 2009. The receivables and the Note are recorded in the Condensed Consolidated Balance Sheets of the Company at December 31, 2007 and September 30, 2008, and the Note is classified as current portion of long-term debt in the Company’s Condensed Consolidated Balance Sheets at September 30, 2008 based on its September 2009 maturity date.

In July 2008, the Company redeemed its \$250.0 million of Reset notes due July 2028, and recorded a loss on the extinguishment of the Reset notes of \$52.2 million associated with the purchase of the remarketing option embedded in the Reset notes. The Company utilized its commercial paper program to fund the redemption of the Reset notes and the purchase of the remarketing option in order to pursue more favorable financing terms. The loss on extinguishment of \$52.2 million is included in other expense, net in the Condensed Consolidated Statements of Income for the three and nine months ended September 30, 2008. The \$302.2 million aggregate amount paid to redeem the Reset notes is included as payments on notes payable and long-term debt in the Condensed Consolidated Statement of Cash Flows for the nine months ended September 30, 2008.

In July 2008, note holders owning \$65.0 million of the Company’s \$75.0 million of outstanding medium-term notes due July 2028 exercised their put option, which entitled the holders of the notes to require the Company to repay the notes at par. As a result, the Company repaid \$65.0 million of the outstanding notes in July 2008. The remaining \$10.0 million were not put to the Company and will continue to bear interest at 6.11% through maturity in July 2028. The Company utilized its commercial paper program to fund the redemption of the medium-term notes.

In March 2008, the Company completed the offering and sale of senior unsecured notes, consisting of \$500 million in 5.50% senior unsecured notes with a maturity of April 15, 2013 and \$250 million in 6.25% senior unsecured notes with a maturity of April 15, 2018 (collectively, the “Senior Unsecured Notes”). Interest on the Senior Unsecured Notes is payable semi-annually on April 15 and October 15 beginning October 15, 2008. Net proceeds from this offering were used to fund acquisitions, repay debt, and for general corporate purposes. The Senior Unsecured Notes are unsecured and unsubordinated obligations of the Company and equally ranked with all of its existing and future senior unsecured debt. The Senior Unsecured Notes may be redeemed by the Company at any time, in whole or in part, at a redemption price plus accrued interest to the date of redemption. The redemption price is equal to the greater of (1) 100% of the principal amount of the Senior Unsecured Notes being redeemed or (2) the sum of the present values of the remaining scheduled payments of principal and interest thereon (not including any portion of any payments of interest accrued through

the date of the redemption), discounted to the date of redemption on a semi-annual basis at a specified rate. The Senior Unsecured Notes also contain a provision that allows holders of the Senior Unsecured Notes to require the Company to repurchase all or any part of the Senior Unsecured Notes if a change of control triggering event occurs. Under this provision, the repurchase of the Senior Unsecured Notes will occur at a purchase price of 101% of the outstanding principal amount, plus accrued and unpaid interest, if any, on such Senior Unsecured Notes to the date of purchase.

In 1997, a 100% owned finance subsidiary (the “Subsidiary”) of the Company issued 10.0 million shares of 5.25% convertible preferred securities (the “Preferred Securities”). Each of these Preferred Securities is convertible into 0.9865 of a share of the Company’s common stock. As of September 30, 2008, the Company fully and unconditionally guarantees the 8.4 million shares of the Preferred Securities issued by the Subsidiary that were outstanding at September 30, 2008, which are callable at 100% of the liquidation preference. The proceeds received by the Subsidiary from the issuance of the Preferred Securities were invested in the Company’s 5.25% Junior Convertible Subordinated Debentures (the “Debentures”), which mature on December 1, 2027. The Preferred Securities are mandatorily redeemable upon the repayment of the Debentures at maturity or upon acceleration of the Debentures. As of September 30, 2008, the Company has not elected to defer interest payments on the \$436.7 million of outstanding Debentures.

#### Footnote 7 — Employee Benefit and Retirement Plans

Effective January 1, 2008, the Company prospectively adopted the measurement date provisions of SFAS No. 158, “Employers’ Accounting for Defined Benefit Pension and Other Postretirement Plans — an amendment of FASB Statements No. 87, 88, 106 and 132(R)” (“SFAS 158”). Beginning with the year ended December 31, 2008, SFAS 158 requires the measurement date for defined benefit plan assets and obligations to coincide with the date of the employer’s fiscal year end statement of financial position, which for the Company is December 31. The Company has historically measured defined benefit plan assets and liabilities for the majority of its plans on September 30 for its year-end statement of financial position. The impact on the Condensed Consolidated Financial Statements of the adoption of the change in measurement date for the Company’s defined benefit and postretirement plans with September 30 plan year-ends resulted in an adjustment to decrease retained earnings at January 1, 2008 by \$1.1 million.

The following table presents the components of the Company’s pension cost, including supplemental retirement plans, for the three months ended September 30, *(in millions)*:

	U.S.		International	
	2008	2007	2008	2007
Service cost-benefits earned during the period	\$ 1.1	\$ 0.9	\$ 1.6	\$ 1.9
Interest cost on projected benefit obligation	13.0	12.8	7.8	7.1
Expected return on plan assets	(14.4)	(14.6)	(7.6)	(7.0)
Amortization of:				
Prior service cost	0.4	0.3	—	—
Actuarial loss	1.7	1.9	0.9	1.1
Net periodic pension cost	\$ 1.8	\$ 1.3	\$ 2.7	\$ 3.1

The following table presents the components of the Company’s pension cost, including supplemental retirement plans, for the nine months ended September 30, *(in millions)*:

	U.S.		International	
	2008	2007	2008	2007
Service cost-benefits earned during the period	\$ 3.4	\$ 2.8	\$ 4.8	\$ 5.6
Interest cost on projected benefit obligation	39.1	38.4	23.5	20.8
Expected return on plan assets	(43.3)	(43.9)	(22.8)	(20.6)
Amortization of:				
Prior service cost	1.0	0.9	—	—
Actuarial loss	5.3	5.7	2.8	3.3
Curtailment & special termination benefit gains	—	—	—	(2.4)
Net periodic pension cost	\$ 5.5	\$ 3.9	\$ 8.3	\$ 6.7

In the first quarter of 2007, the Company recorded a \$2.4 million curtailment gain resulting from the closure of a European manufacturing facility within the Company’s Office Products segment.

The following table presents the components of the Company's other postretirement benefit costs for the three and nine months ended September 30, *(in millions)*:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Service cost-benefits earned during the period	\$ 0.4	\$ 0.4	\$ 1.2	\$ 1.3
Interest cost on projected benefit obligation	2.4	2.6	7.2	8.0
Amortization of prior service benefit	(0.6)	(0.5)	(1.8)	(1.7)
Net other postretirement benefit costs	\$ 2.2	\$ 2.5	\$ 6.6	\$ 7.6

The Company made a cash contribution to the Company-sponsored profit sharing plan of \$19.4 million and \$18.4 million during the first quarter of 2008 and 2007, respectively.

#### Footnote 8 — Income Taxes

As of September 30, 2008, there were no significant changes to the Company's unrecognized tax benefits as reported in its Form 10-K for the year ended December 31, 2007, except as noted below.

The Company's income tax expense and resulting effective tax rate are based upon the respective estimated annual effective tax rates applicable for the respective years adjusted for the effect of items required to be treated as discrete interim period items. This rate differs from the U.S. federal corporate income tax rate primarily due to foreign tax rate differentials and other items. The effective tax rates for the three and nine months ended September 30, 2008 and 2007 were primarily impacted by the following tax matters characterized as discrete period adjustments:

- During the third quarter of 2008, the Company recorded a \$3.5 million net benefit due to certain accrual reversals for which the statute of limitations has expired partially offset by provisions for items related to prior periods.
- During the third quarter of 2007, the Company recorded a benefit of \$35.0 million due to the Company entering into an agreement with the IRS relating to the appropriate treatment of a specific deduction included in the Company's 2006 U.S. federal income tax return. The Company requested accelerated review of the transaction under the IRS's Pre-Filing Agreement Program that resulted in affirmative resolution in late August 2007. The Company also recorded a \$4.4 million net benefit due to certain accrual reversals for which the statute of limitations has expired partially offset by provisions required for tax deductions recorded in prior periods.
- During the first quarter of 2007, the Company recorded a benefit of \$1.9 million due to the receipt of an income tax refund, resulting in a reduction in the valuation allowance for deferred tax assets.

#### Footnote 9 — Earnings per Share

The calculation of basic and diluted earnings per share is shown below for the three and nine months ended September 30, *(in millions, except per share data)*:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
<b>Numerator for basic earnings per share:</b>				
Income from continuing operations	\$ 55.0	\$ 169.9	\$ 204.9	\$ 378.2
Gain (loss) from discontinued operations	—	0.3	(0.5)	(16.5)
Net income for basic earnings per share	\$ 55.0	\$ 170.2	\$ 204.4	\$ 361.7
<b>Numerator for diluted earnings per share:</b>				
Income from continuing operations	\$ 55.0	\$ 169.9	\$ 204.9	\$ 378.2
Effect of convertible preferred securities (1)	—	3.6	—	10.7
Income from continuing operations for diluted earnings per share	55.0	173.5	204.9	388.9
Gain (loss) from discontinued operations	—	0.3	(0.5)	(16.5)
Net income for diluted earnings per share	\$ 55.0	\$ 173.8	\$ 204.4	\$ 372.4

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
<b>Denominator:</b>				
Denominator for basic earnings per share — weighted-average shares outstanding	277.1	276.0	277.0	276.0
Dilutive securities (2)	1.3	1.8	1.2	1.8
Convertible preferred securities (1)	—	8.3	—	8.3
Denominator for diluted earnings per share	278.4	286.1	278.2	286.1
<b>Basic earnings (loss) per share:</b>				
Earnings from continuing operations	\$ 0.20	\$ 0.62	\$ 0.74	\$ 1.37
Loss from discontinued operations	—	—	—	(0.06)
Earnings per share	\$ 0.20	\$ 0.62	\$ 0.74	\$ 1.31
<b>Diluted earnings (loss) per share:</b>				
Earnings from continuing operations	\$ 0.20	\$ 0.61	\$ 0.74	\$ 1.36
Loss from discontinued operations	—	—	—	(0.06)
Earnings per share	\$ 0.20	\$ 0.61	\$ 0.73	\$ 1.30

- (1) The convertible preferred securities are anti-dilutive for the three and nine months ended September 30, 2008, and therefore have been excluded from diluted earnings per share. Had the convertible preferred securities been included in the diluted earnings per share calculation, net income would be increased by \$3.6 million and \$10.7 million for the three and nine months ended September 30, 2008, respectively. Weighted-average shares outstanding would have increased by 8.3 million shares for both the three and nine months ended September 30, 2008.
- (2) Dilutive securities include “in the money options” and restricted stock units and awards. The weighted-average shares outstanding exclude the effect of approximately 17.8 million and 11.4 million stock options for the three months ended September 30, 2008 and 2007, respectively, and 17.5 million and 8.3 million stock options for the nine months ended September 30, 2008 and 2007, respectively, because such options were anti-dilutive.

#### Footnote 10 — Accumulated Other Comprehensive Loss

Accumulated other comprehensive loss is recorded within stockholders’ equity and encompasses foreign currency translation adjustments, gains (losses) on derivative instruments and unrecognized pension and other post retirement costs.

The following table displays the components of accumulated other comprehensive loss (*in millions*):

	Foreign Currency Translation Gain/(Loss)	Unrecognized Pension & Other Postretirement Costs, net of tax	After-tax Derivative Hedging Gain	Accumulated Other Comprehensive Loss
Balance at December 31, 2007	\$ 69.8	\$ (202.4)	\$ 9.4	\$ (123.2)
Current period change	(94.8)	11.2	14.2	(69.4)
Balance at September 30, 2008	\$ (25.0)	\$ (191.2)	\$ 23.6	\$ (192.6)

Comprehensive income (loss) amounted to the following for the three and nine months ended September 30, (*in millions*):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Net income	\$ 55.0	\$ 170.2	\$ 204.4	\$ 361.7
Foreign currency translation (loss) gain	(92.8)	10.5	(94.8)	30.9
Unrecognized pension & other postretirement costs, net of tax, including translation effects	8.0	—	10.5	—
After-tax derivatives hedging gain	7.2	6.0	14.2	7.6
Comprehensive (loss) income	\$ (22.6)	\$ 186.7	\$ 134.3	\$ 400.2

The Company recorded an adjustment at January 1, 2008 to accumulated other comprehensive loss of \$0.7 million related to the adoption of the change in measurement date for the Company’s defined benefit and postretirement plans. The adjustment is therefore included in the accumulated other comprehensive loss balance at September 30, 2008, but is excluded from comprehensive income for the nine months ended September 30, 2008.

## Footnote 11 — Stock-Based Compensation

The Company accounts for stock-based compensation pursuant to SFAS No. 123(R), “Share-Based Payment,” which requires measurement of compensation cost for all stock awards at fair value on the date of grant and recognition of compensation, net of estimated forfeitures, over the requisite service period for awards expected to vest.

The following table presents the impact of stock-based compensation expense, which is recorded in selling, general and administrative expenses, for the three and nine months ended September 30, *(in millions)*:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Reduction to income before income taxes	\$ 10.6	\$ 9.4	\$ 27.5	\$ 27.9
Reduction to net income	\$ 7.0	\$ 6.6	\$ 18.8	\$ 19.6

The fair value of stock option awards granted during the three and nine months ended September 30, was estimated using the Black-Scholes option pricing model with the following weighted average assumptions:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Weighted-average fair value of grants	\$ 2	\$ 6	\$ 4	\$ 7
Risk-free interest rate	3.5%	4.6%	2.8%	4.7%
Dividend yield	5.1%	2.8%	3.7%	2.8%
Expected volatility	25%	25%	25%	25%
Expected life (in years)	5.5	5.5	5.5	5.5

The Company utilized its historical experience to estimate the expected life of the options and volatility.

The following table summarizes the changes in the number of shares of common stock under option for the nine months ended September 30, 2008 *(shares in millions)*:

	Shares	Weighted Average Exercise Price	Exercisable
Outstanding at December 31, 2007	16.0	\$ 27	7.3
Granted	4.5	23	
Exercised	(0.1)	23	
Forfeited / expired	(2.6)	28	
Outstanding at September 30, 2008	17.8	\$ 26	8.0

At September 30, 2008, the aggregate intrinsic value of exercisable options was zero.

The following table summarizes the changes in the number of shares of restricted stock and restricted stock units for the nine months ended September 30, 2008 *(shares in millions)*:

	Shares	Weighted- Average Grant Date Fair Value
Outstanding at December 31, 2007	2.6	\$ 26
Granted	1.0	23
Vested	(0.4)	22
Forfeited	(0.4)	26
Outstanding at September 30, 2008	2.8	\$ 26



## Footnote 12 — Fair Value

In the first quarter of 2008, the Company adopted SFAS 157, which defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles, and requires expanded disclosures about fair value measurements. SFAS 157 does not require any new fair value measurements, but rather generally applies to other accounting pronouncements that require or permit fair value measurements.

SFAS 157 emphasizes that fair value is a market-based measurement, not an entity-specific measurement, and defines fair value as the price that would be received to sell an asset or transfer a liability in an orderly transaction between market participants at the measurement date. SFAS 157 discusses valuation techniques, such as the market approach (comparable market prices), the income approach (present value of future income or cash flow), and the cost approach (cost to replace the service capacity of an asset or replacement cost). These valuation techniques are based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. SFAS 157 utilizes a fair value hierarchy that prioritizes these two inputs to valuation techniques used to measure fair value into three broad levels. The following is a brief description of those three levels:

- Level 1: Observable inputs such as quoted prices for identical assets or liabilities in active markets.
- Level 2: Observable inputs other than quoted prices that are directly or indirectly observable for the asset or liability, including quoted prices for similar assets or liabilities in active markets; quoted prices for similar or identical assets or liabilities in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.
- Level 3: Unobservable inputs that reflect the reporting entity's own assumptions.

The FASB issued FSP 157-2 which delayed the effective date of SFAS 157 for all non-financial assets and liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis, until January 1, 2009. The Company's assets and liabilities adjusted to fair value at least annually are its mutual fund investments and derivative instruments, and these assets and liabilities are therefore subject to the measurement and disclosure requirements of SFAS 157. As the Company adjusts the value of its mutual fund investments and derivative instruments to fair value each reporting period, no adjustment to retained earnings resulted from the adoption of SFAS 157.

The value of the Company's mutual fund investments included in its December 31, 2007 balance sheet was \$12.8 million. The Company determines the fair value of its mutual fund investments based on quoted market prices (Level 1).

The Company generally uses derivatives for hedging purposes pursuant to SFAS 133, and the Company's derivatives are primarily foreign currency forward contracts and interest rate swaps. The aggregate values of derivative assets and liabilities included in the Company's December 31, 2007 balance sheet were \$3.0 million and \$67.0 million, respectively. The Company determines the fair value of its derivative instruments based on Level 2 inputs in the SFAS 157 fair value hierarchy. Level 2 fair value determinations are derived from directly or indirectly observable (market based) information. Such inputs are the basis for the fair values of the Company's derivative instruments.

The following table presents the Company's financial assets and liabilities which are measured at fair value on a recurring basis and that are subject to the disclosure requirements of SFAS 157 as of September 30, 2008 (*in millions*):

Description	Fair Value at 9/30/2008	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Assets</b>				
Mutual fund investments	\$ 12.4	\$ 12.4	\$ —	\$ —
Interest rate swaps	2.5	—	2.5	—
Foreign currency derivatives	7.8	—	7.8	—
<b>Total</b>	<b>\$ 22.7</b>	<b>\$ 12.4</b>	<b>\$ 10.3</b>	<b>\$ —</b>
<b>Liabilities</b>				
Interest rate swaps	\$ 12.1	\$ —	\$ 12.1	\$ —
Foreign currency derivatives	63.9	—	63.9	—
<b>Total</b>	<b>\$ 76.0</b>	<b>\$ —</b>	<b>\$ 76.0</b>	<b>\$ —</b>

Consistent with the Company's risk management strategies and business initiatives, the Company generally does not enter into financial contracts or invest in financial assets whose values are not readily determinable using either Level 1 or Level 2 inputs.

### Footnote 13 — Industry Segment Information

The Company's reporting segments reflect the Company's focus on building large consumer brands, promoting organizational integration, achieving operating efficiencies in sourcing and distribution and leveraging its understanding of similar consumer segments and distribution channels. The reportable segments are as follows:

Segment	Description of Products
Cleaning, Organization & Décor	Material handling, cleaning, refuse, indoor/outdoor organization, home storage, food storage, drapery hardware, window treatments, restroom hygiene systems
Office Products	Ball point/roller ball pens, markers, highlighters, pencils, correction fluids, office products, art supplies, on-demand labeling products, card-scanning solutions, on-line postage
Tools & Hardware	Hand tools, power tool accessories, manual paint applicators, cabinet, window and convenience hardware, propane torches, soldering tools and accessories
Other (Home & Family)	Premium cookware and related kitchenware, beauty and style accessory products, infant and juvenile products, including high chairs, car seats, strollers and play yards, and other products within operating segments that are individually immaterial and do not meet aggregation criteria

The Company's segment results are as follows as of and for the three and nine months ended September 30, *(in millions)*:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Net Sales (1)				
Cleaning, Organization & Décor	\$ 570.0	\$ 547.2	\$1,644.6	\$1,549.0
Office Products	540.2	544.9	1,574.8	1,538.7
Tools & Hardware	331.0	335.9	943.6	954.4
Other (Home & Family)	319.1	259.3	856.1	722.7
	<u>\$1,760.3</u>	<u>\$1,687.3</u>	<u>\$5,019.1</u>	<u>\$4,764.8</u>
Operating Income (Loss) (2)				
Cleaning, Organization & Décor	\$ 56.5	\$ 83.7	\$ 179.1	\$ 222.1
Office Products	61.3	84.2	198.4	228.4
Tools & Hardware	47.0	51.3	128.8	133.2
Other (Home & Family)	37.2	37.2	95.5	98.9
Corporate	(21.6)	(19.9)	(61.6)	(61.5)
Restructuring Costs	(13.5)	(22.7)	(101.3)	(53.7)
	<u>\$ 166.9</u>	<u>\$ 213.8</u>	<u>\$ 438.9</u>	<u>\$ 567.4</u>
			September 30, 2008	December 31, 2007
Identifiable Assets				
Cleaning, Organization & Décor			\$ 924.0	\$ 785.3
Office Products			1,285.9	1,352.7
Tools & Hardware			715.8	712.2
Other (Home & Family)			484.0	344.6
Corporate (3)			3,848.6	3,488.1
			<u>\$ 7,258.3</u>	<u>\$ 6,682.9</u>

## Geographic Area Information

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
<b>Net Sales</b>				
United States	\$1,224.3	\$1,224.3	\$3,470.3	\$3,480.5
Canada	113.5	116.4	319.2	308.2
North America	1,337.8	1,340.7	3,789.5	3,788.7
Europe	254.1	221.2	770.5	635.1
Central and South America	77.7	66.7	210.3	183.4
All other	90.7	58.7	248.8	157.6
	<u>\$1,760.3</u>	<u>\$1,687.3</u>	<u>\$5,019.1</u>	<u>\$4,764.8</u>
<b>Operating Income (2), (4)</b>				
United States	\$ 116.0	\$ 155.8	\$ 318.2	\$ 448.2
Canada	33.2	31.6	73.6	78.7
North America	149.2	187.4	391.8	526.9
Europe	1.6	8.1	7.7	3.9
Central and South America	3.5	5.7	2.5	7.4
All other	12.6	12.6	36.9	29.2
	<u>\$ 166.9</u>	<u>\$ 213.8</u>	<u>\$ 438.9</u>	<u>\$ 567.4</u>

- 1) All intercompany transactions have been eliminated. Sales to Wal-Mart Stores, Inc. and subsidiaries amounted to approximately 13% and 14% of consolidated net sales in the three months ended September 30, 2008 and 2007, respectively. Sales to Wal-Mart Stores, Inc. and subsidiaries amounted to approximately 13% and 14% of consolidated net sales in the nine months ended September 30, 2008 and 2007, respectively. Sales to no other customer exceeded 10% of consolidated net sales for either period.
- 2) Operating income is net sales less cost of products sold, selling, general and administrative expenses and restructuring costs. Certain headquarters expenses of an operational nature are allocated to business segments and geographic areas primarily on a net sales basis.
- 3) Corporate assets primarily include tradenames and goodwill, capitalized software, investments and deferred tax assets.
- 4) The restructuring costs have been reflected in the appropriate geographic regions.

### Footnote 14 — Litigation and Contingencies

The Company is involved in legal proceedings in the ordinary course of its business. These proceedings include claims for damages arising out of use of the Company's products, allegations of infringement of intellectual property, commercial disputes and employment matters, as well as environmental matters. Some of the legal proceedings include claims for punitive as well as compensatory damages, and certain proceedings may purport to be class actions. Although management of the Company cannot predict the ultimate outcome of these legal proceedings with certainty, it believes that the ultimate resolution of the Company's legal proceedings, including any amounts it may be required to pay in excess of amounts reserved, will not have a material effect on the Company's condensed consolidated financial statements.

In the normal course of business and as part of its acquisition and divestiture strategy, the Company may provide certain representations and indemnifications related to legal, environmental, product liability, tax or other types of issues. Based on the nature of these representations and indemnifications, it is not possible to predict the maximum potential payments under all of these agreements due to the conditional nature of the Company's obligations and the unique facts and circumstances involved in each particular agreement. Historically, payments made by the Company under these agreements did not have a material effect on the Company's business, financial condition or results of operations.

On July 1, 2007, the Company acquired all of the outstanding equity interests of PSI System, Inc. ("Endicia"), provider of Endicia Internet Postage, for \$51.2 million plus related acquisition costs and contingent payments of up to \$25.0 million based on future revenues. Endicia is party to a lawsuit filed against it alleging patent infringement which was filed on November 22, 2006 in the U.S. District Court for the Central District of California. In this case, Stamps.com seeks injunctive relief in order to prevent Endicia from continuing to engage in activities that are alleged to infringe on Stamps.com's patents. An unfavorable outcome in this litigation, which management does not believe is probable, could materially adversely affect the Endicia business.

