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

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): July 31, 2017**

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**Advanced Energy Industries, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation)

**000-26966**  
(Commission File Number)

**84-0846841**  
(IRS Employer Identification  
No.)

**1625 Sharp Point Drive, Fort Collins, Colorado**  
(Address of principal executive offices)

**80525**  
(Zip Code)

**(970) 221-4670**  
(Registrant's telephone number, including area code)

**Not applicable**  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2). Emerging growth company [ ]

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. [ ]

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**Item 1.01 Entry into a Material Definitive Agreement.**

On July 28, 2017, Advanced Energy Industries, Inc. (the “Company”) entered into a Loan Agreement (the “Loan Agreement”; capitalized terms used herein but not otherwise defined shall have their meanings as assigned in the Loan Agreement) with Bank of America N.A. (“BA”) which provides a revolving line of credit of up to \$100.0 million subject to certain funding conditions through July 28, 2022. Amounts drawn may be used for permitted acquisitions, share repurchases, working capital and other general corporate purposes. Interest on amounts drawn shall be paid quarterly based upon the LIBOR Daily Floating Rate then in effect, plus between one and one-quarter (1.25%) and one and three-quarters (1.75%) percentage points depending on the Funded Debt to EBITDA ratio. Certain affiliates of the Company have also entered into corporate guaranties pursuant to which they have guaranteed the Company’s obligations under the Loan Agreement pursuant to the Guaranty Agreement dated July 28, 2017 by and among UltraVolt Group, Inc., UltraVolt, INC., AEI US Subsidiary, LLC, AEI Global Holdings, LLC, Sekidenko, Inc. and AE Solar Energy, Inc. in favor of BA. The obligations under the Loan Agreement are unsecured until the Funded Debt to EBITDA ratio exceeds 2.0 to 1.0, at which time the Company and certain affiliates’ tangible and intangible personal property will be subject to a first priority, perfected lien and security interest in favor of BA pursuant to a Security Agreement. The Company has not borrowed against this credit facility.

The Loan Agreement requires the Company to pay an unused commitment fee and certain other fees to BA and contains various affirmative and negative covenants, which, among other things, require the Company to maintain Funded Debt to EBITDA ratios and, subject to various exceptions and thresholds, restrict and limit the Company’s activities in various ways, including but not limited to: (i) limiting the payment of certain dividends; (ii) limiting other debt the Company and affiliates’ incur and making certain loans; (iii) limiting the creation of liens on the Company’s and affiliates’ assets; (iv) limiting the Company’s and affiliates’ sale of certain assets; (v) limiting the type of investment the Company and affiliates can make; (vi) limiting extraordinary corporate transactions, changes in stock ownership and board membership changes that would be viewed as a change in control of the Company; (vii) limiting certain changes in the nature of the Company’s and affiliates’ business; (viii) limiting transactions with affiliates; and (ix) other restricted activities more fully set forth in the Loan Agreement.

The description of each of the Loan Agreement, Guaranty Agreement and form of Security Agreement set forth in this Item 1.01 are qualified in their entirety by reference to the terms and provisions of the Loan Agreement, Guaranty Agreement and form of Security Agreement filed as Exhibits 10.1, 10.2 and 10.3 to this Current Report on Form 8-K, respectively.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-balance Sheet Arrangement of the Registrant.**

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference in its entirety into this Item 2.03.

**Item 9.01 Financial Statements and Exhibits.**

The following exhibits are filed pursuant to Item 1.01 and 2.03:

(d)

- 10.1 Loan Agreement dated July 28, 2017 by and among the Advanced Energy Industries, Inc. and Bank of America N.A.
  - 10.2 Guaranty Agreement dated July 28, 2017 by and among UltraVolt Group, Inc., UltraVolt, INC., AEI US Subsidiary, LLC, AEI Global Holdings, LLC, Sekidenko, Inc. and AE Solar Energy, Inc. in favor of Bank of America, N.A.
  - 10.3 Form of Security Agreement to be entered into if required under the Loan Agreement by and among Bank of America, N.A. , Advanced Energy Industries, Inc., UltraVolt Group, Inc., UltraVolt, INC., AEI US Subsidiary, LLC, AEI Global Holdings, LLC, Sekidenko, Inc. and AE Solar Energy, Inc.
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**SIGNATURES**

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

Date: July 31, 2017

/s/ Thomas O. McGimpsey

Thomas O. McGimpsey

Executive Vice President and General Counsel

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## EXHIBIT INDEX

<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
10.1	Loan Agreement dated July 28, 2017 by and among the Advanced Energy Industries, Inc. and Bank of America N.A.
10.2	Guaranty Agreement dated July 28, 2017 by and among UltraVolt Group, Inc., UltraVolt, INC., AEI US Subsidiary, LLC, AEI Global Holdings, LLC, Sekidenko, Inc. and AE Solar Energy, Inc. in favor of Bank of America, N.A.
10.3	Form of Security Agreement to be entered into if required under the Loan Agreement by and among Bank of America, N.A. , Advanced Energy Industries, Inc., UltraVolt Group, Inc., UltraVolt, INC., AEI US Subsidiary, LLC, AEI Global Holdings, LLC, Sekidenko, Inc. and AE Solar Energy, Inc.

LOAN AGREEMENT  
BY AND BETWEEN  
ADVANCED ENERGY INDUSTRIES, INC.,  
AS BORROWER,  
AND  
BANK OF AMERICA, N.A.,  
AS BANK  
DATED AS OF JULY 28, 2017

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## LOAN AGREEMENT

This Loan Agreement (the "Agreement") dated as of July 28, 2017, is between Bank of America, N.A. (the "Bank") and Advanced Energy Industries, Inc., a Delaware corporation (the "Borrower").

### 1. DEFINITIONS

In addition to the terms which are defined elsewhere in this Agreement, the following terms have the meanings indicated for the purposes of this Agreement:

1.1 "Applicable Rate" is defined in Section 2.5.

1.2 "Collateral Trigger Event" means the first date after the date of this Agreement that the Funded Debt to EBITDA Ratio (as calculated based on the most recently delivered financial statements pursuant to Section 7.2(a) or 7.2(b)) exceeds 2.0 to 1.0.

1.3 "Guarantor" means each domestic subsidiary of the Borrower providing a guaranty with respect to the obligations hereunder.

1.4 "Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, properties or financial condition of the Related Parties taken as a whole; (b) a material impairment of the ability of any Obligor to perform its obligations under this Agreement or any related loan document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Obligor of this Agreement or any related loan document to which it is a party.

1.5 "Obligor" means the Borrower and/or any Guarantor.

1.6 "Related Party" means each of the Borrower and its subsidiaries. For the avoidance of doubt, AEI Global Holdings C.V. shall, for all purposes under this Agreement, be deemed to be a Related Party that is not an Obligor.

### 2. LINE OF CREDIT AMOUNT AND TERMS

2.1 Line of Credit Amount.

- (a) During the availability period described below, the Bank will provide a line of credit to the Borrower (the "Line of Credit"). The amount of the Line of Credit (the "Commitment") is One Hundred Million Dollars (\$100,000,000).
- (b) This is a revolving line of credit. During the availability period, the Borrower may repay principal amounts and reborrow them.
- (c) The Borrower agrees not to permit the principal balance outstanding to exceed the Commitment. If the Borrower exceeds this limit, the Borrower will immediately pay the excess to the Bank upon the Bank's demand.



2.2 Availability Period.

The Line of Credit is available between the date of this Agreement and July 28, 2022, or such earlier date as the availability may terminate as provided in this Agreement (the "Facility Expiration Date").

2.3 Repayment Terms.

- (a) The Borrower will pay interest on September 30, 2017, and then on the last day of each quarter thereafter until payment in full of any principal outstanding under this facility. The amount of each payment shall be the amount of all accrued interest on the Line of Credit.
- (b) The Borrower will repay in full any principal, interest or other charges outstanding under this Agreement no later than the Facility Expiration Date.
- (c) The Borrower may at any time (a) prepay the Line of Credit in full or in part or (b) terminate the Commitment, in each case without premium or penalty.