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

### **Business Overview**

Newell Rubbermaid is a global marketer of consumer and commercial products that touch the lives of people where they work, live and play. With annual sales of over \$6 billion, the Company's products are marketed under a strong portfolio of brands, including Rubbermaid®, Sharpie®, Graco®, Calphalon®, Irwin®, Lenox®, Levolor®, Paper Mate®, Dymo®, Waterman®, Parker®, Goody®, BernzOmatic® and Amerock®. The Company's multi-product offering consists of well-known name-brand consumer and commercial products in four business segments: Cleaning, Organization & Décor; Office Products; Tools & Hardware; and Home & Family.

The Company's vision is to become a global company of Brands That Matter™ and great people, known for best-in-class results. The Company remains committed to investing in strategic brands and new product development, strengthening its portfolio of businesses and products, reducing its supply chain costs and streamlining non-strategic selling, general and administrative expenses (SG&A).

### **Market Overview**

The Company operates in the consumer and commercial products markets, which are generally impacted by overall economic conditions in the regions in which the Company operates. While the Company's strategy is to expand globally, the Company currently derives almost 70% of its sales from the U.S. market. The U.S. economy continues to be challenging, driven largely by the steep decline in the residential housing market, reduced access to credit, volatile commodity prices, and resulting decline in consumer confidence and spending. The weakness in the U.S. economy adversely affects the Company's domestic businesses, most notably the Tools & Hardware and Office Products segments; however, the Company continues to realize growth in these segments internationally, although growth in these segments has slowed as global economic conditions have deteriorated. The Company continues to realize growth in the Home and Family segment and certain other business units, both domestically and internationally.

The operating results of sourcers and manufacturers of consumer and commercial products are generally impacted by changes in the prices of raw materials (including commodity prices), labor costs, and foreign exchange rates. During the nine months ended September 30, 2008, the Company experienced a significantly higher than expected rate of inflation for raw materials, primarily resin and metals, and sourced finished goods. The primary driver for the increase was record-high energy prices, including the price of oil and natural gas, which are inputs to the cost of resin, which represents a little over 10% of the Company's cost of products sold. Although raw materials costs moderated in the third quarter of 2008, the Company still expects the impact of inflation to adversely impact gross margins by \$225 million to \$250 million in 2008 compared to 2007. In addition, lower volumes in the Company's manufacturing plants has recently adversely impacted gross margins as the Company reduces production to match revised sales forecasts and reduce inventory. Although Project Acceleration and ongoing productivity initiatives have offset some of the impacts of inflation and reduced production, the Company implemented a pricing initiative effective October 1 across a number of product lines, particularly those where resin is the primary component of the cost of products sold.

### **Business Strategy**

The key tenets of the Company's strategy are as follows: Create Consumer-Meaningful Brands, Leverage One Newell Rubbermaid, Achieve Best Total Cost and Nurture 360° Innovation. The Company's results depend on the ability of its individual business units to succeed in their respective categories, each of which has some unique consumers, customers and competitors.

The following section details the Company's performance in each of its strategic initiatives:

#### *Create Consumer-Meaningful Brands*

The Company is continuing to move from its historical focus on retail push marketing to a new focus on consumer pull marketing and creating competitive advantage through better understanding its consumers, innovating to deliver great performance, investing in advertising and promotion to create demand and leveraging its brands in adjacent categories around the world. The Company's progress in implementing this brand building and marketing initiative is exhibited by the following:

- In the Company's Home & Family segment, the Baby & Parenting Essentials business launched the Nautilus 3-in-1 car seat under the Graco® brand and expanded its premium platform by introducing the Teutonia® brand into the North American market. The Company recently launched Teutonia branded products into national distribution using a selected specialty dealer network.
- Also in the Home & Family segment, the Company launched a new premium line of Calphalon heating electrics, which leverages the well-known Calphalon® brand and expands the business into a natural near-neighbor category.

- In the Cleaning, Organization and Décor segment, the Company's Rubbermaid Food business experienced continued success with the innovative Rubbermaid Produce Saver, Premier and Easy Find Lids product lines.
- The Office Products segment has expanded the market leading Sharpie franchise with the introduction of the Sharpie Pen, which many consumers are adopting as their every day writing instrument.
- The Company remains committed to increasing selective television, print, direct mail and online advertising, and using sampling and product demonstrations where appropriate, to increase brand awareness and trials among end-users of its brands.

#### *Leverage One Newell Rubbermaid*

The Company strives to leverage the common business activities and best practices of its business units, and to build one common culture of shared values, with a focus on collaboration and teamwork. The Company continuously explores ways to leverage common functional capabilities, such as Human Resources, Information Technology, Customer Service, Supply Chain Management and Finance, to improve efficiency and reduce costs. This broad reaching initiative already includes projects such as the corporate consolidation of the distribution and transportation function and consolidating company-wide purchasing efforts.

To leverage information and best practices across the Company's business units, the Company is implementing SAP globally to enable the Company to integrate and manage its worldwide business and reporting processes more efficiently. To date, the Company's North American operations of its Home & Family and Office Products segments have successfully gone live with their SAP implementation efforts.

#### *Achieve Best Total Cost*

The Company's objective is to reduce the cost of manufacturing, sourcing and supplying product on an ongoing basis, and to leverage the Company's size and scale, in order to achieve a best total cost position. Achieving best cost positions in its categories allows the Company to increase investment in strategic brand building initiatives as well as offset some of the cost inflation resulting from the current economic environment.

Through Project Acceleration and other initiatives, the Company has made significant progress in reducing its supply chain costs and delivering productivity savings. In July 2008, the Company committed to an expansion of Project Acceleration to provide for divesting, downsizing or exiting certain product categories where resin is a high percentage of the cost of products sold. The product categories the Company expects to divest or otherwise exit in connection with the expansion of Project Acceleration generate annual sales of approximately \$500 million in selected consumer product categories. Project Acceleration, as expanded, includes the anticipated closures of certain of the Company's manufacturing and distribution facilities to optimize the Company's geographic footprint and the exiting of certain product categories to limit the Company's exposure to volatile commodity markets, particularly resin.

Project Acceleration is expected to result in cumulative restructuring costs over the life of the initiative totaling between \$475 and \$500 million, and the Company has recognized \$303.6 million of restructuring charges associated with Project Acceleration to date. Approximately 67% of the restructuring costs in connection with Project Acceleration are expected to be cash charges. Annual savings from Project Acceleration are projected to be between \$175 and \$200 million once fully implemented in 2010.

Additionally, in its efforts to achieve logistical excellence and optimize its geographic footprint, the Company continues to evaluate its supply chain efforts to identify opportunities to realize efficiencies in purchasing, distribution and transportation. For example, the Company plans to consolidate four smaller warehouses into a new Southeast distribution center as part of its efforts to achieve a best cost structure.

Lastly, the Company continues to optimize its organizational structure, with a focus on the Company's Global Business Unit structure and structural SG&A costs. In that regard, the Company is reorganizing its Global Business Units to gain efficiency and effectiveness, combining several smaller ones into larger ones. The Company plans to reduce structural SG&A costs to maintain margins and to protect investments in brand building SG&A efforts.

#### *Nurture 360° Innovation*

Successful innovation requires both consumer driven product invention and the successful commercialization of that invention. It is a rigorous, consumer-centric process that permeates the entire development cycle. It begins with a deep understanding of how

consumers interact with the Company's brands and categories, and all the factors that drive their purchase decisions and in-use experience. That understanding must then be translated into innovative products that deliver unique features and benefits, at a best-cost position, providing the consumer with great value. Lastly, formulating how and where to create awareness and trial use and measuring the effectiveness of advertising and promotion spending complete the process.

In the Company's Office Products segment, consumer response from the recent launch of the Sharpie pen has remained positive. The Sharpie pen is an extension of the Sharpie product line and addresses consumer needs by delivering the bold, smooth, high-quality writing experience associated with Sharpie markers but with the performance of a pen that does not bleed through paper.

The Company's continued success of its Rubbermaid Produce Saver™, Easy Find Lids™ and Premier™ product lines continue to drive growth within the Rubbermaid Food business. The useful features of these lines, such as longer food storage life, easy organization and storage, and stain and odor resistance, demonstrate the Company's ability to bring consumer-meaningful innovation to the plastic food storage category.

In July, the Company's Beauty & Style global business unit launched the Goody Luxe™ product line which unites style and technology to solve common consumer frustrations. This premier line of hair accessories addresses global hair trends while offering functional benefits. The Goody Luxe product line uses StayPut Hold™ technology which allows the accessories to provide a secure hold yet are gentle enough to remove without snagging.

### **Acquisitions**

In April 2008, the Company closed on two acquisitions, Aprica and Technical Concepts, which expand its product categories and geographic footprint as well as provide the Company an opportunity to leverage innovation and branding capabilities. Aprica is a Japanese brand of premium strollers, car seats and other related juvenile products. This acquisition provides the Company's Baby & Parenting Essentials business the opportunity to broaden its presence worldwide, including expanding the scope of Aprica's sales outside of Asia. The Aprica acquisition also provides the critical mass needed for more shared resources in Japan, which will help accelerate investment in the Asia-Pacific region by other business units. The Technical Concepts acquisition gives the Company's Rubbermaid Commercial Products business an entry into the \$2.5 billion away-from-home washroom market. Technical Concepts is a global provider of innovative touch-free and automated restroom hygiene systems. This acquisition fits within the Company's strategy of leveraging its existing sales and marketing capabilities across additional product categories where performance matters and customers will pay a premium for innovation. In addition, with approximately 40% of its sales outside the U.S., Technical Concepts significantly increases the global footprint of the Rubbermaid Commercial Products business.

### **Summary**

In the midst of the global economic slowdown, the Company remains committed to driving its key strategic initiatives and plans to continue to reshape its portfolio to become increasingly global, faster growing, and more profitable. The Company expects to adapt to the impact of the economic slowdown with a particular focus on cash and liquidity. The Company is focused on managing inventories in the face of rapid consumer demand fluctuations and customer inventory reductions. In addition, the Company continues to execute its portfolio optimization strategy with the resin-dependent product category exits announced in the third quarter of 2008. The Company expects to continue to adapt to the changing circumstances, economic or otherwise, in the future to become a more focused and more profitable company.

## Results of Operations

The following table sets forth for the periods indicated items from the Condensed Consolidated Statements of Income as reported and as a percentage of net sales for the three and nine months ended September 30, *(in millions, except percentages)*:

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2008		2007		2008		2007	
Net sales	\$1,760.3	100.0%	\$1,687.3	100.0%	\$5,019.1	100.0%	\$4,764.8	100.0%
Cost of products sold	1,185.6	67.4	1,086.3	64.4	3,330.7	66.4	3,083.5	64.7
Gross margin	574.7	32.6	601.0	35.6	1,688.4	33.6	1,681.3	35.3
Selling, general and administrative expenses	394.3	22.4	364.5	21.6	1,148.2	22.9	1,060.2	22.3
Restructuring costs	13.5	0.8	22.7	1.3	101.3	2.0	53.7	1.1
Operating income	166.9	9.5	213.8	12.7	438.9	8.7	567.4	11.9
Nonoperating expenses:								
Interest expense, net	38.8	2.2	28.0	1.7	103.3	2.1	82.9	1.7
Other expense, net	55.4	3.1	2.1	0.1	56.4	1.1	4.4	0.1
Net nonoperating expenses	94.2	5.4	30.1	1.8	159.7	3.2	87.3	1.8
Income from continuing operations before income taxes	72.7	4.1	183.7	10.9	279.2	5.6	480.1	10.1
Income taxes	17.7	1.0	13.8	0.8	74.3	1.5	101.9	2.1
Income from continuing operations	55.0	3.1	169.9	10.1	204.9	4.1	378.2	7.9
Gain (loss) from discontinued operations, net of tax	—	—	0.3	—	(0.5)	—	(16.5)	(0.3)
Net income	\$ 55.0	3.1%	\$ 170.2	10.1%	\$ 204.4	4.1%	\$ 361.7	7.6%

### Three Months Ended September 30, 2008 vs. Three Months Ended September 30, 2007

#### Consolidated Operating Results:

Net sales for the three months ended September 30, 2008 were \$1,760.3 million, representing an increase of \$73.0 million, or 4.3%, from \$1,687.3 million for the three months ended September 30, 2007. The Technical Concepts and Aprica acquisitions increased sales by \$65.7 million, or 3.9%, over the prior year period. The remaining increase of \$7.3 million, or 0.4%, was attributed to favorable foreign currency benefits, favorable pricing and growth in the Company's international businesses, partially offset by softness in the Company's domestic Office Products, Tools & Hardware and Décor businesses. Double digit growth in the Baby & Parenting Essentials and Culinary Lifestyles businesses and high single-digit growth in the Rubbermaid Food business led the sales improvement for the 2008 quarter.

Gross margin, as a percentage of net sales, for the three months ended September 30, 2008 was 32.6%, or \$574.7 million, versus 35.6%, or \$601.0 million, for the three months ended September 30, 2007. The 3.0% decline in the gross margin percentage was due to significant inflation in input costs, most notably in the Company's resin intensive businesses, as well as sourced finished goods and unfavorable mix, which were partially offset by benefits realized from savings from Project Acceleration and favorable pricing.

SG&A expenses for the three months ended September 30, 2008 were 22.4% of net sales, or \$394.3 million, versus 21.6% of net sales, or \$364.5 million, for the three months ended September 30, 2007. The \$29.8 million increase in SG&A expenses was driven by incremental SG&A associated with the Technical Concepts and Aprica acquisitions as well as currency translation.

The Company recorded restructuring costs of \$13.5 million and \$22.7 million for the three months ended September 30, 2008 and 2007, respectively. The third quarter 2008 restructuring costs included \$11.2 million of employee severance, termination benefits and employee relocation costs, and \$3.4 million of exited contractual commitments and other restructuring costs, partially offset by \$1.1 million of benefits in facility and other exit costs. The third quarter 2007 restructuring costs included \$5.7 million of facility and other exit costs, \$4.0 million of employee severance and termination benefits and \$13.0 million of exited contractual commitments and other restructuring costs. See Footnote 4 of the Notes to Condensed Consolidated Financial Statements for further information on these restructuring costs.

Operating income for the three months ended September 30, 2008 was \$166.9 million, or 9.5% of net sales, versus \$213.8 million, or 12.7% of net sales, for the three months ended September 30, 2007. Improvements from favorable pricing and savings from Project Acceleration during the third quarter of 2008 were more than offset by inflation in input costs and sourced finished goods and unfavorable mix.

Interest expense, net, for the three months ended September 30, 2008 was \$38.8 million versus \$28.0 million for the three months ended September 30, 2007. The increase in interest expense in the 2008 quarter was driven by additional borrowings used to fund the acquisitions of Technical Concepts and Aprica.

Other expense, net, for the three months ended September 30, 2008 was \$55.4 million versus \$2.1 million for the three months ended September 30, 2007. Other expense, net, in the 2008 quarter is primarily attributable to the \$52.2 million loss on debt extinguishment relating to the Company's redemption of its \$250.0 million of Reset notes in July 2008.

The effective tax rate was 24.3% for the three months ended September 30, 2008 versus 7.5% for the three months ended September 30, 2007. The change in the effective tax rate was primarily related to a net \$3.5 million income tax benefit recorded during the three months ended September 30, 2008, compared to a net \$39.4 million income tax benefit recorded for the three months ended September 30, 2007. These income tax benefits primarily relate to favorable outcomes from the IRS's review of specific deductions and accrual reversals for items for which the statute of limitations expired, partially offset by provisions required for tax deductions recorded in prior periods. See Footnote 8 of the Notes to Condensed Consolidated Financial Statements for further information.

#### Business Segment Operating Results:

Net sales by segment were as follows for the three months ended September 30, *(in millions, except percentages)*:

	2008	2007	% Change
Cleaning, Organization & Décor	\$ 570.0	\$ 547.2	4.2%
Office Products	540.2	544.9	(0.9)
Tools & Hardware	331.0	335.9	(1.5)
Home & Family	319.1	259.3	23.1
Total Net Sales	\$1,760.3	\$1,687.3	4.3%

Operating income (loss) by segment was as follows for the three months ended September 30, *(in millions, except percentages)*:

	2008	2007	% Change
Cleaning, Organization & Décor	\$ 56.5	\$ 83.7	(32.5)%
Office Products	61.3	84.2	(27.2)
Tools & Hardware	47.0	51.3	(8.4)
Home & Family	37.2	37.2	—
Corporate	(21.6)	(19.9)	(8.5)
Restructuring costs	(13.5)	(22.7)	
Total Operating Income	\$166.9	\$213.8	(21.9)%

#### Cleaning, Organization & Décor

Net sales for the three months ended September 30, 2008 were \$570.0 million, an increase of \$22.8 million, or 4.2%, from \$547.2 million for the three months ended September 30, 2007. The Technical Concepts acquisition increased sales \$36.8 million, or 6.7%. Excluding the impact of acquisitions, sales decreased \$14.0 million, or 2.5%, as high single digit growth in the Rubbermaid Food business and low single digit growth in the Rubbermaid Commercial business were more than offset by softness in the Rubbermaid Home and Décor businesses.

Operating income for the three months ended September 30, 2008 was \$56.5 million, or 9.9% of sales, a decrease of \$27.2 million, or 32.5%, from \$83.7 million for the three months ended September 30, 2007. Inflation in raw material costs, particularly resin, lower manufacturing volume and unfavorable mix more than offset the contributions from acquisitions during the 2008 quarter.



## **Office Products**

Net sales for the three months ended September 30, 2008 were \$540.2 million, a decrease of \$4.7 million, or 0.9%, from \$544.9 million for the three months ended September 30, 2007. Softer domestic sales driven by weaker foot traffic at U.S. retailers more than offset benefits recognized from favorable foreign currency. The segment's international sales remained essentially flat in local currency.

Operating income for the three months ended September 30, 2008 was \$61.3 million, or 11.3% of sales, a decrease of \$22.9 million, or 27.2%, from \$84.2 million for the three months ended September 30, 2007. The year-over-year decline in operating income is attributable to core sales decline, raw material inflation, unfavorable mix and increased investment in strategic SG&A spending.

## **Tools & Hardware**

Net sales for the three months ended September 30, 2008 were \$331.0 million, a decrease of \$4.9 million, or 1.5%, from \$335.9 million for the three months ended September 30, 2007. The year-over-year decrease was primarily due to a decline in the sales of the segment's domestic businesses, which have been affected by the decline in the U.S. residential construction market, partially offset by favorable foreign currency and a mid-single digit increase in the segment's international business in local currency.

Operating income for the three months ended September 30, 2008 was \$47.0 million, or 14.2% of sales, a decrease of \$4.3 million, or 8.4%, from \$51.3 million for the three months ended September 30, 2007, as productivity improvements and favorable pricing were more than offset by raw material inflation and core sales declines in North America.

## **Home & Family**

Net sales for the three months ended September 30, 2008 were \$319.1 million, an increase of \$59.8 million, or 23.1%, from \$259.3 million for the three months ended September 30, 2007. The Aprica acquisition increased sales \$28.9 million, or 11.1%. The remaining increase of \$30.9 million, or 11.9%, was attributable to double digit growth in the Baby & Parenting Essentials and Culinary Lifestyles businesses.

Operating income for the three months ended September 30, 2008 was \$37.2 million, or 11.7% of sales, flat to \$37.2 million for the three months ended September 30, 2007, as sales improvements were offset by brand building investments, sourced product inflation and unfavorable mix within the segment's Baby & Parenting Essentials business.

## **Nine Months Ended September 30, 2008 vs. Nine Months Ended September 30, 2007**

### **Consolidated Operating Results:**

Net sales for the nine months ended September 30, 2008 were \$5,019.1 million, representing an increase of \$254.3 million, or 5.3%, from \$4,764.8 million for the nine months ended September 30, 2007. The acquisitions of Technical Concepts and Aprica increased sales \$142.8 million, or 3.0%. The remaining increase of \$111.5 million, or 2.3%, was primarily attributable to foreign currency benefits. Double digit growth in the Company's Rubbermaid Commercial and Rubbermaid Food businesses, high single digit growth in the Home & Family segment and low single digit growth in the Office Products segment were partially offset by declines in the Tools & Hardware segment and Décor business, which have been impacted by weakness in the U.S. economy.

Gross margin, as a percentage of net sales, for the nine months ended September 30, 2008 was 33.6%, or \$1,688.4 million, versus 35.3%, or \$1,681.3 million, for the nine months ended September 30, 2007. The 1.7% decline in the gross margin percentage was due to significant raw material and sourced finished goods inflation more than offsetting positive pricing and savings from Project Acceleration.

SG&A expenses for the nine months ended September 30, 2008 were 22.9% of net sales, or \$1,148.2 million, versus 22.3% of net sales, or \$1,060.2 million, for the nine months ended September 30, 2007. The \$88.0 million increase in SG&A expenses was driven by SG&A expenses associated with the Technical Concepts and Aprica acquisitions, the impact of foreign currency and continued investment in brand building and strategic corporate initiatives.

The Company recorded restructuring costs of \$101.3 million and \$53.7 million for the nine months ended September 30, 2008 and 2007, respectively. The increase in restructuring costs for the nine months ended September 30, 2008 compared to the prior year

period is primarily attributable to \$36.0 million of asset impairment charges recorded for the nine months ended September 30, 2008 associated with the Company's plan to divest, downsize or exit certain product categories where resin is the primary component of cost of products sold. The 2008 restructuring costs included \$45.3 million of facility and other exit costs, including the \$36.0 million of asset impairment charges noted above, \$41.5 million of employee severance, termination benefits and employee relocation costs, and \$14.5 million of exited contractual commitments and other restructuring costs, of which \$1.4 million relates to the Company's 2001 Plan. The 2007 restructuring costs included \$14.1 million of facility and other exit costs, \$23.8 million of employee severance and termination benefits and \$15.8 million of exited contractual commitments and other restructuring costs. See Footnote 4 of the Notes to Condensed Consolidated Financial Statements for further information on these restructuring costs.

Operating income for the nine months ended September 30, 2008 was \$438.9 million, or 8.7% of net sales, versus \$567.4 million, or 11.9% of net sales, for the nine months ended September 30, 2007. The \$128.5 million decline in operating income is primarily attributable to the impact of raw material and sourced goods inflation on gross margin in 2008 and the \$36.0 million of Project Acceleration asset impairment charges in 2008 discussed above, partially offset by gross margin improvements from productivity initiatives and favorable pricing during 2008.

Interest expense, net, for the nine months ended September 30, 2008 was \$103.3 million versus \$82.9 million for the nine months ended September 30, 2007. The increase in interest expense in 2008 was driven by additional borrowings used to fund the acquisitions of Aprica and Technical Concepts.

Other expense, net, for the nine months ended September 30, 2008 was \$56.4 million versus \$4.4 million for the nine months ended September 30, 2007. Other expense, net, in 2008 is primarily attributable to the \$52.2 million loss on debt extinguishment relating to the Company's redemption of its \$250.0 million of Reset notes in July 2008.

The effective tax rate was 26.6% for the nine months ended September 30, 2008 versus 21.2% for the nine months ended September 30, 2007. The increase in the effective tax rate was primarily related to a net \$3.5 million income tax benefit recorded during the nine months ended September 30, 2008 compared to net \$41.3 million income tax benefits recorded for the nine months ended September 30, 2007. These income tax benefits primarily relate to favorable outcomes from the IRS's review of specific deductions and accrual reversals for items for which the statute of limitations expired, partially offset by provisions required for tax deductions recorded in prior periods. The effect of the tax benefits was partially offset by tax rates applicable to various discrete expenses recorded during the nine month periods, including restructuring costs. The discrete items in each of the nine month periods caused the effective tax rate to decline marginally from the nine months ended September 30, 2007 to the nine months ended September 30, 2008. See Footnote 8 of the Notes to Condensed Consolidated Financial Statements for further information.

For the nine months ended September 30, 2007, the Company recognized a loss from operations of discontinued operations of \$0.2 million, net of tax, related to the results of the remaining operations of the Home Décor Europe business and a loss on disposal of discontinued operations of \$16.3 million, net of tax, related primarily to the disposal of the remaining operations of the Home Décor Europe business. The total loss from discontinued operations, net of tax, was \$0.5 million and \$16.5 million for the nine months ended September 30, 2008 and 2007, respectively. Diluted loss per share from discontinued operations was \$- and \$0.06 for the nine months ended September 30, 2008 and 2007, respectively. See Footnote 3 of the Notes to Condensed Consolidated Financial Statements for further information.