2.4 Interest Rate.

- (a) The interest rate is a rate per year equal to the LIBOR Daily Floating Rate plus the Applicable Rate as defined below.
- (b) The LIBOR Daily Floating Rate is a fluctuating rate of interest which can change on each banking day. The rate will be adjusted on each banking day to equal the London Interbank Offered Rate (or a comparable or successor rate which is approved by the Bank) for U.S. Dollar deposits for delivery on the date in question for a one month term beginning on that date. The Bank will use the London Interbank Offered Rate as published by Bloomberg (or other commercially available source providing quotations of such rate as selected by the Bank from time to time) as determined at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, as adjusted from time to time in the Bank's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternate method as reasonably selected by the Bank. A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars. If at any time the LIBOR Daily Floating Rate is less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

2.5 Applicable Rate.

The Applicable Rate shall be the following amounts per annum, based upon the Funded Debt to EBITDA Ratio (as defined in the "Covenants" section of this Agreement, the "Financial Test"), as set forth in the most recent compliance certificate received by the Bank as required in the Covenants section. Until the Bank receives the first compliance certificate, the Applicable Rate shall be the amounts indicated for pricing level 1 set forth below:

Pricing Level	Funded Debt to EBITDA Ratio	LIBOR Daily Floating Rate Loans and Letter of Credit Fee	Unused Commitment Fee
1	≤ 2.0 to 1.0	1.25%	0.15%
2	> 2.0 to 1.0	1.75%	0.25%

The Applicable Rate shall be in effect from the date the most recent compliance certificate is received by the Bank until the date the next compliance certificate is received; provided, however, that if the Borrower

fails to timely deliver the next compliance certificate, the Applicable Rate from the date such compliance certificate was due until the date such compliance certificate is received by the Bank shall be the highest pricing level set forth above.

Notwithstanding anything to the contrary contained herein, (i) in the event the Obligor has not begun transferring their domestic depository accounts, disbursement accounts, cash management services and p-card business to the Bank on or before February 28, 2018 (or such later date acceptable to the Bank in its sole discretion), and (ii) thereafter, if the Obligor fails to maintain their domestic depository accounts, disbursement accounts and p-card business with the Bank, then, in either case, the Unused Commitment Fee shall be increased to (i) 0.25% for Pricing Level 1 and (ii) 0.35% for Pricing Level 2.

If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Bank determines that (i) the Financial Test as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Financial Test would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Bank an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. The Bank's acceptance of payment of such amounts will not constitute a waiver of any default under this Agreement. The Borrower's obligations under this paragraph shall survive the termination of this Agreement and the repayment of all other obligations.

## 2.6 Letters of Credit.

- (a) General. As a subfacility under the Line of Credit, during the availability period, the Bank agrees from time to time to issue or cause an affiliate to issue standby letters of credit for the account of the Borrower (each a "Letter of Credit," and collectively "Letters of Credit"); provided however, that the aggregate drawn and undrawn amount of all outstanding Letters of Credit shall not at any time exceed Ten Million Dollars (\$10,000,000). The form and substance of each Letter of Credit shall be subject to approval by the Bank, in its sole discretion. Each Letter of Credit shall be issued for a term, as designated by the Borrower, not to exceed twelve (12) months; provided however, that no Letter of Credit shall have an expiration date subsequent to the Facility Expiration Date. Standby letters of credit may include a provision providing that their expiry date will automatically be extended each year for an additional one year period unless the Bank delivers written notice to the contrary. The undrawn amount of all Letters of Credit shall be reserved under the Line of Credit and such amount shall not be available for borrowings. Each Letter of Credit shall be subject to the additional terms and conditions of the Letter of Credit agreements, applications and any related documents required by the Bank in connection with the issuance of Letters of Credit. At the option of the Bank, any drawing paid under a Letter of Credit may be deemed an advance under the Line of Credit and shall be repaid by the Borrower in accordance with the terms and conditions of this Agreement applicable to such advances; provided however, that if advances under the Line of Credit are not available, for any reason, at the time any drawing is paid, then the Borrower shall immediately pay to the Bank the full amount drawn, together with interest from the date such drawing is paid to the date such amount is fully repaid by the Borrower, at the rate of interest applicable to advances under the Line of Credit. In such event the Borrower agrees that the Bank, in its sole discretion, may debit any account maintained by the Borrower with the Bank for the amount of any such drawing. The Borrower agrees to deposit in a cash collateral account with the Bank an amount equal to the aggregate outstanding undrawn face amount of all letters of credit which remain outstanding on the Facility Expiration Date. The Borrower grants a security interest in such cash collateral account to the Bank. Amounts held in such cash collateral account shall be applied by the Bank to the payment of drafts drawn under such letters of credit and to the obligations and liabilities of the Borrower to the Bank, in such order of application as the Bank may in its sole discretion elect.
- (b) Letter of Credit Fee. The Borrower shall pay the Bank a non-refundable fee equal to the Applicable Rate times the outstanding undrawn amount of each standby letter of credit, payable quarterly in advance, calculated on the basis of the face amount outstanding on the day the fee is calculated.