**Business Segment Operating Results:**

Net sales by segment were as follows for the nine months ended September 30, *(in millions, except percentages)*:

	2008	2007	% Change
Cleaning, Organization & Décor	\$1,644.6	\$1,549.0	6.2%
Office Products	1,574.8	1,538.7	2.3
Tools & Hardware	943.6	954.4	(1.1)
Home & Family	856.1	722.7	18.5
Total Net Sales	\$5,019.1	\$4,764.8	5.3%

Operating income (loss) by segment was as follows for the nine months ended September 30, *(in millions, except percentages)*:

	2008	2007	% Change
Cleaning, Organization & Décor	\$ 179.1	\$222.1	(19.4)%
Office Products	198.4	228.4	(13.1)
Tools & Hardware	128.8	133.2	(3.3)
Home & Family	95.5	98.9	(3.4)
Corporate	(61.6)	(61.5)	(0.2)
Restructuring Costs	(101.3)	(53.7)	
Total Operating Income	\$ 438.9	\$567.4	(22.6)%

**Cleaning, Organization & Décor**

Net sales for the nine months ended September 30, 2008 were \$1,644.6 million, an increase of \$95.6 million, or 6.2%, from \$1,549.0 million for the nine months ended September 30, 2007. The Technical Concepts acquisition increased sales \$76.8 million, or 5.0%. The remaining increase of \$18.8 million, or 1.2%, was driven by double digit growth in the Rubbermaid Commercial and Rubbermaid Food businesses, partially offset by softness in the Rubbermaid Home and Décor businesses.

Operating income for the nine months ended September 30, 2008 was \$179.1 million, or 10.9% of sales, a decrease of \$43.0 million, or 19.4%, from \$222.1 million for the nine months ended September 30, 2007. Raw material inflation, particularly in resin, and lower manufacturing volume more than offset the contribution from increased sales, favorable pricing, and the Technical Concepts acquisition during the 2008 year.

**Office Products**

Net sales for the nine months ended September 30, 2008 were \$1,574.8 million, an increase of \$36.1 million, or 2.3%, from \$1,538.7 million for the nine months ended September 30, 2007. The sales improvement was driven by favorable foreign currency and growth in the segment's European and Asia Pacific businesses in local currency, partially offset by a decline in domestic sales driven by weaker foot traffic at U.S. retailers. The European business benefited in comparison to prior year from softer sales in 2007 driven mainly by service level interruptions that did not repeat in 2008.

Operating income for the nine months ended September 30, 2008 was \$198.4 million, or 12.6% of sales, a decrease of \$30.0 million, or 13.1%, from \$228.4 million for the nine months ended September 30, 2007. Operating income declined as improvements in sales were offset by raw material inflation, increased investment in strategic SG&A spending, and unfavorable mix.

**Tools & Hardware**

Net sales for the nine months ended September 30, 2008 were \$943.6 million, a decrease of \$10.8 million, or 1.1%, from \$954.4 million for the nine months ended September 30, 2007. The year-over-year decrease was due to softness in the segment's domestic businesses, which have been affected by the decline in the U.S. residential construction market, partially offset by favorable foreign currency and improved sales in the segment's international business in local currency.

Operating income for the nine months ended September 30, 2008 was \$128.8 million, or 13.6 % of sales, a decrease of \$4.4 million, or 3.3%, from \$133.2 million for the nine months ended September 30, 2007, as favorable pricing and productivity improvements were more than offset by raw material inflation and core sales declines in North America.

## Home & Family

Net sales for the nine months ended September 30, 2008 were \$856.1 million, an increase of \$133.4 million, or 18.5%, from \$722.7 million for the nine months ended September 30, 2007. The Aprica acquisition increased sales \$66.0 million, or 9.1%. The remaining increase of \$67.4 million, or 9.4%, was attributable to double digit growth in the Baby & Parenting Essentials business and mid single digit growth in the Culinary Lifestyles business.

Operating income for the nine months ended September 30, 2008 was \$95.5 million, or 11.2% of sales, a decrease of \$3.4 million, or 3.4%, from \$98.9 million for the nine months ended September 30, 2007, as volume gains were more than offset by unfavorable mix and increased strategic SG&A spending for new product launches, brand building investments, and sourced product inflation.

## Liquidity and Capital Resources

Cash and cash equivalents decreased as follows for the nine months ended September 30, (*in millions*):

	2008	2007
Cash provided by operating activities	\$ 243.0	\$ 456.2
Cash used in investing activities	(776.1)	(214.6)
Cash provided by (used in) financing activities	428.0	(277.4)
Currency effect on cash and cash equivalents	(3.5)	4.3
Decrease in cash and cash equivalents	<u>\$(108.6)</u>	<u>\$ (31.5)</u>

## Sources:

Historically, the Company's primary sources of liquidity and capital resources have included cash provided by operations, proceeds from divestitures and use of available borrowing facilities.

Cash provided by operating activities for the nine months ended September 30, 2008 was \$243.0 million, compared to \$456.2 million for the comparable period of 2007. The decrease is attributable primarily to lower income from continuing operations, a reduction in accounts payable, and the timing of payments of accrued liabilities, including income taxes. Cash used for restructuring activities was \$46.7 million and \$37.8 million for the nine months ended September 30, 2008 and 2007, respectively, and is included in the cash flows from operating activities. These payments relate primarily to employee termination benefits. The Company expects to use approximately \$80 million of cash for restructuring activities in 2008 related to Project Acceleration.

During the nine months ended September 30, 2008, the Company received net proceeds from the issuance of debt of \$1,317.6 million, compared to \$354.9 million for the comparable period of 2007. In September 2008, the Company entered into a \$400.0 million credit agreement, under which the Company received an unsecured three-year term loan in the amount of \$400.0 million (the "Loan"). Net proceeds from the Loan were used to repay outstanding commercial paper and for general corporate purposes. In March 2008, the Company completed the offering and sale of senior unsecured notes, consisting of \$500 million in 5.50% senior unsecured notes due April 2013 and \$250 million in 6.25% senior unsecured notes due April 2018 (collectively, the "Senior Unsecured Notes"). Net proceeds from this offering were used to fund acquisitions, repay debt, and for general corporate purposes. The Senior Unsecured Notes are unsecured and unsubordinated obligations of the Company and equally ranked with all existing and future senior unsecured debt. Proceeds from the issuance of debt in 2007 include the issuance of commercial paper used to fund the repayment of a five-year, \$250 million, 6% fixed rate medium term note that came due on March 15, 2007. See Footnote 6 of the Notes to Condensed Consolidated Financial Statements for additional information.

On November 14, 2005, the Company entered into a \$750.0 million five-year syndicated revolving credit facility (the "Revolver"). As a result of subsequent extensions, the Revolver will now expire in November 2012. The Company currently has \$690.0 million available for borrowing under the Revolver. At September 30, 2008 and 2007, there were no borrowings under the Revolver.

In lieu of borrowings under the Revolver, the Company may issue up to \$690.0 million of commercial paper. The Revolver provides the committed backup liquidity required to issue commercial paper. Accordingly, commercial paper may only be issued up to the amount available for borrowing under the Revolver. The Revolver also provides for the issuance of up to \$100.0 million of standby letters of credit so long as there is a sufficient amount available for borrowing under the Revolver. At September 30, 2008, there was \$39.1 million of commercial paper outstanding, classified as current portion of long-term debt, and no standby letters of credit issued under the Revolver.

**Uses:**

Historically, the Company's primary uses of liquidity and capital resources have included acquisitions, dividend payments, capital expenditures and payments on debt.

The Company made payments on notes payable, commercial paper and long-term debt of \$711.0 million and \$474.3 million in the nine months ended September 30, 2008 and 2007, respectively. In July 2008, the Company redeemed its \$250.0 million of Reset notes due July 2028 for \$302.2 million, which includes the Company's purchase of the remarketing option embedded in the Reset notes from a third party for \$52.2 million. In July 2008, the Company also repaid \$65.0 million of its \$75.0 million outstanding 6.11% medium term notes due July 2028 in accordance with the terms of the notes. The Company utilized its commercial paper program to fund the redemption of the Reset notes, the purchase of the remarketing option, and the repayment of the \$65.0 million of 6.11% medium term notes due July 2028. The remaining payments made on debt during the nine months ended September 30, 2008 mainly represent the pay down of commercial paper. During the nine months ended September 30, 2007, the Company paid-off a five-year, \$250 million, 6% fixed rate note, at maturity, and made payments of \$215 million on commercial paper.

Cash used for acquisitions was \$660.4 million and \$101.5 million for the nine months ended September 30, 2008 and 2007, respectively. The cash used in 2008 relates primarily to the acquisitions of Technical Concepts and Aprica, while cash used in 2007 included the third quarter acquisition of Endicia. See Footnote 2 of the Notes to Condensed Consolidated Financial Statements for further information.

Dividends paid were \$176.1 million and \$176.0 million during the nine months ended September 30, 2008 and 2007, respectively.

Capital expenditures were \$122.1 million and \$110.0 million during the nine months ended September 30, 2008 and 2007, respectively. The most significant components of the 2008 capital expenditures relate to the implementation of SAP.

**Liquidity Metrics**

Working capital (defined as current assets less current liabilities) at September 30, 2008 was \$554.1 million compared to \$87.9 million at December 31, 2007. The current ratio was 1.26:1 at September 30, 2008 and 1.03:1 at December 31, 2007. The increase in working capital is primarily related to the repayment of current maturities of long-term debt and commercial paper with proceeds from the \$400 million three-year term loan.

Total debt to total capitalization (total debt is net of cash and cash equivalents, and total capitalization includes total debt and stockholders' equity) was 0.54:1 at September 30, 2008 and 0.45:1 at December 31, 2007.

The Company has adopted and sponsors pension plans in the U.S. and in various other countries. The Company's ongoing funding requirements for its pension plans are largely dependent on the value of each of the plan's assets and the investment returns realized on plan assets. To the extent each plan's assets decline in value or do not generate the returns expected by the Company, the Company may be required to make contributions to the pension plans to ensure the pension obligations are adequately funded as required by law or mandate. Based on the recent performance of the global equity markets and instability in the credit markets, certain of the Company's pension plans' assets have declined in value. As a result, to the extent the plans' assets do not increase in value or decline further in value, the Company may be required to make contributions to certain of its pension plans within the next twelve months, and such contributions may be significant.

The Company believes that available cash, cash flows generated from future operations, access to capital markets, and availability under its revolving credit facility, including issuing commercial paper, will be adequate to support the cash needs of existing businesses, although the Company will be required to refinance its maturing short-term debt. As of September 30, 2008, the Company had \$569.7 million of short-term debt, including a floating rate note of \$448.0 million related to its 2001 receivables facility that matures in September 2009. The Company plans to address these obligations through the capital markets or other arrangements; however, access to the capital markets cannot be assured, particularly in light of the recent turmoil and uncertainty in the global credit markets, and alternative financing arrangements may result in higher borrowing costs for the Company.

## **Fair Value Measurements**

In the first quarter of 2008, the Company adopted Statement of Financial Accounting Standards (“SFAS”) No. 157, “Fair Value Measurements” (“SFAS 157”). SFAS 157 defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles, and requires expanded disclosures about fair value measurements. SFAS 157 does not require any new fair value measurements, but rather generally applies to other accounting pronouncements that require or permit fair value measurements.

SFAS 157 emphasizes that fair value is a market-based measurement, not an entity-specific measurement, and defines fair value as the price that would be received to sell an asset or transfer a liability in an orderly transaction between market participants at the measurement date. SFAS 157 discusses valuation techniques, such as the market approach (comparable market prices), the income approach (present value of future income or cash flow), and the cost approach (cost to replace the service capacity of an asset or replacement cost). These valuation techniques are based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company’s market assumptions. SFAS 157 utilizes a fair value hierarchy that prioritizes these two inputs to valuation techniques used to measure fair value into three broad levels. The following is a brief description of those three levels:

- Level 1: Observable inputs such as quoted prices for identical assets or liabilities in active markets.
- Level 2: Observable inputs other than quoted prices that are directly or indirectly observable for the asset or liability, including quoted prices for similar assets or liabilities in active markets; quoted prices for similar or identical assets or liabilities in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.
- Level 3: Unobservable inputs that reflect the reporting entity’s own assumptions.

The Financial Accounting Standards Board (“FASB”) issued FSP 157-2 which delayed the effective date of SFAS 157 for all non-financial assets and liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis, until January 1, 2009. The Company’s assets and liabilities adjusted to fair value at least annually are its mutual fund investments, included in other assets, and derivative instruments, primarily included in other assets, other accrued liabilities and other noncurrent liabilities, and these assets and liabilities are therefore subject to the measurement and disclosure requirements of SFAS 157. As the Company adjusts the value of its mutual fund investments and derivative instruments to fair value each reporting period, no adjustment to retained earnings resulted from the adoption of SFAS 157.

The Company determines the fair value of its mutual fund investments based on quoted market prices (Level 1).

The Company generally uses derivatives for hedging purposes pursuant to SFAS 133, and the Company’s derivatives are primarily foreign currency forward contracts and interest rate swaps. The Company determines the fair value of its derivative instruments based on Level 2 inputs in the SFAS 157 fair value hierarchy. Level 2 fair value determinations are derived from directly or indirectly observable (market based) information. Such inputs are the basis for the fair values of the Company’s derivative instruments.

## **Critical Accounting Policies**

There have been no significant changes to the Company’s critical accounting policies since the filing of its Form 10-K for the year ended December 31, 2007.

### *Goodwill and Other Indefinite-Lived Intangible Assets*

In the third quarter of 2008, the Company conducted its annual test of impairment of goodwill and indefinite-lived intangible assets. The Company evaluates goodwill and indefinite-lived intangible assets (primarily trademarks and trade names) for impairment at the reporting unit level, which is one level below the operating segment level (herein referred to as the reporting unit). The Company conducts its annual test of impairment of goodwill and indefinite-lived intangible assets in the third quarter because it coincides with its annual strategic planning process. The Company also tests for impairment if events and circumstances indicate that it is more likely than not that the fair value of a reporting unit or an indefinite-lived intangible asset is below its carrying amount.

If the carrying amount of the reporting unit is greater than the fair value, impairment may be present. The Company assesses the fair value of its reporting units for its goodwill and other indefinite-lived assets generally based on discounted cash flow models, market multiples of earnings, or an actual sales offer received from a prospective buyer, if available. The use of a discounted cash flow model involves several assumptions, and changes in assumptions could materially impact fair value estimates. Assumptions critical to the Company's fair value estimates under the discounted cash flow model include the discount rate, royalty rates used in the Company's evaluation of trade names, projected average revenue growth, and projected long-term growth rates in the determination of terminal values. A one percentage point increase in the discount rate used to determine the fair values of the Company's reporting units, which were not deemed to be impaired based on the testing of goodwill in the third quarter as described above, would not cause the carrying value of each respective reporting unit to exceed its fair value.

The Company cannot predict the occurrence of events that might adversely affect the reported value of goodwill and other intangible assets. Such events may include, but are not limited to, strategic decisions made in response to economic and competitive conditions, the impact of the economic environment on the Company's customer base, or a material negative change in its relationships with significant customers.

The Company measures the amount of any goodwill impairment based upon the estimated fair value of the underlying assets and liabilities of the reporting unit, including any unrecognized intangible assets, and estimates the implied fair value of goodwill. An impairment charge is recognized to the extent the recorded goodwill exceeds the implied fair value of goodwill. An impairment charge is also recorded if the carrying amount of an indefinite-lived intangible asset exceeds the estimated fair value on the measurement date.

No impairment charges were recorded by the Company as a result of the annual impairment testing performed in the third quarter of 2008 and 2007.

### **Market Risk**

The Company's market risk is impacted by changes in interest rates, foreign currency exchange rates and certain commodity prices. Pursuant to the Company's policies, natural hedging techniques and derivative financial instruments may be utilized to reduce the impact of adverse changes in rates and prices. The Company does not hold or issue derivative instruments for trading purposes.

#### *Interest Rates*

Interest rate risk is present with both fixed and floating rate debt. The Company manages its interest rate exposure through its mix of fixed and floating rate debt and its conservative debt ratio target. Interest rate swap agreements designated as fair value hedges are used to mitigate the Company's exposure to changes in the fair value of fixed rate debt resulting from fluctuations in interest rates. Accordingly, interest rate fluctuations impact the fair value of the Company's fixed rate debt, which are offset by corresponding changes in the fair value of the swap agreements. Interest rate swaps may also be used to adjust interest rate exposures when appropriate based on market conditions, and for qualifying hedges, the interest differential of swaps is included in interest expense.

#### *Foreign Currency Exchange Rates*

The Company is exposed to foreign currency risk in the ordinary course of business since a portion of the Company's sales, expenses, and operating transactions are conducted on a global basis in various foreign currencies. To the extent that business transactions are not denominated in U.S. dollars, the Company is exposed to transactional foreign currency exchange rate risk. The Company's foreign exchange risk management policy emphasizes hedging anticipated intercompany and third party commercial transaction exposures of one-year duration or less. The Company uses foreign exchange forward contracts and purchased options as economic hedges for commercial transactions and to offset the future impact of gains and losses resulting from changes in the expected amount of functional currency cash flows to be received or paid upon settlement of the anticipated intercompany and third party commercial transactions. The Company also incurs gains and losses recorded within shareholders' equity due to the translation of the financial statements from the functional currency of its entities to U.S. dollars.

The Company uses natural hedging techniques such as offsetting or netting like foreign currency flows and denominating contracts in the appropriate functional currency. The Company also utilizes capital structures of foreign subsidiaries combined with forward contracts to minimize its exposure to foreign currency risk. The Company hedges portions of its net investments in foreign subsidiaries with forward contracts and cross-currency hedges of intercompany loans denominated in foreign currencies.

Gains and losses related to the settlement of qualifying hedges of commercial and intercompany transactions are deferred and included in the basis of the underlying transactions. Gains and losses related to qualifying forward exchange contracts, which are used to hedge

intercompany loans, are recognized in other comprehensive income. The Company's hedging programs reduce, but do not always eliminate, the impact of currency exchange rate movements.

#### *Commodity Price Risk*

The Company purchases certain raw materials, including resin, corrugate, steel, stainless steel, aluminum and other metals, which are subject to price volatility caused by unpredictable factors. While future movements of raw material costs are uncertain, a variety of programs, including periodic raw material purchases, purchases of raw materials for future delivery and customer price adjustments help the Company address this risk. Where practical, the Company uses derivatives as part of its risk management process.

The amounts shown below represent the estimated potential economic loss that the Company could incur from adverse changes in either interest rates or foreign exchange rates using the value-at-risk estimation model. The value-at-risk model uses historical foreign exchange rates and interest rates to estimate the volatility and correlation of these rates in future periods. It estimates a loss in fair market value using statistical modeling techniques that are based on a variance/covariance approach and includes substantially all market risk exposures (specifically excluding equity-method investments). The fair value losses shown in the table below represent the Company's estimate of the maximum loss that could arise in one day. The amounts presented in the table are shown as an illustration of the impact of potential adverse changes in interest and foreign currency exchange rates. The following table sets forth the one day value-at-risk as of and for the nine months ended September 30, *(dollars in millions)*:

	2008 Nine Month Average	September 30, 2008	2007 Nine Month Average	September 30, 2007	Confidence Level
<b>Market Risk (1)</b>					
Interest rates	\$ 13.1	\$ 10.9	\$ 8.3	\$ 8.8	95%
Foreign exchange	\$ 6.7	\$ 6.6	\$ 4.2	\$ 5.2	95%

(1) The Company generally does not enter into material derivative contracts for commodities; therefore, commodity price risk is not shown because the amounts are not material.

The 95% confidence interval signifies the Company's degree of confidence that actual losses would not exceed the estimated losses shown above. The amounts shown here disregard the possibility that interest rates and foreign currency exchange rates could move in the Company's favor. The value-at-risk model assumes that all movements in these rates will be adverse. Actual experience has shown that gains and losses tend to offset each other over time, and it is highly unlikely that the Company could experience losses such as these over an extended period of time. Additionally, since the Company operates globally, and therefore, among a broad basket of currencies, its foreign currency exposure is diversified. These amounts should not be considered projections of future losses, because actual results may differ significantly depending upon activity in the global financial markets.

#### **Forward-Looking Statements**

Forward-looking statements in this Report are made in reliance upon the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements may relate to, but are not limited to, information or assumptions about the effects of Project Acceleration, sales (including pricing), income/(loss), earnings per share, operating income or gross margin improvements or declines, return on equity, return on invested capital, capital and other expenditures, working capital, cash flow, dividends, capital structure, debt to capitalization ratios, interest rates, internal growth rates, restructuring, impairment and other charges, potential losses on divestitures, impact of changes in accounting standards, pending legal proceedings and claims (including environmental matters), future economic performance, costs and cost savings (including raw material and sourced product inflation, productivity and streamlining), synergies, management's plans, goals and objectives for future operations, performance and growth or the assumptions relating to any of the forward-looking statements. These statements generally are accompanied by words such as "intend," "anticipate," "believe," "estimate," "project," "target," "plan," "expect," "will," "should," "would" or similar statements. The Company cautions that forward-looking statements are not guarantees because there are inherent difficulties in predicting future results. Actual results could differ materially from those expressed or implied in the forward-looking statements. Important factors that could cause actual results to differ materially from those suggested by the forward-looking statements include, but are not limited to, the Company's dependence on the strength of retail economies in light of the global economic slowdown; competition with other manufacturers and distributors of consumer products; major retailers' strong bargaining power; changes in the prices of raw materials and sourced products and the Company's ability to obtain raw materials and sourced products in a timely manner from suppliers; the Company's ability to develop innovative new products and to develop, maintain and strengthen its end-user brands; the Company's ability to expeditiously close facilities and move operations while managing foreign regulations and other impediments; the



Company's ability to manage successfully risks associated with divesting or discontinuing businesses and product lines; the Company's ability to implement successfully information technology solutions throughout its organization; the Company's ability to improve productivity and streamline operations; the Company's ability to refinance short term debt on terms acceptable to it particularly given the recent turmoil and uncertainty in the global credit markets; increases in the funding obligations related to the Company's pension plans due to declining asset values or otherwise; the risks inherent in the Company's foreign operations and those matters set forth in this Report generally and Exhibit 99.1 to this Report.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

The information required by this item is incorporated herein by reference to the section entitled "Market Risk" in the Company's Management's Discussion and Analysis of Financial Condition and Results of Operations (Part I, Item 2).

### **Item 4. Controls and Procedures**

As of September 30, 2008, an evaluation was performed by the Company's management, under the supervision and with the participation of the Company's chief executive officer and chief financial officer, of the effectiveness of the Company's disclosure controls and procedures. Based on that evaluation, the chief executive officer and the chief financial officer concluded that the Company's disclosure controls and procedures were effective.

There were no changes in the Company's internal control over financial reporting that occurred during the quarter ended September 30, 2008 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting. The Company is in the process of replacing various business information systems worldwide with an enterprise resource planning system from SAP. Implementation will continue to occur over several years in phases, primarily based on geographic region and segment. This activity involves the migration of multiple legacy systems and users to a common SAP information platform. In addition, this conversion will impact certain interfaces with the Company's customers and suppliers, resulting in changes to the tools the Company uses to take orders, procure materials, schedule production, remit billings, make payments and perform other business functions.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

Information required under this Item is contained above in Part I. Financial Information, Item 1 and is incorporated herein by reference.

### **Item 1A. Risk Factors**

The information presented below updates and supplements the risk factors set forth in the Company's 2007 Form 10-K and in Exhibit 99.1 to the Company's Form 10-Q for the period ended June 30, 2008.

**The level of returns on pension and postretirement plan assets and the actuarial assumptions used for valuation purposes could affect the Company's earnings and cash flows in future periods. Changes in government regulations could also affect the Company's pension and postretirement plan expense and funding requirements.**

The funding obligations for the Company's pension plans are impacted by the performance of the financial markets, particularly the equity markets, and interest rates. Funding obligations are determined under government regulations and are measured each year based on the value of assets and liabilities on a specific date. If the financial markets do not provide the long-term returns that are expected under the governmental funding calculations, the Company could be required to make larger contributions. The equity markets can be, and recently have been, very volatile, and therefore the Company's estimate of future contribution requirements can change dramatically in relatively short periods of time. Similarly, changes in interest rates and legislation enacted by governmental authorities can impact the timing and amounts of contribution requirements. An adverse change in the funded status of the plans could significantly increase the Company's required contributions in the future and adversely impact its liquidity.

Assumptions used in determining projected benefit obligations and the fair value of plan assets for the Company's pension and other postretirement benefit plans are evaluated by the Company in consultation with outside actuaries. In the event that the Company determines that changes are warranted in the assumptions used, such as the discount rate, expected long term rate of return, or health

care costs, the Company's future pension and projected postretirement benefit expenses could increase or decrease. Due to changing market conditions or changes in the participant population, the actuarial assumptions that the Company uses may differ from actual results, which could have a significant impact on the Company's pension and postretirement liability and related costs.

**The inability to obtain raw materials and finished goods in a timely manner from suppliers would adversely affect the Company's ability to manufacture and market its products.**

The Company purchases raw materials to be used in manufacturing its products. In addition, the Company is placing increasing reliance on third party manufacturers as a source for finished goods. The Company typically does not enter into long-term contracts with its suppliers or sourcing partners. Instead, most raw materials and sourced goods are obtained on a "purchase order" basis. In addition, in some instances the Company maintains single-source or limited-source sourcing relationships, either because multiple sources are not available or the relationship is advantageous due to performance, quality, support, delivery, capacity, or price considerations. Financial, operating or other difficulties suffered by the Company's suppliers and/or sourcing partners or changes in the Company's relationships with them could result in manufacturing or sourcing interruptions, delays, and inefficiencies and prevent the Company from manufacturing or obtaining the finished goods necessary to meet customer demand.

**Circumstances associated with the Company's potential divestitures and product line rationalizations could adversely affect the Company's results of operations and financial condition.**

The Company continues to evaluate the performance and strategic fit of its businesses and may decide to sell or discontinue a business or product line based on such an evaluation. A decision to divest or discontinue a business or product line may result in asset impairments, including those related to goodwill and other intangible assets, and losses upon disposition, both of which could have an adverse effect on the Company's results of operations and financial condition. In addition, the Company may encounter difficulty in finding buyers (or prospective buyers may have difficulty obtaining financing) or alternative exit strategies at acceptable prices and terms and in a timely manner. Divestitures and business discontinuations could involve additional risks, including the following:

- difficulties in the separation of operations, services, products and personnel;
- the diversion of management's attention from other business concerns;
- the assumption of certain current or future liabilities in order to induce a buyer to complete a divestiture;
- the disruption of the Company's business;
- and the potential loss of key employees.

The Company may not be successful in managing these or any other significant risks that it may encounter in divesting or discontinuing a business or product line.

**The Company may have additional tax liabilities.**

The Company is subject to income tax in the U.S. and numerous jurisdictions outside the U.S. Significant estimation and judgment is required in determining the Company's worldwide provision for income taxes. In the ordinary course of the Company's business, there are many transactions and calculations where the ultimate tax determination is uncertain. The Company is regularly under audit by tax authorities. Although the Company believes its tax estimates are reasonable, the final outcome of tax audits and related litigation could be materially different than that reflected in its historical income tax provisions and accruals. There can be no assurance that the resolution of any audits or litigation will not have an adverse effect on future operating results.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds****ISSUER PURCHASES OF EQUITY SECURITIES**

The following table provides information about the Company's purchases of equity securities during the quarter ended September 30, 2008.

Period	Total Number of Shares Purchased(1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number Approximate dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
7/1/08-7/31/08	1,623	\$ 16.82	—	—
8/1/08-8/31/08	4,405	\$ 18.00	—	—
9/1/08-9/30/08	22,642	\$ 19.54	—	—
Total	<u>28,670</u>	\$ 19.15	<u>—</u>	<u>—</u>

- (1) None of these transactions were made pursuant to a publicly announced repurchase plan. All shares purchased for the quarter were acquired by the Company to satisfy employees' tax withholding and payment obligations in connection with the vesting of awards of restricted stock, which are repurchased by the Company based on their fair market value on the vesting date.

**Item 6. Exhibits**

- 10.1 \$400,000,000 Term Loan Credit Agreement, dated as of September 19, 2008, by and among, the Company, Bank of America, N.A., as administrative agent, and each lender a signatory thereto.
- 10.2 Employment Security Agreement with Mark D. Ketchum dated September 30, 2008 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated September 30, 2008).
- 10.3 Form of Employment Security Agreement with certain executive officers and a limited number of other senior management employees (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K dated September 30, 2008).
- 10.4 Form of Restricted Stock Unit Agreement for Non-Employee Directors.
- 31.1 Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a), as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a), as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 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.
- 99.1 Safe Harbor Statement.

### **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.

NEWELL RUBBERMAID INC.  
Registrant

Date: November 10, 2008

/s/ J. Patrick Robinson

J. Patrick Robinson  
Chief Financial Officer

NEWELL RUBBERMAID INC.

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CREDIT AGREEMENT

Dated as of September 19, 2008

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\$400,000,000

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BANK OF AMERICA, N.A.  
as Administrative Agent

and

JP MORGAN CHASE BANK, N.A.,  
as Syndication Agent

BANC OF AMERICA SECURITIES LLC  
and

J.P. MORGAN SECURITIES INC.,  
as Joint Lead Arrangers and Joint Bookrunners

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EXHIBIT A		Form of Loan Notice
EXHIBIT B	-	Form of Assignment and Assumption



CREDIT AGREEMENT dated as of September 19, 2008, between NEWELL RUBBERMAID INC., a corporation duly organized and validly existing under the laws of the State of Delaware (together with its successors, the "Borrower"); each of the lenders which is a signatory hereto (together with its successors and permitted assigns, individually, a "Lender" and, collectively, the "Lenders"); and BANK OF AMERICA, N.A., as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the "Administrative Agent").

The Borrower has requested that the Lenders make a term loan to the Borrower in an aggregate principal amount not exceeding \$400,000,000 on the Effective Date. The Lenders are prepared to make such term loan upon the terms and conditions hereof, and, accordingly, the parties agree as follows:

## SECTION 1

### DEFINITIONS AND ACCOUNTING MATTERS

**1.01 Certain Defined Terms.** As used herein, the following terms shall have the following meanings (all terms defined in this Section 1 or in other provisions of this Agreement in the singular to have the same meanings when used in the plural and vice versa):

"Additional Costs" has the meaning provided in Section 5.01.

"Adjusted LIBO Rate" shall mean, for any LIBO Rate Loan for any Interest Period, a rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) determined by the Administrative Agent to be equal to the LIBO Rate for the Interest Period for such Loan divided by 1 minus the Reserve Requirement for such Loan for such Interest Period.

"Administrative Agent" means Bank of America in its capacity as administrative agent under any of the Credit Documents.

"Administrative Agent Fee Letter" means the letter agreement dated August 26, 2008 among the Borrower, Bank of America and BAS.

"Administrative Agent's Account" shall mean, such account as the Administrative Agent shall designate in a notice to the Borrower and the Lenders.

"Advance Period" has the meaning provided in Section 4.04.

"Administrative Questionnaire" shall mean an Administrative Questionnaire in the form supplied by the Administrative Agent.

"Affected Loans" has the meaning provided in Section 5.04.

"Affected Type" has the meaning provided in Section 5.04.

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“Affiliate” shall mean, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent Parties” has the meaning provided in Section 11.02.

“Applicable Lending Office” shall mean for each Lender and for each Type of Loan the lending office of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan in the Administrative Questionnaire submitted by such Lender or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower.

“Applicable Margin” shall mean, during any period when the Rating is at one of the Rating Groups specified below, the percentage set forth below opposite the reference to the relevant Type of Loan:

	<u>Rating Group I</u>	<u>Rating Group II</u>	<u>Rating Group III</u>	<u>Rating Group IV</u>	<u>Rating Group V</u>	<u>Rating Group VI</u>
Applicable Margin for LIBO Rate Loans	0.75%	1.00%	1.375%	1.75%	2.00%	2.50%
Applicable Margin for Base Rate Loans	0%	0%	0.375%	0.75%	1.00%	1.50%

Any change in the Applicable Margin by reason of a change in the Moody’s Rating, the Standard & Poor’s Rating or the Fitch Rating shall become effective on the date of announcement or publication by the respective Rating Agency of a change in such Rating or, in the absence of such announcement or publication, on the effective date of such changed rating.

“Applicable Percentage” shall mean, with respect to any Lender at any time, with respect to such Lender’s portion of the outstanding Term Loan at any time, the percentage of the outstanding principal amount of the Term Loan held by such Lender at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Annex I or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Approved Fund” shall mean any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignment and Assumption” shall mean an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 11.05), and accepted by the Administrative Agent, in the form of Exhibit B or any other form approved by the Administrative Agent.

“Bank of America” shall mean Bank of America, N.A. and its successors.

“BAS” means Banc of America Securities LLC, in its capacity as joint lead arranger and joint bookrunner.

“Bankruptcy Code” means the United States Bankruptcy Code of 1978, as amended from time to time.

“Base Rate” shall mean, with respect to any Base Rate Loan, for any day, the higher of (a) the Federal Funds Rate for such day plus 1/2 of 1% and (b) the Prime Rate for such day.

“Base Rate Loans” shall mean Loans which bear interest based upon the Base Rate.

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

“Borrower Materials” has the meaning provided in Section 8.01.

“Business Day” shall mean any day (a) that is not a Saturday, Sunday or other day on which commercial banks are authorized or required to close in New York City and (b) if such day relates to the giving of notices in connection with a borrowing of, a payment or prepayment of principal of or interest on, Conversion of or into, or an Interest Period for, a LIBO Rate Loan or a notice by the Borrower with respect to any such borrowing, payment, prepayment, Conversion or Interest Period, also on which dealings in deposits are carried out in the London interbank market.

“Capital Lease Obligations” shall mean, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP (including Statement of Financial Accounting Standards No. 13 of the Financial Accounting Standards Board) and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP (including such Statement No. 13).

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Commitment” shall mean, as to each Lender, the obligation of such Lender to make its portion of the Term Loan to the Borrower pursuant to Section 2.01, in the principal amount set opposite such Lender’s name on Annex I hereto under the caption “Commitment”. The aggregate principal amount of the Commitments of all of the Lenders as in effect on the Closing Date is FOUR HUNDRED MILLION DOLLARS (\$400,000,000).

“Commitment Letter” means the letter agreement dated August 26, 2008 from Bank of America, BAS, JPMCB and JPMorgan and accepted and agreed to by the Borrower.

“Consolidated EBITDA” shall mean, for any period, Consolidated Net Income for such period plus, without duplication and to the extent deducted in determining such Consolidated Net

Income for such period, the sum of (a) income tax expense, (b) interest expense, amortization or writeoff of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including the Loans), (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and organization costs and (e) any extraordinary, unusual or non-recurring charges or losses, and minus, to the extent included in determining such Consolidated Net Income for such period, the sum of (a) interest income, (b) any extraordinary, unusual or non-recurring income or gains (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sales of assets outside of the ordinary course of business) and (c) any other non-cash income, all as determined on a consolidated basis.

“Consolidated Interest Expense” shall mean, for any period and without duplication, total interest expense (including that attributable to Capital Lease Obligations) of the Borrower and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrower and its Subsidiaries accrued or capitalized during such period (whether or not actually paid during such period) (including all commissions, discounts and other fees and charges owed with respect to standby letters of credit and bankers’ acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), but excluding any interest expense for such period relating to quarterly or monthly income preferred securities, quarterly income capital securities or other similar securities.

“Consolidated Net Income” shall mean, for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Borrower) in which the Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any security issued by the Borrower or any of its Subsidiaries or of any agreement, instrument or other undertaking to which the Borrower or any of its Subsidiaries is a party or by which any of them or their respective property is bound (other than under any Credit Document) or Requirement of Law applicable to such Subsidiary.

“Continue”, “Continuation” and “Continued” shall refer to a continuation pursuant to Section 2.06(c) of a LIBO Rate Loan from one Interest Period to the next Interest Period.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Controlling Stock Disposition” has the meaning provided in Section 8.07.

“Convert”, “Conversion” and “Converted” shall refer to a conversion pursuant to Section 2.06(c) of one Type of Loans into the other Type of Loans, which may be accompanied by a transfer by a Lender (at its sole discretion) of a Loan from one Applicable Lending Office to another).

“Credit Documents” shall mean this Agreement and the Notes, if any.

“Credit Extension” shall mean the making of the Term Loan hereunder.

“Default” shall mean an Event of Default or an event which with notice or lapse of time or both would become an Event of Default.

“Disposition” shall have the meaning assigned to that term in Section 8.07(vi).

“Disposition Period” shall mean, for any Disposition, a period of twelve months ending on the date of such Disposition.

“Dollars” and “\$” shall mean lawful money of the United States of America.

“Effective Date” shall mean the date hereof.

“Environmental Affiliate” shall mean, as to any Person, any other Person whose liability (contingent or otherwise) for any Environmental Claim such Person may have retained, assumed or otherwise become liable (contingently or otherwise), whether by contract, operation of law or otherwise; provided that each Subsidiary of such Person, and each former Subsidiary or division of such Person transferred to another Person, shall in any event be an “Environmental Affiliate” of such Person.

“Environmental Claim” shall mean, with respect to any Person, any notice, claim, demand or other communication (whether written or oral) by any other Person alleging or asserting liability of such Person for investigatory costs, cleanup costs, governmental response costs, damages to natural resources or other Property, personal injuries, fines or penalties arising out of, based on or resulting from (a) the presence, or release into the environment, of any hazardous material at any location, whether or not owned by such Person, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

“Environmental Laws” shall mean any and all Federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment, including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes.

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

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“Event of Default” shall have the meaning assigned to that term in Section 9.

“Federal Funds Rate” shall mean, for any day, the weighted average (rounded upwards, if necessary, to the nearest 1/100th of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (i) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average (rounded upwards, if necessary, to the next 1/100th of 1%) of the quotations for such day for transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Fee Letter” means the letter agreement dated August 26, 2008 among the Borrower, Bank of America, BAS, JPMCB and JPMorgan.

“Fitch” shall mean Fitch Investors Services, Inc. or any successor thereto.

“Fitch Rating” shall mean, as of any date, the rating most recently published by Fitch relating to the unsecured, long-term, senior debt securities of the Borrower.

“GAAP” shall mean generally accepted accounting principles applied on a basis consistent with those which, in accordance with the last sentence of Section 1.02(a), are to be used in making the calculations for purposes of determining compliance with the provisions of this Agreement.

“Governmental Authority” shall mean any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“Guarantee” of any Person shall mean any guarantee, endorsement, contingent agreement to purchase or to furnish funds for the payment or maintenance of, or any other contingent liability on or with respect to, the Indebtedness, other obligations, net worth, working capital or earnings of any other Person (including, without limitation, the liability of such Person in respect of the Indebtedness of any partnership of which such Person is a general partner), or the

guarantee by such Person of the payment of dividends or other distributions upon the stock of any other Person, or the agreement by such Person to purchase, sell or lease (as lessee or lessor) property, products, materials, supplies or services primarily for the purpose of enabling any other Person to make payment of its obligations or to assure a creditor against loss, and the verb “Guarantee” shall have a correlative meaning, provided that the term “Guarantee” shall not include endorsements for collection or deposits in the ordinary course of business.

“Indebtedness” shall mean, as to any Person at any date (without duplication): (i) indebtedness created, issued, incurred or assumed by such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments; (ii) all obligations of such Person to pay the deferred purchase price of property or services, excluding, however, trade accounts payable (other than for borrowed money) arising in, and accrued expenses incurred in, the ordinary course of business of such Person so long as such trade accounts payable are paid within 120 days of the date the respective goods are delivered or the services are rendered; (iii) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; (iv) all Indebtedness of others Guaranteed by such Person; (v) all Capital Lease Obligations; (vi) reimbursement obligations of such Person (whether contingent or otherwise) in respect of bankers acceptances, surety or other bonds and similar instruments (other than commercial, standby or performance letters of credit); (vii) unpaid reimbursement obligations of such Person (other than contingent obligations) in respect of commercial, standby or performance letters of credit; and (viii) debt securities or obligations (including preferred debt securities) issued in connection with Permitted Securitizations included as indebtedness in accordance with GAAP on a consolidated balance sheet of such Person.

“Interest Coverage Ratio” shall mean, as at any date of determination thereof, the ratio of (a) Consolidated EBITDA for the period of four consecutive fiscal quarters ending on or most recently ended prior to such date to (b) Consolidated Interest Expense for such period.

“Interest Period” shall mean, with respect to any LIBO Rate Loan, each period commencing on the date such LIBO Rate Loan is made or Converted from a Loan of another Type or the last day of the next preceding Interest Period for such Loan and ending on the numerically corresponding day in the first, second, third or sixth calendar month thereafter, as the Borrower may select as provided in Section 2.02, except that each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month. Notwithstanding the foregoing: (i) if any Interest Period would otherwise commence before and end after the Maturity Date, such Interest Period shall not be available hereunder; (ii) each Interest Period which would otherwise end on a day which is not a Business Day shall end on the next succeeding Business Day (or, in the case of an Interest Period for any LIBO Rate Loans, if such next succeeding Business Day falls in the next succeeding calendar month, on the next preceding Business Day); and (iii) notwithstanding clause (i) above, no Interest Period for any LIBO Rate Loans shall have a duration of less than one month and, if the Interest Period for any such Loans would otherwise be a shorter period, such Loans shall not be available hereunder.

“JPMCB” shall mean JPMorgan Chase Bank, N.A.

“JPMorgan” shall mean J.P. Morgan Securities Inc., in its capacity as a joint lead arranger and joint bookrunner.

“Jurisdiction” shall mean, with respect to the Borrower, the country or countries (including any political subdivision or taxing authority thereof or therein) under whose laws the Borrower is organized or where the Borrower is domiciled, resident or licensed or otherwise qualified to do business or where any significant part of the Property of the Borrower is located.

“LIBO Rate” shall mean, for any Interest Period for any LIBO Rate Loan, the rate for deposits with a maturity comparable to such Interest Period commencing on the first day of such Interest Period equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, on the Quotation Date. If such rate is not available at such time for any reason, then the “LIBO Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBO Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

“LIBO Rate Loans” shall mean Loans the interest rates on which are determined on the basis of Adjusted LIBO Rates.

“Lien” shall mean, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, the Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Loans” means an extension of credit by a Lender to the Borrower under Article II in the form of a portion of the Term Loan.

“Loan Notice” means a notice of (a) a borrowing of the Term Loan pursuant to Section 2.02(a), (b) a conversion of Loans from one type to the other pursuant to Section 2.06(c) a continuation of LIBO Rate Loans pursuant to Section 2.06(c), which, if in writing, shall be substantially in the form of Exhibit A.

“Majority Lenders” shall mean, at any time, Lenders holding in the aggregate more than 50% of the outstanding Term Loan at such time.

“Mandatory Cost” shall mean, with respect to any Lender, the cost, if any, imputed to such Lender of compliance with the cash ratio and special deposit requirements of the Bank of England and/or the banking supervision or other costs imposed by the Financial Services



Authority during the relevant period, as determined by the Bank of England and/or Financial Services Authority during such relevant period.

“Material Adverse Effect” shall mean a material adverse effect on (i) the consolidated financial condition, operations, business or prospects of the Borrower and its Subsidiaries (taken as a whole), (ii) the ability of the Borrower to perform its obligations under any of the Credit Documents or (iii) the validity or enforceability of any of the Credit Documents.

“Maturity Date” shall mean September 19, 2011.

“Moody’s” shall mean Moody’s Investors Service, Inc. or any successor thereto.

“Moody’s Rating” shall mean, as of any date, the rating most recently published by Moody’s relating to the unsecured, long-term, senior debt securities of the Borrower.

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Worth” shall mean, at any time, the consolidated stockholders’ equity of the Borrower and its Subsidiaries determined on a consolidated basis without duplication in accordance with GAAP.

“Non-Strategic Property” shall mean (a) Property related to the Borrower’s (i) Rubbermaid Home Product’s insulated products (e.g. coolers and totes, etc.), outdoor shed and storage solutions businesses and (ii) Ashland Hardware Systems business and (b) Property acquired as part of the acquisition of a business that is designated by resolution of the Board of Directors of the Borrower adopted no later than six months after such acquisition as non-strategic Property.

“Notes” shall mean the promissory notes provided for by Section 2.05(d).

“Participant” has the meaning provided in Section 11.05(c)(i).

“Payor” has the meaning provided in Section 4.04.

“PBGC” shall mean the Pension Benefit Guaranty Corporation or any entity succeeding to any or all its functions under ERISA.

“Permitted Activities” has the meaning provided in Section 8.09.

“Permitted Securitization” shall mean any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or such Subsidiary, as the case may be, may sell, convey or otherwise transfer, or grant a security interest in, any receivables (whether now existing or arising in the future) of the Borrower or any of its Subsidiaries and any assets related thereto, including all collateral securing such receivables, all contracts and all guarantees or other obligations in respect of such receivables

and the proceeds of such receivables; provided that (a) there shall be no recourse under such securitization to the Borrower or any of its other Subsidiaries other than pursuant to Standard Securitization Undertakings and (b) the Administrative Agent shall be reasonably satisfied that the terms of such securitization are in compliance with the terms of this Agreement.

“Person” shall mean an individual, a corporation, a company, a limited liability company, a voluntary association, a partnership, a trust, an unincorporated organization or a government or any agency, instrumentality or political subdivision thereof.

“Plan” shall mean any employee pension benefit plan (other than a Multiemployer Plan) which is or was established, sponsored, maintained or contributed to, by the Borrower or any ERISA Affiliate and is or was subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA.

“Platform” has the meaning provided in Section 8.01.

“Post-Default Rate” shall mean, in respect of any principal of any Loan or any other amount payable by the Borrower under this Agreement or any Note which is not paid when due (whether at stated maturity, by acceleration or otherwise), a rate per annum during the period commencing on the due date until such amount is paid in full equal to the sum of 2% plus the Base Rate as in effect from time to time plus the Applicable Margin for Base Rate Loans (provided that, if such amount in default is principal of a LIBO Rate Loan and the due date is a day other than the last day of the Interest Period therefor, the “Post-Default Rate” for such principal shall be, for the period commencing on the due date and ending on the last day of the Interest Period therefor, 2% above the interest rate for such Loan as provided in Section 3.02 and, thereafter, the rate provided for above in this definition).

“Prime Rate” shall mean a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the Prime Rate announced by Bank of America shall take effect at the opening of business specified in the public announcement of such change.

“Property” shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible (including, without limitation, shares of capital stock).

“Proposed Lender” has the meaning provided in Section 5.07.

“Quarterly Dates” shall mean the last Business Day of each March, June, September and December, the first of which shall be the first such day after the Effective Date.

“Quotation Date” shall mean, for any Interest Period, the date two Business Days prior to the commencement of such Interest Period.

“Rating” shall mean the Moody’s Rating, the Standard & Poor’s Rating or the Fitch Rating.

“Rating Agency” shall mean Moody’s, Standard & Poor’s or Fitch.

“Rating Group I” shall mean any two of the following: the Moody’s Rating is at or above A2, the Standard & Poor’s Rating is at or above A or the Fitch Rating is at or above A; “Rating Group II” shall mean (a) any two of the following: the Moody’s Rating is at or above A3, the Standard & Poor’s Rating is at or above A- or the Fitch Rating is at or above A- and (b) Rating Group I is not in effect; “Rating Group III” shall mean (a) any two of the following: the Moody’s Rating is at or above Baa1, the Standard & Poor’s Rating is at or above BBB+ or the Fitch Rating is at or above BBB+ and (b) neither Rating Group I nor Rating Group II is in effect;

“Rating Group IV” shall mean (a) any two of the following: the Moody’s Rating is at or above Baa2, the Standard & Poor’s Rating is at or above BBB or the Fitch Rating is at or above BBB and (b) neither Rating Group I, Rating Group II nor Rating Group III is in effect; “Rating Group V” shall mean (a) any two of the following: the Moody’s Rating is at or above Baa3, the Standard & Poor’s Rating is at or above BBB- or the Fitch Rating is at or above BBB- and (b) neither Rating Group I, Rating Group II, Rating Group III nor Rating Group IV is in effect;

“Rating Group VI” shall mean none of Rating Group I, Rating Group II, Rating Group III, Rating Group IV and Rating Group V is in effect; provided that (i) if at any time the Company has two or three Ratings falling within two different Rating Groups that are one Rating Group apart, the relevant Rating Group for purposes of determining the Applicable Margin shall be the Rating Group for the higher of the Moody’s Rating (if any) or the Standard & Poor’s Rating (if any), (ii) if at any time the Company has two or three Ratings falling within different Rating Groups that are two or more Rating Groups apart, the relevant Rating Group for purposes of determining the Applicable Margin shall be the Rating Group that is one level above the Rating Group for the lower (or the lowest, as the case may be) of such Ratings and (iii) for this purpose of this proviso, Rating Group I is higher than Rating Group II, Rating Group II is higher than Rating Group III, Rating Group III is higher than Rating Group IV, Rating Group IV is higher than Rating Group V and Rating Group V is higher than Rating Group VI).