If there is a default under this Agreement, at the Bank's option, the amount of the fee shall be increased by 2.0% per annum, effective starting on the day the Bank provides notice of the increase to the Borrower.

### 3. COLLATERAL

The Borrower's obligations to the Bank under this Agreement will be secured by assets of the Obligors to the extent required by Section 7.18.

### 4. LOAN ADMINISTRATION AND FEES

#### 4.1 Fees.

- (a) Unused Commitment Fee. The Borrower agrees to pay a fee on any difference between the Commitment and the amount of credit it actually uses, determined by the daily amount of credit outstanding during the specified period. The fee will be calculated at the Applicable Rate.

This fee is due on September 30, 2017, and on the last day of each following quarter until the expiration of the availability period.

#### 4.2 Collection of Payments; Payments Generally.

- (a) Payments will, unless otherwise agreed by the Bank, be made by debit to a deposit account, if direct debit is provided for in this Agreement or is otherwise authorized by the Borrower. For payments not made by direct debit, payments will be made by mail to the address shown on the Borrower's statement, or by such other method as may be permitted by the Bank.
- (b) Each disbursement by the Bank and each payment by the Borrower will be evidenced by records kept by the Bank which will, absent demonstrable error, be conclusively presumed to be correct and accurate and constitute an account stated between the Borrower and the Bank.
- (c) All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff.

#### 4.3 Borrower's Instructions.

Subject to the terms, conditions and procedures stated elsewhere in this Agreement, the Bank may honor instructions for advances or repayments and any other instructions under this Agreement given by any one of the individuals the Bank reasonably believes is authorized to sign loan agreements on behalf of the Borrower, or any other individual(s) designated by any one of such authorized signers (each an "Authorized Individual"). The Bank may honor any such instructions made by any one of the Authorized Individuals, whether such instructions are given in writing or by telephone, telefax or Internet and intranet websites designated by the Bank with respect to separate products or services offered by the Bank.

#### 4.4 Direct Debit.

The Borrower agrees that, upon request from the Bank or at the option of the Borrower after any time following the transfer of the Borrower's depository accounts to the Bank, on the due date of any amount due under this Agreement, the Bank will debit the amount due from a deposit account of the Borrower maintained with the Bank that is designated in writing by the Borrower (the "Designated Account"). Should there be insufficient funds in the Designated Account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable by the Borrower.

#### 4.5 Banking Days.

Unless otherwise provided in this Agreement, a banking day is a day other than a Saturday, Sunday or other day on which commercial banks are authorized to close, or are in fact closed, in the state where the Bank's lending office is located, and, if such day relates to amounts bearing interest at an offshore rate (if any), means any such day on which dealings in dollar deposits are conducted among banks in the offshore dollar interbank market. All payments and disbursements which would be due or which are received on a day which is not a banking day will be due or applied, as applicable, on the next banking day.