“Register” shall have the meaning assigned to that term in Section 11.05.

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

“Regulatory Change” shall mean, with respect to any Lender, any change after the date hereof, in United States Federal, state or foreign law or regulations (including Regulation D) or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks including such Lender of or under any United States Federal, state or foreign law or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

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

“Requesting Lender” has the meaning set forth in Section 5.07.

“Required Payment” has the meaning provided in Section 4.04.

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

“Reserve Requirement” shall mean, for any Interest Period for any LIBO Rate Loan, the effective maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding one billion Dollars against “Eurocurrency liabilities” (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (i) any category of liabilities which includes deposits by reference to which the LIBO Rate is to be determined or (ii) any category of extensions of credit or other assets which includes LIBO Rate Loans.

“Revolving Credit Agreement” means that certain credit agreement dated as of November 14, 2005, by and between the Borrower, each of the lenders from time to time party thereto and JPMCB, as administrative agent, as amended or modified from time to time.

“Significant Subsidiary” shall mean, at any time, any Subsidiary of the Borrower if the revenues of such Subsidiary and its Subsidiaries for the four consecutive fiscal quarters of such Subsidiary most recently ended (determined on a consolidated basis without duplication in accordance with GAAP and whether or not such Person was a Subsidiary of the Borrower during all or any part of the fiscal period of the Borrower referred to below) exceed an amount equal to 7-1/2% of the revenues of the Borrower and its Subsidiaries for the four consecutive fiscal quarters of the Borrower most recently ended (determined on a consolidated basis without duplication in accordance with GAAP and including such Subsidiary and its Subsidiaries on a pro forma basis if such Subsidiary was not a Subsidiary of the Borrower).

“Standard & Poor’s” shall mean Standard & Poor’s Ratings Services, or any successor thereto.

“Standard and Poor’s Rating” shall mean, as of any date, the rating most recently published by Standard & Poor’s relating to the unsecured, long-term, senior debt securities of the Borrower.

“Standard Securitization Undertakings” shall mean representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary that are reasonably customary in the non-recourse securitization of receivables transactions.

“Subsidiary” of any Person shall mean any corporation, partnership, limited liability company or other entity of which at least a majority of the outstanding shares of stock or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership, limited liability company or other entity (irrespective of whether or not at the time stock or other ownership interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person and/or one or more of the Subsidiaries of such Person. “Wholly-Owned Subsidiary” shall mean any such corporation, partnership, limited liability company or other entity of which all such shares or other ownership interests, other than directors’ qualifying shares or shares held by nominees to satisfy any requirement as to minimum number of shareholders, are so owned or controlled.

“Swap Agreement” shall mean any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a “Swap Agreement”.

“Taxes” shall have the meaning assigned to that term in Section 5.06(a).

“Term Loan” shall have the meaning assigned to that term in Section 2.01.

“Total Capital” shall mean the sum of (i) Net Worth plus (ii) Total Indebtedness.

“Total Consolidated Assets” shall mean, as at any time, the total of all the assets appearing on a consolidated balance sheet of the Borrower and its Subsidiaries determined in accordance with generally accepted accounting principles applicable to the type of business in which the Borrower and such Subsidiaries are engaged, and may be determined as of a date, selected by the Borrower, not more than sixty days prior to the happening of the event for which such determination is being made.

“Total Indebtedness” shall mean, as at any time, the total Indebtedness of the Borrower and its Subsidiaries determined on a consolidated basis without duplication.

“Type” shall have the meaning assigned to that term in Section 1.03.

“Wholly-Owned Subsidiary” shall have the meaning assigned to that term in the definition of the term “Subsidiary”.

**1.02 Accounting Terms and Determinations.** (a) All accounting terms used herein shall be interpreted, and, unless otherwise disclosed to the Lenders in writing at the time of delivery thereof in the manner described in subsection (b) below, all financial statements and certificates and reports as to financial matters required to be delivered to the Lenders hereunder shall be prepared, in accordance with generally accepted accounting principles applied on a basis consistent with those used in the preparation of the latest financial statements furnished to the Lenders hereunder after the date hereof (or, until such financial statements are furnished, consistent with those used in the preparation of the financial statements referred to in Section 7.02(a)). All calculations made for the purposes of determining compliance with the terms of Sections 8.07(a)(vi), 8.10 and 8.11 shall, except as otherwise expressly provided herein, be made by application of generally accepted accounting principles applied on a basis consistent with those used in the preparation of the annual or quarterly financial statements furnished to the Lenders pursuant to Section 8.01 (or, until such financial statements are furnished, consistent with those used in the preparation of the financial statements referred to in Section 7.02(a)) unless (i) the Borrower shall have objected to determining such compliance on such basis at the time of delivery of such financial statements or (ii) the Majority Lenders shall so object in writing within 30 days after delivery of such financial statements, in either of which events such calculations shall be made on a basis consistent with those used in the preparation of the latest financial statements as to which such objection shall not have been made (which, if objection is made in respect of the first financial statements delivered under Section 8.01, shall mean the financial statements referred to in Section 7.02(a)).

(b) The Borrower shall deliver to the Lenders at the same time as the delivery of any annual or quarterly financial statement under Section 8.01 (i) a description in reasonable detail of any material variation between the application of accounting principles employed in the preparation of such statement and the application of accounting principles employed in the preparation of the next preceding annual or quarterly financial statements as to which no objection has been made in accordance with the last sentence of subsection (a) above and (ii) reasonable estimates of the difference between such statements arising as a consequence thereof.

(c) To enable the ready and consistent determination of compliance with the covenants set forth in Section 8, the Borrower shall not change the last day of its fiscal year from December 31, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30, respectively.

**1.03 Types of Loans.** Loans hereunder are distinguished by “Type”. The “Type” of a Loan refers to whether such Loan is a Base Rate Loan or a LIBO Rate Loan, each of which constitutes a Type.

**1.04 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, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement,

instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Annexes, Exhibits and Schedules shall be construed to refer to Sections of, and Annexes, Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

## **SECTION 2**

### **TERM LOAN.**

**2.01 Term Loan.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make its portion of a term loan (the "Term Loan") to the Borrower in Dollars on the Effective Date in an amount not to exceed such Lender's Term Loan Commitment. Amounts repaid on the Term Loan may not be reborrowed. The Term Loan may consist of Base Rate Loans or LIBO Rate Loans or a combination thereof, as further provided herein.

#### **2.02 Borrowing of the Term Loan.**

(a) The borrowing of the Term Loan shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of such borrowing if the borrowing will consist of LIBO Rate Loans, and (ii) one Business Day prior to such borrowing if the borrowing will consist of Base Rate Loans. Such telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by an authorized officer of the Borrower. Such Loan Notice (whether telephonic or written) shall specify (i) the requested date of the borrowing (which shall be a Business Day), (ii) the principal amount of the Term Loan to be borrowed, (iii) the Type to be borrowed, and (iv) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify the Type of the Term Loan in such Loan Notice, then the Term Loan shall be made as a Base Rate Loan. If the Borrower requests a borrowing of a LIBO Rate Loan in such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of such Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the Term Loan. Each Lender shall make the amount of its Term Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. New York time on the Business Day specified in such Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 6.01 and Section 6.02, the Administrative Agent shall make all funds so

received available to the Borrower in immediately available funds either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds to an account or accounts of the Borrower, in each case in accordance with instructions provided to the Administrative Agent by the Borrower.

**2.03 Fees.** The Borrower agrees to pay to the Administrative Agent and BAS, for their own respective accounts fees in the amounts and at the times specified in the Fee Letter and the Administrative Agent Fee Letter. Such fees shall be fully earned when paid and shall be non-refundable for any reason whatsoever.

**2.04 Several Obligations; Remedies Independent.** The failure of any Lender to make its portion of the Term Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its portion of the Term Loan on such date, and no Lender shall be responsible for the failure of any other Lender to make its portion of the Term Loan to be made by such other Lender. The amounts payable by the Borrower at any time hereunder and under its Notes to each Lender shall be a separate and independent debt and each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and the Notes, and it shall not be necessary for any other Lender or the Administrative Agent to consent to, or be joined as an additional party in, any proceedings for such purposes.

**2.05 Evidence of Debt.** (a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from its portion of the Term Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall maintain accounts in which it shall record (i) the date, amount, maturity date and interest rate of each Loan hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to clause (a) or (b) of this Section 2.05 shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(d) Any Lender may request that the portion of the Term Loan made by it to the Borrower be evidenced by a promissory note of the Borrower. In such event, the Borrower shall prepare, execute and deliver to such Lender one or more promissory notes payable to the order of such Lender and in a form approved by the Administrative Agent (the "Notes").

**2.06 Prepayments; Conversions and Continuations.** (a) The Term Loan may be prepaid in whole or in part without premium or penalty upon not less than (i) (in the case of Base Rate Loans) one Business Day's, and (ii) (in the case of LIBO Rate Loans) three Business Days',



prior notice to the Administrative Agent (which shall promptly notify the Lenders). Each notice shall specify the prepayment date (which shall be a Business Day) and the Type(s) of Loans to be prepaid and the amount of the prepayment and shall be irrevocable and effective only upon receipt by the Administrative Agent not later than 11:00 a.m. New York time on the number of Business Days specified above prior to the relevant date of prepayment. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and the amount of such Lender's Applicable Percentage of such prepayment.

(b) If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBO Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 5.05. Each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages. Each such prepayment of the Term Loan shall be applied to the remaining principal amortization payments thereof on a pro rata basis.

(c) The Borrower shall have the right to Convert Loans of one Type into Loans of another Type or Continue LIBO Rate Loans as such at any time or from time to time, upon not less than (i) (in the case of any Conversion into Base Rate Loans) one Business Day's, and (ii) (in the case of any Conversion into, or Continuation as, LIBO Rate Loans), three Business Days', prior notice to the Administrative Agent (which shall promptly notify the Lenders), which notice may be given by telephone and shall specify the amount (which shall be in integral multiples of \$1,000,000) and Type of each Loan to be Converted or Continued (and, in the case of Conversion, the Type of Loan to result from such Conversion), the duration of the Interest Period for any LIBO Rate Loans to be Continued or to result from such Conversion, and the date of Conversion or Continuation (which shall be a Business Day) and shall be irrevocable and effective only upon receipt by the Administrative Agent not later than 11:00 a.m. New York time on the number of Business Days specified above prior to the relevant date of Conversion or Continuation. Each telephonic notice by the Borrower pursuant to this Section 2.06(c) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice. In the event that the Borrower fails to select the Type of Loan or the duration of any Interest Period for any LIBO Rate Loan, within the time period specified above, such Loan (if outstanding as a LIBO Rate Loan) will be automatically Converted into a Base Rate Loan on the last day of the then current Interest Period for such Loan or (if outstanding as a Base Rate Loan) will remain as, a Base Rate Loan.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBO Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to the borrowing of the Term Loan, all Conversions of Loans from one Type to the other, and all Continuations of Loans as the same Type, there shall not be more than 5 Interest Periods in effect with respect to all Loans.

### SECTION 3

#### **PAYMENTS OF PRINCIPAL AND INTEREST**

**3.01 Repayment of Loans.** The Borrower shall repay the outstanding principal amount of the Term Loan in installments on the dates and in the amounts set forth in the table set forth below (as such installments may hereafter be adjusted as a result of prepayments made pursuant to Section 2.06(a)):

Payment Dates	Principal Amortization Payment
September 19, 2009	\$50,000,000
September 19, 2010	\$100,000,000
Maturity Date	Outstanding Principal Balance of Term Loan

**3.02 Interest.** (a) The Borrower hereby promises to pay to the Administrative Agent for account of each Lender interest on the unpaid principal amount of the Term Loan, for the period commencing on the date of the Term Loan to but excluding the date the Term Loan shall be paid in full, at the following rates per annum:

(i) during such period as any portion of the Term Loan is a Base Rate Loan, the Base Rate (as in effect from time to time) plus, the Applicable Margin; and

(ii) during such period as any portion of the Term Loan is a LIBO Rate Loan, for each Interest Period relating thereto, the LIBO Rate for such portion of the Term Loan for such Interest Period plus the Applicable Margin.

Notwithstanding the foregoing, the Borrower hereby promises to pay to the Administrative Agent for account of each Lender interest at the applicable Post-Default Rate on any principal of the Term Loan made by such Lender to the Borrower, and (to the fullest extent permitted by law) on any other amount payable by the Borrower hereunder or under the Note held by such Lender to or for account of such Lender, which shall not be paid in full when due (whether at stated maturity, by acceleration or otherwise), for the period commencing on the due date thereof until the same is paid in full.

(b) Accrued interest on the Term Loan shall be payable (i) (in the case of a Base Rate Loan) quarterly on the Quarterly Dates, (ii) in the case of a LIBO Rate Loan, on the last day of each Interest Period therefor and, if such Interest Period is longer than three months, at three-month intervals following the first day of such Interest Period and (iii) (in the case of any LIBO Rate Loan Converted into a Base Rate Loan pursuant to Section 2.06(c)) on the date of Conversion (but only on the principal amount so Converted), except that interest payable at the Post-Default Rate shall be payable from time to time on demand.

(c) Promptly after the determination of any Adjusted LIBO Rate provided for herein, the Administrative Agent shall (i) notify the Lenders to which interest at such Adjusted LIBO Rate is payable and the Borrower thereof and (ii) at the request of the Borrower, furnish to the Borrower a copy of publication by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent) on the basis of which the relevant LIBO Rate was determined. At any time that the Administrative Agent determines the Adjusted LIBO Rate on a basis other than using the BBA LIBOR as published by Reuters, the Administrative Agent shall promptly notify the Borrower and provide information in reasonable detail as to such determination.

#### **SECTION 4**

##### **PAYMENTS; PRO RATA TREATMENT; COMPUTATIONS; ETC.**

**4.01 Payments.** (a) Except to the extent otherwise provided herein, all payments of principal of and interest on Loans payable by the Borrower under this Agreement and the Notes, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to the Administrative Agent's Account, for account of the Lenders, not later than 2:00 p.m. New York time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) If the Borrower shall default in the payment when due of any principal, interest or other amounts to be made by the Borrower under this Agreement or the Notes, any Lender for whose account any such payment is to be made may (but shall not be obligated to) debit the amount of any such payment due such Lender which is not made by such time to any ordinary deposit account of the Borrower with such Lender (with notice to the Borrower and the Administrative Agent).

(c) The Borrower shall, at the time of making each payment under this Agreement or any Note for account of any Lender, specify to the Administrative Agent the Loans or other amounts payable by the Borrower hereunder to which such payment is to be applied (and in the event that the payor fails to so specify, or if an Event of Default has occurred and is continuing, such Lender may apply such payment received by it from the Administrative Agent to such amounts then due and owing to such Lender as such Lender may determine).

(d) Each payment received by the Administrative Agent under this Agreement or any Note for account of any Lender shall be paid promptly to such Lender, in immediately available funds.

(e) If the due date of any payment under this Agreement or any Note would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall be payable for any principal so extended for the period of such extension.

**4.02 Pro Rata Treatment.** Except to the extent otherwise provided herein: (a) the borrowing from the Lenders of the Term Loan under Section 2.01 shall be made from the Lenders, pro rata according to the amounts of their respective Commitments, and the Conversion or Continuation of Loans of a particular Type (other than Conversions provided for by Section 5.04) shall be made pro rata among the relevant Lenders according to their respective Commitments; (b) each payment of principal of the Term Loan by the Borrower shall be made for account of the Lenders pro rata in accordance with the respective unpaid principal amount of the Term Loan held by the Lenders; and (c) each payment of interest on the Term Loan by the Borrower shall be made for account of the Lenders pro rata in accordance with the amounts of interest due and payable to the respective Lenders; provided that, if an Event of Default shall have occurred and be continuing, each payment of principal of and interest on the Term Loan and other amounts owing hereunder by the Borrower shall be made for account of the Lenders pro rata in accordance with the aggregate amounts of all principal of and interest on the Term Loan and all other amounts owing hereunder by the Borrower then due and payable to the respective Lenders.

**4.03 Computations.** Interest on Term Loan shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable; provided that interest on Base Rate Loans shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

**4.04 Non-Receipt of Funds by the Administrative Agent.** Unless the Administrative Agent shall have been notified by a Lender or the Borrower (each, a “Payor”) prior to the time by, and on the date on, which such Payor is scheduled to make payment to the Administrative Agent of (in the case of a Lender) a payment to be made by it hereunder or (in the case of the Borrower) a payment to the Administrative Agent for account of one or more of the Lenders hereunder (such payment being herein called the “Required Payment”), which notice shall be effective upon receipt, that it does not intend to make the Required Payment to the Administrative Agent, the Administrative Agent may assume that the Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient(s) on such date; and, if the Payor has not in fact made the Required Payment to the Administrative Agent, the recipient(s) of such payment shall, on demand, repay to the Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Administrative Agent to but not including the date the Administrative Agent recovers such amount (the “Advance Period”) at a rate per annum equal to (a) if the recipient is the Borrower, the Base Rate in effect on such day and (b) if the recipient is a Lender, the Federal Funds Rate in effect on such day; and, if such recipient(s) shall fail promptly to make such payment, the Administrative Agent shall be entitled to recover such amount, on demand, from the Payor, together with interest thereon for each day during the Advance Period at a rate per annum equal to (i) if the Payor is the Borrower, the rate of interest payable on the Required Payment as provided in the second sentence of Section 3.02(a) and (ii) if the Payor is a Lender, during the period commencing on the date such amount was so made available to but excluding the date three Business Days following such date, the Federal Funds Rate in effect on such day and, thereafter, the Base Rate in effect on such day.

**4.05 Set-off; Sharing of Payments.** (a) The Borrower agrees that, in addition to (and without limitation of) any right of set-off, bankers’ lien or counterclaim a Lender may otherwise have, each Lender and each of its Affiliates shall be entitled, at its option, to offset balances held by it for account of the Borrower at any of its offices, against any principal of or interest on any of such Lender’s Loans which is not paid when due (regardless of whether such balances are then due to the Borrower) in which case it shall promptly notify the Borrower and the Administrative Agent thereof, provided that such Lender’s failure to give such notice shall not affect the validity thereof.

(b) If any Lender shall obtain payment of any principal of or interest on that portion of the Term Loan made by it under this Agreement through the exercise of any right of set-off, bankers’ lien or counterclaim or similar right or otherwise, and, as a result of such payment, such Lender shall have received a greater percentage of the amounts then due hereunder to such Lender in respect of the Term Loan than the percentage received by any other Lenders, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the portion of the Term Loan made by such other Lenders (or in the interest thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders shall share the benefit of such excess payment (net of any expenses which may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal and interest on the portion of the Term Loan held by each of the Lenders. To such end all the Lenders shall

make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. The Borrower agrees that any Lender so purchasing a participation (or direct interest) in the portion of the Term Loan made by other Lenders (or in the interest thereon, as the case may be) may exercise all rights of set-off, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of a portion of the Term Loan (or in the interest thereon, as the case may be) in the amount of such participation. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which this Section 4.05 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 4.05 to share in the benefits of any recovery on such secured claim.

## SECTION 5

### YIELD PROTECTION AND ILLEGALITY

**5.01 Additional Costs.** (a) The Borrower shall pay directly to each Lender from time to time such amounts as such Lender may determine to be necessary to compensate such Lender for any costs that such Lender determines are attributable to its making or maintaining of any LIBO Rate Loans or its obligation to make any LIBO Rate Loans hereunder, or any reduction in any amount receivable by such Lender hereunder in respect of any of such Loans or such obligation (such increases in costs and reductions in amounts receivable being herein called "Additional Costs"), resulting from any Regulatory Change that:

(i) changes the basis of taxation of any amounts payable to such Lender under this Agreement or its Note in respect of any of such Loans (other than taxes imposed on or measured by the overall net income of such Lender or of its Applicable Lending Office for any of such Loans by the jurisdiction in which such Lender has its principal office or such Applicable Lending Office); or

(ii) imposes or modifies any reserve, special deposit or similar requirements (other than the Reserve Requirement utilized in the determination of the Adjusted LIBO Rate for such Loan and Mandatory Costs utilized in the determination of the LIBO Rate for such Loan) relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Lender (including, without limitation, any of such Loans or any deposits referred to in the definition of "LIBO Rate" in Section 1.01), or any commitment of such Lender (including, without limitation, the Commitment of such Lender hereunder); or

(iii) imposes any other condition affecting this Agreement or its Note (or any of such extensions of credit or liabilities) or its Commitment.

If any Lender requests compensation from the Borrower under this Section 5.01(a), the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender thereafter to make or Continue LIBO Rate Loans or to Convert Base Rate Loans into LIBO Rate Loans, until the Regulatory Change giving rise to such request ceases to be in effect (in which case the provisions of Section 5.04 shall be applicable), provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(b) Without limiting the effect of the foregoing provisions of this Section 5.01 (but without duplication), if any Lender determines that any Regulatory Change regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Regulatory Change (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Each Lender shall notify the Borrower of any event occurring after the date hereof entitling such Lender to compensation under paragraph (a) or (b) of this Section 5.01 as promptly as practicable, but in any event within 45 days, after such Lender obtains actual knowledge thereof. If any Lender fails to give such notice within 45 days after it obtains actual knowledge of such an event, such Lender shall, with respect to compensation payable pursuant to this Section 5.01 in respect of any costs resulting from such event, only be entitled to payment under this Section 5.01 for costs incurred from and after the date 45 days prior to the date that such Lender does give such notice. Each Lender will furnish to the Borrower a certificate setting forth the basis and amount of each request by such Lender for compensation under paragraph (a) or (b) of this Section 5.01. Determinations and allocations by any Lender for purposes of this Section 5.01 of the effect of any Regulatory Change pursuant to paragraph (a) of this Section 5.01, or of the effect of capital maintained pursuant to paragraph (b) of this Section 5.01, on its costs or rate of return of maintaining Loans or its obligation to make Loans, or on amounts receivable by it in respect of Loans, and of the amounts required to compensate such Lender under this Section 5.01, shall be conclusive absent manifest error, provided that such determinations and allocations are made on a reasonable basis.

(d) Each Lender will designate a different Applicable Lending Office for the Loans of such Lender affected by any event specified in paragraphs (a) or (b) of this Section 5.01 or in Section 5.03 if such designation will avoid the need for, or reduce the amount of, such compensation or suspension, as the case may be, and will not, in the sole opinion of such Lender, be disadvantageous to such Lender.

**5.02 Limitation on Types of Loans.** If the Required Lenders determine that for any reason in connection with any request for a LIBO Rate Loan or a Conversion to or Continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBO Rate Loan, (b) adequate and

reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan, or (c) the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative Agent will promptly notify the Borrower and all Lenders. Thereafter, the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended until the Administrative Agent revokes such notice. The Administrative Agent agrees to promptly revoke such notice upon the relevant circumstances ceasing to exist. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing, Conversion or Continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein.

**5.03 Illegality.** Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its Applicable Lending Office to honor its obligation to make or maintain LIBO Rate Loans hereunder, then such Lender shall promptly notify the Borrower thereof (with a copy to the Administrative Agent) and such Lender's obligation to make or Continue, or Convert Base Rate Loans into, LIBO Rate Loans shall be suspended until such time as such Lender may again make and maintain LIBO Rate Loans (in which case the provisions of Section 5.04 shall be applicable).

**5.04 Base Rate Loans Pursuant to Sections 5.01 and 5.03.** If the obligation of any Lender to make, Continue, or to Convert Base Rate Loans into, any LIBO Rate Loans shall be suspended pursuant to Section 5.01 or 5.03 (Loans of such type being herein called "Affected Loans" and such type being herein called the "Affected Type"), all Loans which would otherwise be made by such Lender as Loans of the Affected Type shall be made instead as Base Rate Loans (and, if an event referred to in Section 5.03 has occurred and such Lender so requests by notice to the Borrower with a copy to the Administrative Agent, all Affected Loans of such Lender then outstanding shall be automatically Converted into Base Rate Loans on the date specified by such Lender in such notice) and, to the extent that Affected Loans are so made as (or Converted into) Base Rate Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its Base Rate Loans. If such Lender gives notice to the Borrower with a copy to the Administrative Agent that the circumstances specified in Section 5.01 or 5.03 that gave rise to the Conversion of such Lender's Affected Loans pursuant to this Section 5.04 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Loans of the Affected Type made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding loans of the Affected Type, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Loans of the Affected Type and by such Lender are held pro rata (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

**5.05 Compensation.** The Borrower shall pay to the Administrative Agent for account of each Lender, upon the request of such Lender through the Administrative Agent, such amount or amounts as shall be sufficient (in the reasonable opinion of such Lender) to compensate it for any loss, cost or expense which such Lender determines are attributable to:



(a) any payment or prepayment or Conversion of a LIBO Rate Loan made by such Lender for any reason (including, without limitation, the acceleration of the Loans pursuant to Section 9) on a date other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower for any reason (excluding only failure due solely to a default by any Lender or the Administrative Agent in its obligation to provide funds to the Borrower hereunder but including, without limitation, the failure of any of the conditions precedent specified in Section 6 to be satisfied) to borrow a LIBO Rate Loan from such Lender on the date for such borrowing specified in the relevant notice of borrowing given pursuant to Section 2.02.

Without limiting the effect of the preceding sentence, such compensation shall include, in the case of a Loan, an amount equal to the excess, if any, of (i) the amount of interest which otherwise would have accrued on the principal amount so paid, prepaid or Converted or not borrowed for the period from the date of such payment, prepayment, Conversion or failure to borrow to the last day of the Interest Period for such Loan (or, in the case of a failure to borrow, the Interest Period for such Loan which would have commenced on the date specified for such borrowing) at the applicable rate of interest for such Loan provided for herein over (ii) the interest component of the amount such Lender would have bid in the London interbank market for deposits of leading banks (if such Loan is a LIBO Rate Loan) in amounts comparable to such principal amount and with maturities comparable to such period (as reasonably determined by such Lender).

**5.06 Taxes.** (a) The Borrower agrees to pay to each Lender such additional amounts as are necessary in order that the net payment of any amount due to such Lender hereunder after deduction for or withholding in respect of any Taxes imposed with respect to such payment will not be less than the amount stated herein to be then due and payable, provided that the foregoing obligation to pay such additional amounts shall not apply:

(i) to any payment to any Lender hereunder unless such Lender is, on the date hereof, or (if later) on the date such Lender becomes a Lender hereunder as provided in Section 11.05(b) and on the date of any change in the Applicable Lending Office of such Lender, entitled to a complete exemption from withholding or deduction by the Borrower of Taxes on all interest to be received by such Lender hereunder in respect of the Loans made by such Lender to the Borrower, or

(ii) to any such Taxes required to be deducted or withheld solely by reason of the failure of such Lender to comply with applicable certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connections with the Borrower's Jurisdiction if such compliance is required by treaty, statute or regulation as a precondition to relief or exemption from such Taxes.

For the purposes of this Section 5.06(a), the term "Taxes" shall mean with respect to the Borrower all present and future income, stamp, registration and other taxes and levies, imposts,

deductions, charges, compulsory loans and withholdings whatsoever, and all interest, penalties or similar amounts with respect thereto, now or hereafter imposed, assessed, levied or collected by the Borrower's Jurisdiction on or in respect of the Credit Documents, the principal of and interest on the Loans and any other amounts payable under any of the Credit Documents, the recording, registration, notarization or other formalization of any thereof, the enforcement thereof or the introduction thereof in any judicial proceedings, or on or in respect of any payments of principal, interest, premium, charges, fees or other amounts made on, under or in respect of any thereof (excluding, however, income or franchise taxes imposed on or measured by the overall net income or capital of a Lender (or its Applicable Lending Office) by the Borrower's Jurisdiction as a result of such Lender being organized under the laws of or resident in the Borrower's Jurisdiction or of its Applicable Lending Office being located or carrying on business in the Borrower's Jurisdiction).

(b) Within 30 days after paying any amount to the Administrative Agent or any Lender from which it is required by law to make any deduction or withholding, and within 30 days after it is required by law to remit such deduction or withholding to any relevant taxing or other authority, the Borrower shall deliver to the Administrative Agent for delivery to such Lender evidence satisfactory to such Lender of such deduction, withholding or payment (as the case may be).

**5.07 Replacement of Lenders.** If (a) any Lender requests compensation pursuant to Section 5.01 or 5.06, (b) any Lender's obligation to make Loans of any Type shall be suspended pursuant to Section 5.01 (any such Lender requesting such compensation, or whose obligations are so suspended, being herein called a "Requesting Lender") or (c) if a Lender (a "Non-Consenting Lender") does not consent to a proposed change, waiver, discharge or termination with respect to any Credit Document that has been approved by the Majority Lenders as provided by Section 11.04 but requires unanimous consent of all Lenders or all Lenders directly affected thereby (as applicable), the Borrower, upon three Business Days' notice to the Administrative Agent may require that such Requesting Lender or Non-Consenting Lender, as applicable, transfer all of its right, title and interest under this Agreement to any bank or other financial institution or entity identified by the Borrower that is satisfactory to the Administrative Agent (a) if such bank or other financial institution or entity (a "Proposed Lender") agrees to assume all of the obligations of such Requesting Lender or Non-Consenting Lender hereunder, and to purchase all of such Requesting Lender's or Non-Consenting Lender's Loans hereunder for consideration equal to the aggregate outstanding principal amount of such Requesting Lender's Loans or Non-Consenting Lender's Loans, as applicable, together with interest thereon to the date of such purchase, and satisfactory arrangements are made for payment to such Requesting Lender or Non-Consenting Lender of all other amounts payable hereunder to such Requesting Lender or Non-Consenting Lender on or prior to the date of such transfer (including any fees accrued hereunder and any amounts that would be payable under Section 5.05 as if all of such Requesting Lender's Loans or Non-Consenting Lender's Loans, as applicable, were being prepaid in full on such date) and (b) if such Requesting Lender has requested compensation pursuant to Section 5.01 or 5.06, such Proposed Lender's aggregate requested compensation, if any, pursuant to said Section 5.01 or 5.06 with respect to such Requesting Lender's Loans is lower than that of the Requesting Lender; provided, however, in the case of any such assignment resulting from a Non-Consenting Lender's failure to consent to a proposed

change, waiver, discharge or termination with respect to any Credit Document, such transfer shall be conditioned upon the Proposed Lender consenting to the proposed change, waiver, discharge or termination; provided further that the failure by such Non-Consenting Lender to execute and deliver an Assignment and Assumption shall not impair the validity of the removal of such Non-Consenting Lender and the mandatory assignment of such Non-Consenting Lender's Commitments and outstanding Loans pursuant to this Section 5.07 shall nevertheless be effective without the execution by such Non-Consenting Lender of an Assignment and Assumption. Subject to the provisions of Section 11.05(b), such Proposed Lender shall be a "Lender" for all purposes hereunder. Without prejudice to the survival of any other agreement of the Borrower hereunder the agreements of the Borrower contained in Sections 5.01, 5.06 and 11.03 (without duplication of any payments made to such Requesting Lender or Non-Consenting Lender by the Borrower or the Proposed Lender) shall survive for the benefit of such Requesting Lender or Non-Consenting Lender under this Section 5.07 with respect to the time prior to such replacement.

## SECTION 6

### CONDITIONS PRECEDENT

**6.01 Effective Date.** The obligations of the Lenders to make the Term Loan shall not become effective until the date on which each of the following conditions is satisfied (or waived pursuant to Section 11.04):

(a) The Administrative Agent shall have received each of the following documents (with sufficient copies for each Lender), each of which shall be satisfactory to the Administrative Agent (and to the extent specified below, to each Lender) in form and substance:

(i) A counterpart of this Agreement signed on behalf of each party hereto or written evidence satisfactory to the Administrative Agent that such party has signed a counterpart of this Agreement.

(ii) Certified copies of the charter and by-laws of, and all corporate action taken by, the Borrower approving this Agreement and the Notes (if any) to be made by the Borrower and the borrowing by the Borrower (including, without limitation, a certificate setting forth the resolutions of the Board of Directors of the Borrower adopted in respect of the transactions contemplated hereby).

(iii) A certificate of the Borrower in respect of each of the officers (1) who is authorized to sign this Agreement and the Notes, together with specimen signatures, and (2) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection herewith and with the Notes and the transactions contemplated hereby and thereby. The

Administrative Agent and each Lender may conclusively rely on such certificate until they receive notice in writing from the Borrower to the contrary.

(iv) An opinion or opinions dated the Effective Date of counsel to the Borrower (and the Borrower hereby instructs such counsel to deliver such opinion to the Lenders and the Administrative Agent) in a form satisfactory to the Administrative Agent and the Lenders.

(b) The Lenders and the Administrative Agent shall have received all fees and other amounts as the Borrower shall have agreed to pay in connection herewith.

For purposes of determining compliance with the conditions specified in this Section 6.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

**6.02 Credit Extension.** The obligation of any Lender to make the Credit Extension hereunder is subject to the further conditions precedent that, as of the date of the Effective Date and after giving effect thereto and the intended use of the Credit Extension:

(a) no Default shall have occurred and be continuing; and

(b) the representations and warranties made by the Borrower in Section 7 shall be true on and as of the Effective Date, except to the extent that such representations or warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

The Loan Notice provided by the Borrower on the Effective Date shall constitute a certification by the Borrower to the effect set forth in the preceding sentence (both as of the date of such Loan Notice and, unless the Borrower otherwise notifies the Administrative Agent prior to the date of the Credit Extension, as of the Effective Date).

## SECTION 7

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrant to the Lenders that:

**7.01 Corporate Existence.** Each of the Borrower and its Significant Subsidiaries: (a) is a corporation duly organized and validly existing under the laws of the jurisdiction of its incorporation; (b) has all requisite corporate power, and has all material governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted; and (c) is qualified to do business in all jurisdictions

in which the nature of the business conducted by it makes such qualification necessary except where failure so to qualify would not have a Material Adverse Effect.

**7.02 Financial Condition.** (a) The consolidated balance sheets of the Borrower and its Subsidiaries as of December 31, 2006 and December 31, 2007 and the related consolidated statements of income, cash flows and stockholders' equity of the Borrower and its Subsidiaries for the fiscal years ended on said dates, with the opinion thereon of Ernst & Young LLP, heretofore furnished to each of the Lenders, are complete and correct and fairly present the consolidated financial condition of the Borrower and its Subsidiaries as at said dates and the consolidated results of their operations for the fiscal year ended on said dates, all in accordance with generally accepted accounting principles. Neither the Borrower nor any of its Subsidiaries had on said dates any material contingent liabilities, material liabilities for taxes, material unusual forward or long-term commitments or material unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in said balance sheet as at said dates.

(b) The consolidated balance sheets of the Borrower and its Subsidiaries as of June 30, 2008 and the related consolidated statements of income, cash flows and stockholders' equity of the Borrower and its Subsidiaries for the six-month period ended on said date, heretofore furnished to each of the Lenders, are complete and correct and fairly present the consolidated financial condition of the Borrower and its Subsidiaries as at said date and the consolidated results of their operations for the six-month period ended on said date, all in accordance with generally accepted accounting principles. Neither the Borrower nor any of its Subsidiaries had on said date any material contingent liabilities, material liabilities for taxes, material unusual forward or long-term commitments or material unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in said balance sheet as at said date.

(c) Since December 31, 2007, there has been no material adverse change in the consolidated financial condition, operations, business or prospects of the Borrower and its Subsidiaries (taken as a whole).

**7.03 Litigation.** There are no legal or arbitral proceedings or any proceedings or investigations by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of the Borrower) threatened against the Borrower or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

**7.04 No Breach.** The making or performance of this Agreement or the Notes, and the consummation of the transactions herein contemplated, will not conflict with or result in a breach of, or require any consent under, the charter or by-laws of the Borrower or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which the Borrower or any of its Subsidiaries is a party or by which any of them is bound or to which any of them is subject, or constitute a default under any such agreement or instrument, or constitute a tortious interference with any agreement, or result in the creation or imposition of any Lien upon any of the revenues or assets of the Borrower or any of its Subsidiaries pursuant to the terms of any such agreement or instrument.

**7.05 Corporate Action.** The Borrower has all necessary corporate power and authority to make and perform its obligations under this Agreement and the Notes; the making and performance of this Agreement and the Notes by the Borrower have been duly authorized by all necessary corporate action on the part of the Borrower; and this Agreement has been duly and validly executed and delivered by the Borrower and constitutes, and each of the Notes of the Borrower when executed and delivered by the Borrower for value will constitute, the legal, valid and binding obligation of the Borrower, enforceable in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally.

**7.06 Approvals.** No authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency are necessary for the execution, delivery or performance by the Borrower of this Agreement or the Notes or for the validity or enforceability of any thereof.

**7.07 Use of Credit.** Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation U or X of the Board of Governors of the Federal Reserve System), and no part of the proceeds of any Credit Extension hereunder will be used in a manner that will cause any Borrower to violate said Regulation X or any Lender to violate said Regulation U.

**7.08 ERISA.** Each of the Borrower and each ERISA Affiliate has fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to each of its Plans and is (and to the best of its knowledge in the case of any Multiemployer Plan is) in compliance with the currently applicable provisions of ERISA and the Code, and has not incurred any liability on account of the termination of any of its Plans to the PBGC or any of its Plans and has not incurred any withdrawal liability to any Multiemployer Plan, in each case except to the extent failure to do so would not reasonably be expected to have a Material Adverse Effect.

**7.09 Investment Company Act.** Neither the Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

**7.10 Credit Agreements.** Schedule I hereto is a complete and correct list, as of June 30, 2008, of each credit agreement, loan agreement, indenture, purchase agreement, Guarantee or other arrangement (other than a letter of credit or bank lines established for daylight overdrafts) providing for or otherwise relating to any extension of credit (or commitment for any extension of credit) to, or Guarantee by, the Borrower or any of its Subsidiaries the aggregate principal or face amount of which equals or exceeds (or may equal or exceed) \$5,000,000 and the aggregate principal or face amount outstanding or which may become outstanding under each such arrangement is correctly described (as of June 30, 2008) in said Schedule I.

**7.11 Hazardous Materials.** The Borrower and each of its Subsidiaries have obtained all permits, licenses and other authorizations that are required under all Environmental Laws, except to the extent failure to have any such permit, license or authorization would not have a Material Adverse Effect. The Borrower and each of its Subsidiaries are in compliance with the terms and conditions of all such permits, licenses and authorizations, and are also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, except to the extent failure to comply would not have a Material Adverse Effect. Except as heretofore disclosed to the Lenders, there have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted by or that are in the possession of the Borrower or any of its Subsidiaries with respect to any property or facility now or previously owned or leased by the Borrower or any of its Environmental Affiliates which reveal facts or circumstances that could reasonably be expected to have a Material Adverse Effect.

**7.12 Taxes.** The Borrower and its Subsidiaries are members of an affiliated group of corporations filing consolidated returns for Federal income tax purposes, of which the Borrower is the "common parent" (within the meaning of Section 1504 of the Code) of such group. The Borrower and its Subsidiaries have filed all Federal income tax returns and all other material tax returns and information statements that are required to be filed by them and have paid all taxes due pursuant to such returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of taxes and other governmental charges are, in the opinion of the Borrower, adequate. The United States Federal income tax returns of the Borrower and its Subsidiaries have been examined and/or closed through the fiscal years of the Borrower and its Subsidiaries ended on or before December 31, 2004. The Borrower has not given or been requested to give a waiver of the statute of limitations relating to the payment of Federal, state, local and foreign taxes or other impositions.

**7.13 True and Complete Disclosure.** The information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of the Borrower to the Lenders in connection with the negotiation, preparation or delivery of this Agreement or included herein or delivered pursuant hereto, when taken as a whole do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they are made, not misleading. All written information furnished after the date hereof by the Borrower and its Subsidiaries to the Lenders in connection

with this Agreement and the transactions contemplated hereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified. There is no fact known to the Borrower that could reasonably be expected to have a Material Adverse Effect that has not been disclosed herein or in a report, financial statement, exhibit, schedule, disclosure letter or other writing furnished to the Lenders for use in connection with the transactions contemplated hereby.

**7.14 Subsidiaries.** As of the date hereof, each of the Borrower and its Subsidiaries (as disclosed in the periodic reports which the Borrower has filed with the Securities and Exchange Commission) owns, free and clear of Liens, and has the unencumbered right to vote all of its outstanding ownership interests in, each Subsidiary held by it and all of the issued and outstanding capital stock of each such Person is validly issued, fully paid and nonassessable.

**7.15 Compliance with Law.** As of the date hereof, the Borrower and its Subsidiaries are in compliance with all applicable laws and regulations, except to the extent that failure to comply therewith would not have a Material Adverse Effect.

## SECTION 8

### **COVENANTS OF THE BORROWER**

The Borrower agrees that, until payment in full of all Loans hereunder, all interest thereon and all other amounts payable by the Borrower hereunder:

**8.01 Financial Statements.** The Borrower shall furnish to each of the Lenders:

(a) as soon as available and in any event within 60 days after the end of each of the fiscal quarterly periods of each fiscal year of the Borrower, consolidated statements of income, cash flows and stockholders' equity of the Borrower and its Subsidiaries for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related consolidated balance sheet as at the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, and accompanied by a certificate of a senior financial officer of the Borrower, which certificate shall state that said financial statements fairly present the consolidated financial condition and results of operations of the Borrower and its Subsidiaries, in accordance with generally accepted accounting principles, as at the end of (and for) such period (subject to normal year-end audit adjustments).

(b) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, consolidated statements of income, cash flows and stockholders' equity of the Borrower and its Subsidiaries for such year and the related consolidated balance sheet as at the end of such year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that said financial statements fairly present the consolidated financial condition and results of operations of the Borrower and its Subsidiaries, in accordance with generally accepted accounting principles, as at



the end of (and for) such fiscal year, and a certificate of such accountants stating that, in making the examination necessary for their opinion, they obtained no knowledge, except as specifically stated, of any Event of Default under Sections 8.10 and 8.11.

(c) promptly upon their becoming available, copies of all registration statements and regular periodic reports, if any, which the Borrower shall have filed with the Securities and Exchange Commission (or any governmental agency substituted therefor) or any national securities exchange.

(d) promptly upon the mailing thereof to the shareholders of the Borrower generally, copies of all financial statements, reports and proxy statements so mailed.

(e) as soon as possible, and in any event within 30 days after the Borrower knows or has reason to know that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan of the Borrower have occurred or exist, a statement signed by a senior financial officer of the Borrower setting forth details respecting such event or condition and the action, if any, which the Borrower or any ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC by the Borrower or such ERISA Affiliate with respect to such event or condition):

(i) any reportable event, as defined in Section 4043(b) of ERISA and the regulations issued thereunder, with respect to a Plan, as to which PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA by more than \$5,000,000 shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code);

(ii) the filing under Section 4041 of ERISA of a notice of intent to terminate any Plan or the termination of any Plan if at the date of such filing or termination the fair market value of the assets of such Plan, as determined by the Plan's independent actuaries, is exceeded by the present value as determined by such actuaries as of such date, of benefit commitments under such Plan by more than \$5,000,000 (including any prior terminations subject to this provision);

(iii) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan of the Borrower, or the receipt by the Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan and such action would reasonably be expected to result in liability to the Borrower in excess of \$5,000,000;

(iv) the complete or partial withdrawal by the Borrower or any ERISA Affiliate under Section 4201 or 4204 of ERISA from a Multiemployer Plan causing any withdrawal liability in excess of \$5,000,000 (including any prior withdrawals subject to this provision), or the receipt by the Borrower or any ERISA Affiliate of notice from a

Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA; and

(v) the institution of a proceeding by a fiduciary of any Multiemployer Plan against the Borrower or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within 30 days.

(f) promptly after the Borrower knows or has reason to know that any Default has occurred, a notice of such Default, describing the same in reasonable detail.

(g) from time to time such other information regarding the business, affairs or financial condition of the Borrower or any of its Subsidiaries (including, without limitation, any Plan or Multiemployer Plan and any reports or other information required to be filed under ERISA) as any Lender or the Administrative Agent may reasonably request.

The Borrower will furnish to each Lender, at the time it furnishes each set of financial statements pursuant to paragraph (a) or (b) above, a certificate of a senior financial officer of the Borrower (i) to the effect that no Default has occurred and is continuing (or, if any Default has occurred and is continuing, describing the same in reasonable detail) and (ii) setting forth in reasonable detail the computations necessary to determine whether the Borrower is in compliance with Sections 8.06, 8.07(a)(vi), 8.08(xiii), 8.10 and 8.11 as of the end of the respective fiscal quarter or fiscal year.

Notwithstanding the foregoing, the Borrower's obligations to deliver documents or information required under any of clauses (a), (b), (c) and (d) above shall be deemed to be satisfied upon (i) the relevant documents or information being publicly available on the Borrower's website or other publicly available electronic medium (such as EDGAR) within the time period required by such clause and thereafter being continuously so available and (ii) the delivery by the Borrower of notice to the Administrative Agent and each of the Lenders (which notice may be given electronically (such as e-mail)) within the time period required by such clause that such documents or information are so available; provided that the Borrower shall deliver paper copies of any such documents or information to any Lender upon request of such Lender through the Administrative Agent.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower 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 Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that (w) all Borrower 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 Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material

non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower 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 Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

**8.02 Litigation.** The Borrower shall promptly furnish to each Lender notice of all legal or arbitral proceedings, and of all proceedings before any governmental or regulatory authority or agency, instituted, or (to the knowledge of the Borrower) threatened, against the Borrower or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

**8.03 Corporate Existence, Etc.** The Borrower shall, and shall cause each of its Significant Subsidiaries to: preserve and maintain its corporate existence and all its material rights, privileges and franchises (except as otherwise expressly permitted under Section 8.07); comply with all Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained; maintain all its properties used or useful in its business in good working order and condition, ordinary wear and tear excepted; keep proper books of record and account in which full, true and correct entries are made of all material dealings and transactions in relations to its business and activities; and permit representatives of any Lender or the Administrative Agent, during normal business hours, to examine, copy and make extracts from its books and records, to inspect its properties, and to discuss its business and affairs with its officers, all to the extent reasonably requested by such Lender or the Administrative Agent (as the case may be).

**8.04 Insurance.** The Borrower shall, and shall cause each of its Subsidiaries to, keep insured by financially sound and reputable insurers all property of a character usually insured by corporations engaged in the same or similar business similarly situated against loss or damage of the kinds and in the amounts customarily insured against by such corporations and carry such other insurance as is usually carried by such corporations.

**8.05 Use of Proceeds.** The proceeds of the Credit Extensions hereunder will be used solely for general corporate purposes, including (without limitation) commercial paper back-up and acquisitions (each of which uses shall be in compliance with all applicable legal and regulatory requirements, including, without limitation, Regulations U and X of the Board of Governors of the Federal Reserve System and the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder). The

Borrower will not permit more than 25% of the value (as determined by any reasonable method) of its assets, nor more than 25% of the value (as determined by any reasonable method) of the assets of the Borrower and its Subsidiaries, to be represented by margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System).

**8.06 Indebtedness.** The Borrower will not, nor will it permit any of its Subsidiaries to, incur, assume or suffer to exist obligations in respect of standby and performance letters of credit (other than Letters of Credit issued under the Revolving Credit Agreement) in an aggregate amount exceeding 5% of Total Consolidated Assets at any one time outstanding. The Borrower will not permit any of its Subsidiaries to create, issue, incur or assume, or suffer to exist, any Indebtedness, except:

- (i) Indebtedness existing on the date hereof (including any Indebtedness incurred after the date hereof under any instrument or agreement in effect on the date hereof), but not any renewals, extensions or refinancings of the same;
- (ii) Indebtedness owing to the Borrower and Indebtedness owing by any Subsidiary to another Subsidiary;
- (iii) Indebtedness of any Person that becomes a Subsidiary of the Borrower after the date hereof so long as such Indebtedness exists at the time such Person becomes such a Subsidiary and was not incurred in anticipation thereof;
- (iv) Capital Lease Obligations in an aggregate amount not to exceed an amount equal to 5% of Total Consolidated Assets at any one time outstanding;
- (v) Indebtedness under this Agreement;
- (vi) Indebtedness under the Revolving Credit Agreement in an aggregate amount not to exceed \$750,000,000 at any one time outstanding; and
- (vii) additional Indebtedness in an aggregate amount not to exceed an amount equal to 15% of Total Consolidated Assets at any one time outstanding.

**8.07 Fundamental Changes.** (a) The Borrower will not, and will not permit any of its Subsidiaries to, be a party to any merger or consolidation, and the Borrower will not, and will not permit any of its Subsidiaries or operating divisions (whether now owned or existing or hereafter acquired or designated) to, (x) sell, assign, lease or otherwise dispose of all or substantially all of its Property whether now owned or hereafter acquired or (y) sell, assign or otherwise dispose of any capital stock of any such Subsidiary, or permit any such Subsidiary to issue any capital stock, to any Person other than the Borrower or any of its Wholly-Owned Subsidiaries if, after giving effect thereto, the Borrower does not own, directly or indirectly, a majority of the capital stock of such Subsidiary ("Controlling Stock Disposition"); provided that, so long as both before and after giving effect thereto, no Default shall have occurred and be continuing:

- (i) the Borrower or any Subsidiary of the Borrower may be a party to any merger or consolidation if it shall be the surviving corporation;
  - (ii) any such Subsidiary may be a party to any merger or consolidation with another such Subsidiary (or with any Person that becomes another such Subsidiary as a result of such merger or consolidation);
  - (iii) any such Subsidiary may merge into, and any such Subsidiary or operating division may transfer any Property to, the Borrower;
  - (iv) any such Subsidiary or operating division may transfer any Property to another such Subsidiary or operating division (or to any Person that becomes as part of such transfer another such Subsidiary or operating division);
  - (v) the Borrower, any such Subsidiary or operating division may sell, assign, lease or otherwise dispose of any Non-Strategic Property; and
  - (vi) the Borrower or any such Subsidiary or operating division may make sales, assignments and other dispositions of Property (including Controlling Stock Dispositions) and any such Subsidiary may become a party to a merger or consolidation (each such sale, assignment, disposition, Controlling Stock Disposition, merger or consolidation, other than those described in clauses (i) through (v), a "Disposition") if the aggregate book value of the Property that was the subject of such Disposition, together with the aggregate book value of the Property that was the subject of all other Dispositions during the Disposition Period for such Disposition, would not exceed an amount equal to 15% of the Total Consolidated Assets determined as of the last day of the most recently completed fiscal year for which a consolidated balance sheet of the Borrower has been furnished to the Lenders pursuant to Section 8.01.
- (b) Notwithstanding anything in clauses (i) through (vi) of Section 8.07(a) to the contrary, the Borrower will not, and will not permit any of its Subsidiaries or operating divisions (whether now owned or existing or hereafter acquired or designated) to, sell, lease, assign, transfer or otherwise dispose of (whether in one transaction or in a series of transactions) any of its Property (whether now owned or hereafter acquired) if such sale, assignment, lease or other disposition (whether in one transaction or in a series of transactions) shall have a Material Adverse Effect.

**8.08 Liens.** The Borrower shall not, and shall not permit any of its Subsidiaries to, create, assume or suffer to exist any Lien upon any of its property or assets, now owned or hereafter acquired, securing any Indebtedness or other obligation except: (i) Liens outstanding on the date hereof and listed in Schedule II hereto; (ii) Liens for taxes or other governmental charges not yet delinquent; (iii) Liens in respect of Property acquired or constructed or improved by the Borrower or any such Subsidiary after the date hereof which Liens exist or are created at the time of acquisition or completion of construction or improvement of such Property or within six months thereafter to secure Indebtedness assumed or incurred to finance all or any part of the purchase price or cost of construction or improvement of such Property, but any such Lien shall

cover only the Property so acquired or constructed and any improvements thereto (and any real property on which such Property is located); (iv) Liens on Property of any corporation that becomes a Subsidiary of the Borrower after the date hereof, provided that such Liens are in existence at the time such corporation becomes a Subsidiary of the Borrower and were not created in anticipation thereof; (v) Liens on Property acquired after the date hereof, provided that such Liens were in existence at the time such Property was acquired and were not created in anticipation thereof; (vi) Liens imposed by law, such as mechanics', materialmen's, landlords', warehousemen's and carriers' Liens, and other similar Liens, securing obligations incurred in the ordinary course of business which are not past due for more than thirty days or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established; (vii) Liens under workmen's compensation, unemployment insurance, social security or similar legislation; (viii) Liens, deposits, or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases, public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds, or other similar obligations arising in the ordinary course of business; (ix) judgment and other similar Liens arising in connection with court proceedings, provided the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings; (x) easements, rights-of-way, restrictions and other similar encumbrances which, in the aggregate, do not materially interfere with the occupation, use and enjoyment by the Borrower or any such Subsidiary of the Property encumbered thereby in the normal course of its business or materially impair the value of the Property subject thereto; (xi) Liens securing obligations of any such Subsidiary to the Borrower or another Subsidiary of the Borrower; (xii) Liens arising in connection with Permitted Securitizations; and (xiii) other Liens securing Indebtedness or other obligations in an aggregate amount not exceeding 5% of Total Consolidated Assets.

**8.09 Lines of Businesses.** Neither the Borrower nor any of its Subsidiaries shall engage to any significant extent in any line or lines of business other than the lines of business in which they are engaged on the date hereof and any other line or lines of business directly related to the manufacture, distribution and/or sale of consumer or industrial products (collectively, "Permitted Activities"). Notwithstanding the foregoing, the Borrower and its Subsidiaries may engage in other lines of business as a result of the acquisition of any Person primarily engaged in Permitted Activities so long as the Borrower uses its best efforts to come into compliance with the first sentence of this Section 8.09 within a reasonable period of time after such acquisition.

**8.10 Total Indebtedness to Total Capital.** The Borrower shall not permit the ratio of Total Indebtedness to Total Capital at any time to be greater than 0.60 to 1; provided that (i) in calculating Total Capital, goodwill impairment charges taken pursuant to the Financial Accounting Standards Board shall be disregarded to the extent such charges do not exceed \$550,000,000 in the aggregate and (ii) in calculating such ratio, quarterly income preferred securities, quarterly income capital securities, monthly income preferred securities or other similar securities will be treated as part of "Total Capital" and not "Total Indebtedness".

**8.11 Interest Coverage Ratio.** The Borrower shall not permit the Interest Coverage Ratio as at the last day of any fiscal quarter to be less than 4.00 to 1.00.

**8.12 Transactions with Affiliates.** The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties and (b) transactions between or among the Borrower and its Subsidiaries not involving any other Affiliate.

## SECTION 9

### EVENTS OF DEFAULT

If one or more of the following events (herein called "Events of Default") shall occur and be continuing:

- (a) The Borrower shall default in the payment of any principal of any Loan when and as the same shall become due and payable; or
- (b) The Borrower shall default in the payment of any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable hereunder or under any other Credit Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five days; or
- (c) The Borrower or any of its Subsidiaries shall default in the payment when due of any principal of or interest on any of its other Indebtedness aggregating \$50,000,000 or more; or any event specified in any note, agreement, indenture or other document evidencing or relating to any Indebtedness aggregating \$50,000,000 or more shall occur if the effect of such event is to cause, or (with the giving of any notice or the lapse of time or both) to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, such Indebtedness to become due prior to its stated maturity or to permit termination of the commitment to lend pursuant to any such instrument or agreement; or
- (d) Any representation, warranty or certification made or deemed made by the Borrower herein or by the Borrower in any certificate furnished to any Lender or the Administrative Agent pursuant to the provisions hereof, shall prove to have been false or misleading as of the time made or furnished in any material respect; or
- (e) The Borrower shall default in the performance of any of its obligations under Section 8.01(f) or 8.05 through 8.12; or the Borrower shall default in the performance of any of its other obligations in this Agreement and such default shall continue unremedied for a period of 30 days after notice thereof to the Borrower by the Administrative Agent or any Lender (through the Administrative Agent); or

(f) The Borrower or any of its Significant Subsidiaries shall admit in writing its inability to, or be generally unable to, pay its debts as such debts become due; or

(g) The Borrower or any of its Significant Subsidiaries shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Bankruptcy Code (as now or hereafter in effect), (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (vi) take any corporate action for the purpose of effecting any of the foregoing; or

(h) A proceeding or case shall be commenced against the Borrower or any of its Significant Subsidiaries without its application or consent, in any court of competent jurisdiction, seeking (i) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of it or of all or any substantial part of its assets, or (iii) similar relief in respect of it under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 60 days; or an order for relief against it shall be entered in an involuntary case under the Bankruptcy Code; or

(i) A final judgment or judgments for the payment of money in excess of \$50,000,000 in the aggregate shall be rendered by a court or courts against the Borrower and/or any of its Subsidiaries and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within 30 days from the date of entry thereof and the Borrower or the relevant Subsidiary shall not, within said period of 30 days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal; or

(j) An event or condition specified in Section 8.01(e) shall occur or exist with respect to any Plan or Multiemployer Plan of the Borrower and, as a result of such event or condition, together with all other such events or conditions, the Borrower or any ERISA Affiliate shall incur or in the opinion of the Majority Lenders shall be reasonably likely to incur a liability to a Plan, a Multiemployer Plan or PBGC (or any combination of the foregoing) which, in the determination of the Majority Lenders, would reasonably be expected to have a Material Adverse Effect; or

(k) During any period of 25 consecutive calendar months (i) individuals who were directors of the Borrower on the first day of such period and (ii) other individuals whose election or nomination to the Board of Directors of the Borrower was approved by



at least a majority of the individuals referred to in clause (i) above and (iii) other individuals whose election or nomination to the Board of Directors of the Borrower was approved by at least a majority of the individuals referred to in clauses (i) and (ii) above shall no longer constitute a majority of the Board of Directors of the Borrower.

THEREUPON: (i) in the case of an Event of Default (other than one referred to in clause (g) or (h) of this Section 9 in respect of the Borrower) the Administrative Agent may and, upon request of the Majority Lenders, shall, by notice to the Borrower, declare the principal amount of and the accrued interest on the Loans, and all other amounts payable by the Borrower hereunder and under the Notes, to be forthwith due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrower; and (ii) in the case of the occurrence of an Event of Default referred to in clause (g) or (h) of this Section 9 in respect of the Borrower, the principal amount then outstanding of, and the accrued interest on, the Loans and all other amounts payable by the Borrower hereunder and under the Notes shall become automatically immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrower.

## SECTION 10

### THE ADMINISTRATIVE AGENT

**10.01 Appointment, Powers and Immunities.** Each Lender hereby irrevocably (but subject to Section 10.08) appoints and authorizes the Administrative Agent to act as its agent hereunder with such powers as are specifically delegated to the Administrative Agent by the terms of this Agreement together with such other powers as are reasonably incidental thereto. The Administrative Agent (which term as used in this sentence and in Section 10.05 and the first sentence of Section 10.06 shall include reference to its Affiliates and its own and its affiliates' officers, directors, employees and agents): (a) shall have no duties or responsibilities except those expressly set forth in this Agreement and shall not by reason of this Agreement be a trustee for any Lender; (b) shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in this Agreement or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, any Note or any other document referred to or provided for herein or for any failure by the Borrower or any other Person to perform any of its obligations hereunder or thereunder; (c) shall not be required to initiate or conduct any litigation or collection proceedings hereunder; and (d) shall not be responsible for any action taken or omitted to be taken by it hereunder or under any other document or instrument referred to or provided for herein or in connection herewith, except for its own gross negligence or willful misconduct. The Administrative Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The exculpatory provisions of this Section shall apply to any agent or attorney-in-fact of the Administrative Agent and any such agent or attorney-in-fact, and shall apply to their respective activities in connection with the syndication of the facility provided for herein as well as the activities as Administrative Agent. The provisions of this Section are solely for the benefit of the Administrative Agent and the Lenders, and the Borrower shall not have any rights as a third party beneficiary of any of such provisions.

**10.02 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely 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. Furthermore, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (a) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or (b) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

As to any matters not expressly provided for by this Agreement, the Administrative Agent shall in all cases be fully protected (a) in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Majority Lenders (or such other number of Lenders as is expressly required hereby), and such instructions of the Majority Lenders (or such other

number of Lenders) and any action taken or failure to act pursuant thereto shall be binding on all the Lenders and (b) from liability for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct.

**10.03 Defaults.** The Administrative Agent shall not be deemed to have knowledge of the occurrence of a Default unless the Administrative Agent has received notice from a Lender or the Borrower specifying such 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, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall (subject to Section 10.07) take such action with respect to such Default as shall be directed by the Majority Lenders, provided that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interest of the Lenders.

**10.04 Rights as a Lender.** With respect to its Commitment and the Loans made by it, Bank of America (and any successor acting as 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 the Administrative Agent in its individual capacity. Bank of America (and any successor acting as 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 Borrower (and any of its Affiliates) as if it were not acting as the Administrative Agent, and Bank of America and its Affiliates may accept fees and other consideration from the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

**10.05 Indemnification.** The Lenders agree to indemnify the Administrative Agent (to the extent not reimbursed under Section 11.03, but without limiting the obligations of the Borrower under said Section 11.03), 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 any way relating to or arising out of this Agreement or any other documents contemplated by or referred to herein or the transactions contemplated hereby (including, without limitation, the costs and expenses which the Borrower is obligated to pay under Section 11.03 but excluding, unless a Default has occurred and is continuing, normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof, or of any such other documents, 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 party to be indemnified.

**10.06 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 Borrower and its Subsidiaries 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. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Borrower of this Agreement or any other document referred to or provided for herein or to inspect the properties or books of the Borrower or any Subsidiary of the Borrower. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower or any Subsidiary of the Borrower (or any of their affiliates) which may come into the possession of the Administrative Agent or any of its Affiliates.

**10.07 Failure to Act.** Except for action expressly required of the Administrative Agent hereunder the Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

**10.08 Resignation or Removal of Administrative Agent.** The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Credit Documents, the provisions of this Article and Section 11.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective affiliates in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

**10.09 Lead Arrangers and Other Agents.** Anything herein to the contrary notwithstanding, the Joint Lead Arrangers and Joint Bookrunners and the Syndication Agent listed on the cover page shall not have any duties or responsibilities under this Agreement, except in their capacity, if any, as Lenders.

**10.10 Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents. Without

limiting the generality of the foregoing, the Administrative Agent (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing; (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or applicable law; and (c) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

**10.11 Administrative Agent May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of the Term Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loan and all other obligations of the Borrower that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 11.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 11.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Term Loan or the obligations of the

Borrower hereunder or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

## SECTION 11

### MISCELLANEOUS

**11.01 Waiver.** No failure on the part of the Administrative Agent or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement or any Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement or any Note preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein and therein are cumulative and not exclusive of any remedies provided by law.

Notwithstanding anything to the contrary contained herein or in any other Credit Document, the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Credit Documents, (b) any Lender from exercising setoff rights in accordance with Section 4.05 or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under the Bankruptcy Code or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Credit Documents, then (i) the Majority Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 4.05, any Lender may, with the consent of the Majority Lenders, enforce any rights and remedies available to it and as authorized by the Majority Lenders.

**11.02 Notices.** All notices and other communications provided for herein (including, without limitation, any modifications of, or requests, demands, waivers or consents under, this Agreement) shall be given or made in writing and telecopied, mailed or delivered to the intended recipient at (i) in the case of the Borrower or the Administrative Agent, the "Address for Notices" specified below its name on the signature pages hereof and (ii) in the case of each Lender, the address (or telecopy) set forth in its Administrative Questionnaire; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the

foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower 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.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any 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 Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

**11.03 Expenses, Etc.** The Borrower agrees to pay or reimburse each of the Lenders and the Administrative Agent for paying: (a) the reasonable fees and expenses of Moore & Van Allen PLLC, counsel to the Administrative Agent, in connection with (i) the preparation, execution and delivery of this Agreement and the Notes and the making of the Loans hereunder and (ii) any amendment, modification or waiver (whether or not such amendment, modification or waiver shall become effective) of any of the terms of this Agreement or any of the Notes; (b) all reasonable costs and expenses of the Lenders and the Administrative Agent (including reasonable counsels' fees) in connection with the enforcement of this Agreement or any of the Notes; and (c) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Agreement, any of the Notes or any other document referred to herein.

The Borrower hereby agrees to indemnify the Administrative Agent and each Lender and each of their respective Affiliates, and each of the respective directors, officers, employees, agents and advisors of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of

their respective obligations hereunder or the consummation of the transactions contemplated hereby, (ii) any Loan or the use of the proceeds therefrom or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

To the fullest extent permitted by applicable law, the Borrower shall not assert, and the Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof.

**11.04 Amendments, Etc.** Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be amended or modified only by an instrument in writing signed by the Borrower, the Administrative Agent and the Majority Lenders, or by the Borrower, and the Administrative Agent acting with the consent of the Majority Lenders, and any provision of this Agreement may be waived by the Majority Lenders or by the Administrative Agent acting with the consent of the Majority Lenders; provided that no amendment, modification or waiver shall, unless by an instrument signed by each of the Lenders affected thereby or by the Administrative Agent acting with the consent of each of the Lenders affected thereby: (i) extend the date fixed for the payment of any principal of or interest on any Loan, (ii) reduce the amount of any principal of any Loan or the rate at which interest or any fee is payable hereunder, (iii) alter the terms of Section 11 or release the Borrower from any of its material obligations thereunder, (iv) alter the terms of this Section 11.04 or Section 4.05(b) or (v) amend the definition of the term “Majority Lenders” or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof; and provided, further, that any amendment of Section 10, or which increases the obligations or alters the rights of the Administrative Agent hereunder, shall require the consent of the Administrative Agent.

**11.05 Assignments and Participations**

(a) The Borrower may not assign any of its rights or obligations hereunder or under the Notes without the prior consent of all of the Lenders and the Administrative Agent.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of (A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has



occurred and is continuing, any other assignee; and (B) the Administrative Agent provided that no consent of the Administrative Agent shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining principal amount of the Loans at the time owing to such assigning Lender, the principal amount of the Loans owing to such assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section 11.05, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 5.01, 5.05, 5.06 and 11.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.05(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.05(c).

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 11.05(b) and any written consent to such assignment required thereby, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.04 that affects such Participant. Subject to paragraph (c)(ii) of this Section 11.05, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.01, 5.05 and 5.06 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 11.05. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 4.05(a) as though it were a Lender, provided such Participant agrees to be subject to Section 4.05(b) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 5.01 or 5.06 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) A Lender may furnish any information concerning the Borrower or any of its Subsidiaries in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants).

**11.06 Survival.** The obligations of the Borrower under Sections 5.01, 5.05 and 5.06, the obligations of the Lenders under Section 10.05 and the obligations of the Borrower under Section 11.03 shall survive the repayment of the Loans and the termination of the Commitments. In addition, each representation and warranty made, or deemed to be made, by a notice of borrowing of Loans hereunder shall survive the making of such Loans, and no Lender shall be deemed to have waived, by reason of making any Loan, any Default or Event of Default which may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that such Lender or the Administrative Agent may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such Loan was made.

**11.07 Captions.** Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

**11.08 Counterparts; Effectiveness.** This Agreement may be executed in any number of counterparts, each of which shall be identical and all of which, when taken together, shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart. Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

**11.09 Governing Law; Jurisdiction; Service of Process; Waiver of Jury Trial; Etc.** (a) **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND ANY ACTION OR PROCEEDING TO EXECUTE OR OTHERWISE ENFORCE ANY JUDGMENT OBTAINED IN CONNECTION THEREWITH, MAY BE INSTITUTED IN THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK**

OR IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS GENERALLY (BUT NON-EXCLUSIVELY) TO THE JURISDICTION OF EACH SUCH COURT. THE BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO THE BORROWER AT ITS ADDRESS SET FORTH UNDERNEATH ITS SIGNATURE HERETO. THE BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. THE BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. THE BORROWER FURTHER AGREES THAT ANY SUCH ACTION OR PROCEEDING AGAINST THE ADMINISTRATIVE AGENT AND/OR ANY OF THE LENDERS SHALL BE BROUGHT ONLY IN THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK OR IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY CONSENT TO THE JURISDICTION OF SUCH COURTS FOR SUCH PURPOSE.

(b) EACH OF THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**11.10 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**11.11 USA PATRIOT Act.** Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), such Lender may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with said Act.

**11.12 No Advisory or Fiduciary Relationship.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a)(i) the arranging and other services regarding this Agreement provided by the Administrative Agent, BAS or any Lender, are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, BAS or any such Lender, on the other hand, (ii) the Borrower has

consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (b)(i) the Administrative Agent, BAS and each Lender each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary, for the Borrower or any of Affiliates or any other Person and (ii) neither the Administrative Agent, BAS nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein, in the other Credit Documents and in the Commitment Letter; and (c) the Administrative Agent, BAS and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent, BAS nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases, any claims that it may have against the Administrative Agent, BAS or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

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

NEWELL RUBBERMAID INC.

By /s/ Dale L. Metz

Name: Dale L. Metz

Title: Vice President — Treasurer

Address for Notices:

Newell Rubbermaid Inc.

3 Glenlake Parkway, 13<sup>th</sup> Floor

Atlanta, GA 30328

Attn: Dale Metz

Vice President-Treasurer

Telecopier No.: (770) 418-7705

Telephone No.: (770) 677-8705

U.S. Federal Tax Identification No.: 36-3514169

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THE ADMINISTRATIVE AGENT

BANK OF AMERICA, N.A.  
as Administrative Agent

By /s/ Joan Mok

Name: Joan Mok  
Title: Vice President

Address for Notices:

**Administrative Agent's Office**  
**(for payments and Requests for Credit Extensions):**

Bank of America, N.A.  
Building B, 2001 Clayton Road  
CA4-702-02-25  
Concord, CA 94520  
Attention: Jessica Torres, Credit Services  
Telephone: (925) 675-8139  
Telecopier: (888) 969-9232  
Electronic Mail: [jessica.l.torres@bankofamerica.com](mailto:jessica.l.torres@bankofamerica.com)

**Other Notices as Administrative Agent:**

Bank of America, N.A.  
Agency Management  
1455 Market Street, 5th Floor  
CA5-701-15-19  
San Francisco, CA 94103  
Attention: Joan Mok  
Telephone: (415) 436-3496  
Telecopier: (415) 503-5085  
Electronic Mail: [joan.mok@bankofamerica.com](mailto:joan.mok@bankofamerica.com)

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LENDERS

BANK OF AMERICA, N.A.

By /s/ David L. Catherall

Name: David L. Catherall

Title: Senior Vice President

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JPMORGAN CHASE BANK, N.A.

By /s/ Anthony W. White

Name: Anthony W. White

Title: Vice President

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THE ROYAL BANK OF SCOTLAND PLC

By /s/ William McGinty

Name: William McGinty

Title: Senior Vice President

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BARCLAYS BANK PLC

By /s/ Nicholas A. Bell

Name: Nicholas A. Bell

Title: Director

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CREDIT SUISSE, CAYMAN ISLANDS BRANCH

By /s/ Doreen Barr  
Name: Doreen Barr  
Title: Vice President

By /s/ Morenikeji Ajayi  
Name: Morenikeji Ajayi  
Title: Associate

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CITIBANK, N.A.

By /s/ John Coons

Name: John Coons

Title: Vice President

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WILLIAM STREET LLC

By /s/ Mark Walton

Name: Mark Walton

Title: Authorized Signatory

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ING BANK N.V., DUBLIN BRANCH

By /s/ Maurice Kenny

Name: Maurice Kenny

Title: Director

By /s/ Sean Hassett

Name: Sean Hassett

Title: Director

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THE BANK OF TOKYO-MITSUBISHI UFJ, LTD.

By     /s/ Maria Iarriccio  
Name: Maria Iarriccio  
Title: Authorized Signatory

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PNC BANK NATIONAL ASSOCIATION

By /s/ David B. Gookin

Name: David B. Gookin

Title: Senior Vice President

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THE NORTHERN TRUST COMPANY

By /s/ Kathryn Schad Reuther

Name: Kathryn Schad Reuther

Title: Vice President

---

SUMITOMO MITSUI BANKING CORPORATION

By /s/ Yoshihiro Hyakutome

Name: Yoshihiro Hyakutome

Title: General Manager

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FIRST HAWAIIAN BANK

By /s/ Paula C.H. Chang

Name: Paula C.H. Chang

Title: Vice President

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REGIONS BANK

By /s/ Stephen H. Lee

Name: Stephen H. Lee

Title: Senior Vice President

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RBC BANK (USA)

By /s/ James R. Pryor

Name: James R. Pryor

Title: Managing Director

---

BNP PARIBAS

By /s/ Paul Harris  
Name: Paul Harris  
Title: Managing Director

By /s/ Fikret Durmus  
Name: Fikret Durmus  
Title: Vice President

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U.S. BANK NATIONAL ASSOCIATION

By /s/ James N. DeVries

Name: James N. DeVries

Title: Senior Vice President

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BANK OF COMMUNICATIONS CO., LTD., NEW YORK  
BRANCH

By /s/ Hong Tu

Name: Hong Tu

Title: General Manager

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THE CHIBA BANK, LTD., NEW YORK BRANCH

By /s/ Yukihiro Inamura

Name: Yukihiro Inamura

Title: General Manager

**NEWELL RUBBERMAID INC. 2003 STOCK PLAN**  
**(As Amended and Restated Effective February 8, 2006)**  
**RESTRICTED STOCK UNIT AWARD AGREEMENT**  
**(Non-Employee Directors)**

A Restricted Stock Unit ("RSU") Award (the "Award") granted by Newell Rubbermaid Inc., a Delaware corporation (the "Company"), to the non-employee director named in the attached Award letter (the "Grantee") relating to the common stock, par value \$1.00 per share (the "Common Stock"), of the Company, shall be subject to the following terms and conditions and the provisions of the Newell Rubbermaid Inc. 2003 Stock Plan, as amended and restated effective February 8, 2006 and further amended August 9, 2006 (the "Plan"), a copy of which is attached hereto and the terms of which are hereby incorporated by reference.

1. Acceptance by Grantee. The receipt of the Award is conditioned upon its acceptance by the Grantee in the space provided therefor at the end of the attached Award letter and the return of an executed copy of such Award letter to the Secretary of the Company no later than 60 days after the Award Date set forth therein or, if later, 30 days after the Grantee receives this Agreement.

2. Grant of RSUs. The Company hereby grants to the Grantee the Award of RSUs, as set forth in the Award letter. An RSU is the right, subject to the terms and conditions of the Plan and this Agreement, to receive a distribution of a share of Common Stock for each RSU as described in Section 6 of this Agreement.

3. RSU Account. The Company shall maintain an account ("RSU Account") on its books in the name of the Grantee which shall reflect the number of RSUs awarded to the Grantee.

4. Dividend Equivalents. Upon the payment of any dividend on Common Stock (the "Dividend Payment Date") occurring during the period preceding the earlier of the date of vesting of the Grantee's Award or the date the Grantee's Award is forfeited as described with Section 5, the Company shall promptly pay to each Grantee an amount in cash equal in value to the dividends that the Grantee would have received had the Grantee been the actual owner of the number of shares of Common Stock represented by the RSUs in the Grantee's RSU Account on that date. If, however, the Grantee has elected to defer the RSUs in accordance with Section 13, then the Grantee shall be entitled to a number of RSUs determined by dividing (i) the product of (A) the dollar amount of the cash dividend paid per share of Common Stock on the Dividend Payment Date and (B) the total number of RSUs previously credited to the Grantee as of such Dividend Payment Date (including as a result of previous dividend equivalents paid thereon), by (ii) the Fair Market Value per Share on that date. Such dividend equivalents (if any) shall be subject to the same terms and conditions and shall vest, be settled or forfeited in the same manner and at the same time as the RSUs to which the dividend equivalents were credited.

5. Vesting.

(a) Except as described in (b) below, the Grantee shall become vested in his Award upon the first anniversary of the date of the grant of the Award (the "Award Date") if he remains in continuous service on the Board until such date.

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(b) If the Grantee's service on the Board terminates prior to the first anniversary of the Award Date due to his death, disability or retirement, the Grantee shall become vested in his Award. For this purpose (i) "disability" means (as determined by the Committee in its sole discretion) the inability of the Grantee to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which is expected to result in death or disability or which has lasted or can be expected to last for a continuous period of not less than 12 months; and (ii) "retirement" means the Grantee's retirement in accordance with the Company's retirement policy for Directors.

(c) If the Grantee's service on the Board terminates prior to the first anniversary of the Award Date for any reason other than death, disability or retirement, the entire Award shall be forfeited to the Company, and no portion of the Award shall vest.

6. Settlement of Award. If a Grantee becomes vested in his Award in accordance with Section 5, the Company shall distribute to him, or his personal representative, beneficiary or estate, as applicable, a number of shares of Common Stock equal to the number of vested RSUs subject to the Award. Such shares shall be delivered within 30 days following the date of vesting. If, however, the Grantee has elected to defer the RSUs in accordance with Section 13, then the shares shall be delivered within 30 days following the Grantee's separation from service with the Company as defined under Section 409A of the Internal Revenue Code of 1986, as amended. If, for any reason, the Grantee is a "specified employee," as determined under the Company's policy for identifying specified employees on the date of separation from service (other than as a result of death), then the shares of Common Stock equal to the number of vested RSUs subject to the Award instead shall be delivered within 30 days after the first business day that is more than six months after the date of the Grantee's separation from service (or, if the Grantee dies during such six-month period, within 30 days after death). Fractional RSUs shall be paid in cash.

7. Withholding Taxes. If applicable, the Company shall withhold from any distribution made to the Grantee in cash an amount sufficient to satisfy all minimum Federal, state and local withholding tax requirements. Payment of such taxes may be made by a method specified in the Plan and approved by the Committee.

8. Rights as Stockholder. The Grantee shall not be entitled to any of the rights of a stockholder of the Company with respect to the Award, including the right to vote and to receive dividends and other distributions, until and to the extent the Award is settled in shares of Common Stock.

9. Share Delivery. Delivery of any shares in connection with settlement of the Award will be by book-entry credit to an account in the Grantee's name established by the Company with the Company's transfer agent, or upon written request from the Grantee (or his personal representative, beneficiary or estate, as the case may be), in certificates in the name of the Grantee (or his personal representative, beneficiary or estate).

10. Award Not Transferable. The Award may not be transferred other than by will or the applicable laws of descent or distribution or pursuant to a qualified domestic relations order. The Award shall not otherwise be assigned, transferred, or pledged for any purpose whatsoever and is not subject, in whole or in part, to attachment, execution or levy of any kind. Any attempted assignment, transfer, pledge, or encumbrance of the Award, other than in accordance with its terms, shall be void and of no effect.

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11. Administration. The Award shall be administered in accordance with such regulations as the Organizational Development and Compensation Committee of the Board of Directors of the Company (the "Committee") shall from time to time adopt.

12. Governing Law. This Agreement, and the Award, shall be construed, administered and governed in all respects under and by the laws of the State of Delaware.

13. Deferral of RSUs. The Grantee may elect, on a form provided by the Company (the "Deferral Election"), to defer settlement of the RSUs in accordance with the following rules: (a) in general, the Deferral Election must be filed with the Committee or its designee by, and shall become irrevocable as of, December 31 (or such earlier date as specified on the Deferral Election) of the calendar year next preceding the calendar year in which the Award is granted; and (b) in the first calendar year in which the Grantee becomes a non-employee director of the Company, he or she must file the Deferral Election with the Committee or its designee prior to the date that the individual first becomes a director, and the Deferral Election will become irrevocable on the date received by the Committee or its designee. The Deferral Election will continue in effect for each subsequent year and will become effective with respect to an Award for a year on the date such election otherwise becomes irrevocable for that year under this Section 13(a), unless terminated prior to such date.

IN WITNESS WHEREOF, this Agreement is executed by the Company this \_\_\_\_th day of \_\_\_\_\_, \_\_\_\_\_, effective as of the \_\_\_\_day of \_\_\_\_\_, \_\_\_\_\_.

NEWELL RUBBERMAID INC.

By: \_\_\_\_\_

**CERTIFICATION**

I, Mark D. Ketchum, certify that:

1. I have reviewed this report on Form 10-Q for the quarterly period ended September 30, 2008 of Newell Rubbermaid 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent 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.

Date: November 10, 2008

/s/ Mark D. Ketchum

Mark D. Ketchum  
Chief Executive Officer

**CERTIFICATION**

I, J. Patrick Robinson, certify that:

1. I have reviewed this report on Form 10-Q for the quarterly period ended September 30, 2008 of Newell Rubbermaid 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent 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.

Date: November 10, 2008

/s/ J. Patrick Robinson  
J. Patrick Robinson  
Chief Financial Officer

**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 Newell Rubbermaid Inc. (the "Company") on Form 10-Q for the period ending September 30, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark D. Ketchum, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Mark D. Ketchum

Mark D. Ketchum  
Chief Executive Officer  
November 10, 2008



**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 Newell Rubbermaid Inc. (the "Company") on Form 10-Q for the period ending September 30, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, J. Patrick Robinson, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ J. Patrick Robinson

J. Patrick Robinson  
Chief Financial Officer  
November 10, 2008

**NEWELL RUBBERMAID INC. SAFE HARBOR STATEMENT**

The Company has made statements in its Annual Report on Form 10-K for the year ended December 31, 2007, as well as in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2008, and the documents incorporated by reference therein that constitute forward-looking statements, as defined by the Private Securities Litigation Reform Act of 1995. These statements are subject to risks and uncertainties. The statements relate to, and other forward-looking statements that may be made by the Company may relate to, but are not limited to, information or assumptions about the effects of Project Acceleration, sales (including pricing), income/(loss), earnings per share, return on equity, return on invested capital, capital expenditures, working capital, cash flow, dividends, capital structure, debt to capitalization ratios, interest rates, internal growth rates, restructuring, impairment and other charges, potential losses on divestitures, impact of changes in accounting standards, pending legal proceedings and claims (including environmental matters), future economic performance, operating income improvements, costs and cost savings (including raw material and sourced product inflation, productivity and streamlining), synergies, and management's plans, goals and objectives for future operations and growth. These statements generally are accompanied by words such as "intend," "anticipate," "believe," "estimate," "project," "target," "plan," "expect," "will," "should" or similar statements. Forward-looking statements are not guarantees because there are inherent difficulties in predicting future results. Actual results could differ materially from those expressed or implied in the forward-looking statements. The factors that are discussed below, as well as the matters that are set forth generally in the 2007 Form 10-K and the third Quarter 2008 Form 10-Q and the documents incorporated by reference therein could cause actual results to differ. Some of these factors are described as criteria for success. The Company's failure to achieve, or limited success in achieving, these objectives could result in actual results differing materially from those expressed or implied in the forward-looking statements. In addition, there can be no assurance that the Company has correctly identified and assessed all of the factors affecting the Company or that the publicly available and other information the Company receives with respect to these factors is complete or correct.

**The Company is subject to risks related to its dependence on the strength of retail economies in various parts of the world.**

The Company's business depends on the strength of the retail economies in various parts of the world, primarily in North America, and to a lesser extent Europe, Central and South America and Asia. These retail economies are affected primarily by factors such as consumer demand and the condition of the retail industry, which, in turn, are affected by general economic conditions. With the recent and significant deterioration of economic conditions in the U.S. and elsewhere, there has been considerable pressure on consumer demand, and the resulting impact on consumer spending could have a material adverse effect on the demand for the Company's products as well as its financial condition and results of operations. Consumer demand and the condition of the retail industry may also be impacted by other external factors such as war, terrorism, geopolitical uncertainties, public health issues, natural disasters and other business interruptions. The impact of these external factors is difficult to predict, and one or more of the factors could adversely impact the Company's business. Moreover, in recent years, the retail industry in the U.S. and, increasingly, elsewhere has been characterized by intense competition among retailers. Because such competition, particularly in weak retail economies, can cause retailers to struggle or fail, the Company must continuously monitor, and adapt to changes in, the profitability, creditworthiness and pricing policies of its customers.

**The Company is subject to intense competition in a marketplace dominated by large retailers.**

The Company competes with numerous other manufacturers and distributors of consumer and commercial products, many of which are large and well established. The Company's principal customers are large mass merchandisers, such as discount stores, home centers, warehouse clubs and office superstores, and commercial distributors. The rapid growth of these large mass merchandisers, together with changes in consumer shopping patterns, have contributed to the formation of dominant multi-category retailers that have strong negotiating power with suppliers. Current trends among retailers include fostering high levels of competition among suppliers, demanding innovative new products and requiring suppliers to maintain or reduce product prices and delivering products with shorter lead times. Other trends are for retailers to import products directly from foreign sources and to source and sell products, under their own private label brands, that compete with the Company's products.

The combination of these market influences has created an intensely competitive environment in which the Company's principal customers continuously evaluate which product suppliers to use, resulting in downward pricing pressures and the need for big, consumer-meaningful brands, the ongoing introduction and commercialization of innovative new products, continuing improvements in customer service, and the maintenance of strong relationships with large, high-volume purchasers. The Company also faces the risk

of changes in the strategy or structure of its major retailer customers, such as overall store and inventory reductions and retailer consolidation. The resulting risks to the Company include possible loss of sales, reduced profitability and limited ability to recover cost increases through price increases.

**To compete successfully, the Company must develop and commercialize a continuing stream of innovative new products that create consumer demand.**

The Company's long-term success in the competitive retail environment depends on its ability to develop and commercialize a continuing stream of innovative new products that create consumer demand. The Company also faces the risk that its competitors will introduce innovative new products that compete with the Company's products. The Company's strategy includes increased investment in new product development and increased focus on innovation. There are, nevertheless, numerous uncertainties inherent in successfully developing and commercializing innovative new products on a continuing basis, and new product launches may not deliver expected growth in sales or operating income.

**To compete successfully, the Company must develop and maintain big, consumer-meaningful brands.**

The Company's ability to compete successfully also depends increasingly on its ability to develop and maintain consumer-meaningful brands so that the Company's retailer customers will need the Company's products to meet consumer demand. Consumer-meaningful brands allow the Company to realize economies of scale in its operations. The development and maintenance of such brands requires significant investment in brand building and marketing initiatives. While the Company plans to increase its expenditures for advertising and other brand building and marketing initiatives, the increased investment may not deliver the anticipated results.

**Price increases in raw materials and sourced products could harm the Company's financial results.**

The Company purchases some raw materials, including resin, glass, corrugate, steel, gold, zinc, brass and aluminum, which are subject to price volatility and inflationary pressures. The Company attempts to reduce its exposure to increases in those costs through a variety of programs, including periodic purchases, future delivery purchases, long-term contracts and sales price adjustments. Where practical, the Company uses derivatives as part of its risk management process. Also, as part of its strategy to achieve best total cost, the Company increasingly relies on third party manufacturers as a source for its products. These manufacturers are also subject to price volatility and inflationary pressures, which may, in turn, result in an increase in the amount the Company pays for sourced products. Raw material and sourced product price increases may more than offset productivity gains and could materially impact the Company's financial results.

**The Company's success depends on its ability to continuously improve productivity and streamline operations.**

The Company's success depends on its ability to continuously improve its manufacturing efficiencies, reduce supply chain costs and streamline non-strategic selling, general and administrative expenses in order to produce products at a best-cost position and allow the Company to invest in innovation and brand building. Project Acceleration includes the anticipated closures of certain manufacturing and distribution facilities. In addition, the Company continuously explores ways to best leverage its functional capabilities such as Human Resources, Information Technology, Customer Service, Supply Chain Management and Finance in order to improve efficiency and reduce costs. The Company runs the risk that Project Acceleration and other corporate initiatives aimed at streamlining operations and processes, cost reduction, and improving overall financial results may not be completed substantially as planned, may be more costly to implement than expected, or may not have the positive effects anticipated, or that other major productivity and streamlining programs may be required after such projects are completed. In addition, disruptions in the Company's ability to supply products on a timely basis, which may be incidental to any problems in the execution of Project Acceleration, could adversely affect the Company's future results.

**The Company's ability to make strategic acquisitions and to integrate its acquired businesses is an important factor in the Company's future growth.**

Although the Company has in recent years increasingly emphasized internal growth rather than growth by acquisition, the Company's ability to continue to make strategic acquisitions and to integrate the acquired businesses successfully, including obtaining anticipated cost savings and operating income improvements within a reasonable period of time, remain important factors in the Company's future growth. Furthermore, the Company's ability to finance major acquisitions may be adversely affected by the recent turmoil and uncertainty in global credit markets. In addition, significant additional borrowings would increase the Company's borrowing costs and could adversely affect its credit rating, and constrain the Company's future access to capital.

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**The Company is subject to risks related to its international operations and sourcing model.**

Foreign operations, especially in Europe, but also in Asia, Central and South America and Canada, are important to the Company's business. The Company is expanding from a U.S.-centric business model to one that includes international growth as an increasing focus. In addition, as the Company increasingly sources products in low-cost countries, particularly in the Far East, it is exposed to additional risks and uncertainties. Foreign operations can be affected by factors such as currency devaluation, other currency fluctuations, tariffs, nationalization, exchange controls, interest rates, limitations on foreign investment in local business and other political, economic and regulatory risks and difficulties. The Company also faces risks due to the transportation and logistical complexities inherent in increased reliance on foreign sourcing.

**The Company faces challenges and uncertainties as it transforms into a company that grows through consumer-meaningful brands and new product innovation.**

The Company is undergoing a transformation from a portfolio-holding company that grew through acquisitions to a focused group of leadership platforms that generate internal growth driven by consumer-meaningful brands and new product innovation. Such a transformation requires significant investment in brand-building, marketing and product development and the development of the right methods for understanding how consumers interact with the Company's brands and categories and measuring the effectiveness of advertising and promotion spending. Although the process is well underway, significant challenges and uncertainties remain.

**Complications in connection with the Company's current information system initiative may impact its results of operations, financial condition and cash flows.**

The Company is in the process of replacing various business information systems worldwide with an enterprise resource planning system from SAP. To date, the Company has successfully gone live with the SAP implementation at its North American Office Products business unit and its North American Home & Family business units. These go-lives are the first two major milestones in a multi-year implementation that will occur in several phases, primarily based on geographic region and segment. This activity involves the migration of multiple legacy systems and users to a common SAP information platform. Throughout this process, the Company is changing the way it conducts business and employees' roles in processing and utilizing information. In addition, this conversion will impact certain interfaces with the Company's customers and suppliers, resulting in changes to the tools the Company uses to take orders, procure materials, schedule production, remit billings, make payments and perform other business functions. Based upon the complexity of this initiative, there is risk that the Company will be unable to complete the implementation in accordance with its timeline and will incur additional costs. The implementation could result in operating inefficiencies, and the implementation could impact the Company's ability to perform necessary business transactions. All of these risks could adversely impact the Company's results of operations, financial condition and cash flows.

**Impairment charges could have a material adverse effect on the Company's financial results.**

Future events may occur that would adversely affect the reported value of the Company's assets and require impairment charges. Such events may include, but are not limited to, strategic decisions made in response to changes in economic and competitive conditions, the impact of the economic environment on the Company's customer base, the unfavorable resolution of litigation, including patent infringement litigation involving PSI Systems, Inc., or a material adverse change in the Company's relationship with significant customers or business partners.

**Product liability claims or regulatory actions could adversely affect the Company's financial results or harm its reputation or the value of its end-user brands.**

Claims for losses or injuries purportedly caused by some of the Company's products arise in the ordinary course of the Company's business. In addition to the risk of substantial monetary judgments, product liability claims or regulatory actions could result in negative publicity that could harm the Company's reputation in the marketplace or adversely impact the value of its end-user brands. The Company could also be required to recall possibly defective products, which could result in adverse publicity and significant expenses. Although the Company maintains product liability insurance coverage, potential product liability claims are subject to a self-insured retention or could be excluded under the terms of the policy.

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**If the Company is unable to access the capital markets to refinance its maturing short-term debt, its borrowing costs could increase significantly.**

As of September 30, 2008, the Company had approximately \$569.7 million of short-term debt that it will be required to refinance or repay within the next twelve months. The Company plans to address these obligations as they mature through the capital markets or other arrangements. However, access to the capital markets cannot be assured, particularly given the recent turmoil and uncertainty in the global credit markets, and although the Company believes that alternative arrangements will be available to refinance these obligations, such arrangements could result in a significant increase in the Company's borrowing costs.

**A significant reduction in the Company's credit ratings could materially and adversely affect its business, financial condition and results of operations.**

The Company's current senior debt credit ratings from Moody's Investors Service, Standard & Poor's and Fitch Ratings are Baa2, BBB+ and BBB, respectively. Its current short-term debt credit ratings from Moody's Investors Service, Standard & Poor's and Fitch Ratings are P-2, A-2 and F-2, respectively. In July 2008, both Moody's and Standard & Poor's changed their outlook on their ratings from Stable to Negative and Fitch revised its outlook from Positive to Stable. The Company cannot be sure that any of its current ratings will remain in effect for any given period of time or that a rating will not be lowered by a rating agency if, in its judgment, circumstances in the future so warrant. Any downgrade could increase the Company's borrowing costs, which would adversely affect the Company's financial results. The Company would likely be required to pay a higher interest rate in future financings, and its potential pool of investors and funding sources could decrease. If the Company's short-term ratings were to be lowered, it could limit the Company's access to the commercial paper market, which would likely increase the cost of short term borrowings. The ratings from credit agencies are not recommendations to buy, sell or hold the Company's securities, and each rating should be evaluated independently of any other rating.

**The level of returns on pension and postretirement plan assets and the actuarial assumptions used for valuation purposes could affect the Company's earnings and cash flows in future periods. Changes in government regulations could also affect the Company's pension and postretirement plan expense and funding requirements.**

The funding obligations for the Company's pension plans are impacted by the performance of the financial markets, particularly the equity markets, and interest rates. Funding obligations are determined under government regulations and are measured each year based on the value of assets and liabilities on a specific date. If the financial markets do not provide the long-term returns that are expected under the governmental funding calculations, the Company could be required to make larger contributions. The equity markets can be, and recently have been, very volatile, and therefore the Company's estimate of future contribution requirements can change dramatically in relatively short periods of time. Similarly, changes in interest rates and legislation enacted by governmental authorities can impact the timing and amounts of contribution requirements. An adverse change in the funded status of the plans could significantly increase the Company's required contributions in the future and adversely impact its liquidity.

Assumptions used in determining projected benefit obligations and the fair value of plan assets for the Company's pension and other postretirement benefit plans are evaluated by the Company in consultation with outside actuaries. In the event that the Company determines that changes are warranted in the assumptions used, such as the discount rate, expected long term rate of return, or health care costs, the Company's future pension and projected postretirement benefit expenses could increase or decrease. Due to changing market conditions or changes in the participant population, the actuarial assumptions that the Company uses may differ from actual results, which could have a significant impact on the Company's pension and postretirement liability and related costs.

**The inability to obtain raw materials and finished goods in a timely manner from suppliers would adversely affect the Company's ability to manufacture and market its products.**

The Company purchases raw materials to be used in manufacturing its products. In addition, the Company is placing increasing reliance on third party manufacturers as a source for finished goods. The Company typically does not enter into long-term contracts with its suppliers or sourcing partners. Instead, most raw materials and sourced goods are obtained on a "purchase order" basis. In addition, in some instances the Company maintains single-source or limited-source sourcing relationships, either because multiple sources are not available or the relationship is advantageous due to performance, quality, support, delivery, capacity, or price considerations. Financial, operating or other difficulties suffered by the Company's suppliers and/or sourcing partners or changes in the Company's relationships with its them could result in manufacturing or sourcing interruptions, delays, and inefficiencies and prevent the Company from manufacturing or obtaining the finished goods necessary to meet customer demand.

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**Circumstances associated with the Company's potential divestitures and product line rationalizations could adversely affect the Company's results of operations and financial condition.**

The Company continues to evaluate the performance and strategic fit of its businesses and may decide to sell or discontinue a business or product line based on such an evaluation. A decision to divest or discontinue a business or product line may result in asset impairments, including those related to goodwill and other intangible assets, and losses upon disposition, both of which could have an adverse effect on the Company's results of operations and financial condition. In addition, the Company may encounter difficulty in finding buyers (or prospective buyers may have difficulty obtaining financing) or alternative exit strategies at acceptable prices and terms and in a timely manner. Divestitures and business discontinuations could involve additional risks, including the following:

- difficulties in the separation of operations, services, products and personnel;
- the diversion of management's attention from other business concerns;
- the assumption of certain current or future liabilities in order to induce a buyer to complete a divestiture;
- the disruption of the Company's business;
- and the potential loss of key employees.

The Company may not be successful in managing these or any other significant risks that it may encounter in divesting or discontinuing a business or product line.

**The Company may have additional tax liabilities.**

The Company is subject to income tax in the U.S. and numerous jurisdictions outside the U.S. Significant estimation and judgment is required in determining the Company's worldwide provision for income taxes. In the ordinary course of the Company's business, there are many transactions and calculations where the ultimate tax determination is uncertain. The Company is regularly under audit by tax authorities. Although the Company believes its tax estimates are reasonable, the final outcome of tax audits and related litigation could be materially different than that reflected in its historical income tax provisions and accruals. There can be no assurance that the resolution of any audits or litigation will not have an adverse effect on future operating results.