#### 4.6 Additional Costs.

The Borrower will pay the Bank, on demand, for the Bank's costs or losses arising from any Change in Law which are allocated to this Agreement or any credit outstanding under this Agreement. The allocation will be made as determined by the Bank, using any reasonable method. The costs include, without limitation, the following:

- (a) any reserve or deposit requirements (excluding any reserve requirement already reflected in the calculation of the interest rate in this Agreement); and
- (b) any capital requirements relating to the Bank's assets and commitments for credit.

Failure or delay on the part of the Bank to demand compensation pursuant to this Section 4.6 shall not constitute a waiver of the Bank's right to demand such compensation, provided that the Borrower shall not be required to compensate the Bank pursuant to this Section 4.6 for any increased costs incurred or reductions suffered more than six months prior to the date that the Bank notifies the Borrower of the Change in Law giving rise to such increased costs or losses and of the Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof). The Bank shall not demand any payment for costs and losses arising from any Change of Law unless the Bank is making similar requests of other similarly situated borrowers. Any such demand will include a certificate from the Bank including a calculation, in reasonable detail, of such costs and expenses.

"Change in Law" means the occurrence, after the date of this Agreement, of the adoption or taking effect of any new or changed law, rule, regulation or treaty, or the issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives issued in connection with that Act, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

#### 4.7 Interest Calculation.

Except as otherwise stated in this Agreement, all interest and fees, if any, will be computed on the basis of a 360-day year and the actual number of days elapsed. This results in more interest or a higher fee than if a 365-day year is used. Installments of principal which are not paid when due under this Agreement shall continue to bear interest until paid. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

#### 4.8 Default Rate.

Upon the occurrence of any default or after maturity or after judgment has been rendered on any obligation under this Agreement, all amounts outstanding under this Agreement, including any unpaid interest, fees, or costs, will at the option of the Bank bear interest at a rate which is 2.0 percentage point(s) higher than

the rate of interest otherwise provided under this Agreement. This may result in compounding of interest. This will not constitute a waiver of any default.

4.9 Taxes.

If any payments to the Bank under this Agreement are made from outside the United States, the Borrower will not deduct any foreign taxes from any payments it makes to the Bank. If any such taxes are imposed on any payments made by the Borrower (including payments under this paragraph), the Borrower will pay the taxes and will also pay to the Bank, at the time interest is paid, any additional amount which the Bank specifies as necessary to preserve the after-tax yield the Bank would have received if such taxes had not been imposed. Upon request of the Bank, the Borrower will confirm that it has paid the taxes by giving the Bank official tax receipts (or notarized copies) within thirty (30) days after the due date.

5. CONDITIONS

Before the Bank is required to extend any credit to the Borrower under this Agreement, it must receive any documents and other items it may reasonably require, in form and content acceptable to the Bank, including any items specifically listed below.

5.1 Authorizations.

Evidence that the execution, delivery and performance by each Obligor of this Agreement and any instrument or agreement required under this Agreement have been duly authorized.

5.2 Governing Documents.

A copy of each Obligor's organizational documents.

5.3 Guaranties.

Guaranties signed by UltraVolt Group, Inc., UltraVolt, Inc., AEI US Subsidiary, LLC, AEI Global Holdings LLC, Sekidenko, Inc., and AE Solar Energy, Inc.

5.4 Payment of Fees.

Payment of all fees, expenses and other amounts due and owing to the Bank. If any fee is not paid in cash, the Bank may, in its discretion, treat the fee as a principal advance under this Agreement or deduct the fee from the loan proceeds.

5.5 Good Standing.

Certificates of good standing for each Obligor from its state of formation and from any other state in which such Obligor is required to qualify to conduct its business.

5.6 Legal Opinion.

A written opinion from the Borrower's legal counsel, covering such matters as the Bank may require. The legal counsel and the terms of the opinion must be acceptable to the Bank.

5.7 Conditions to Each Extension of Credit.

Before each extension of credit, including the first:

- (a) each representation and warranty set forth in Section 6 below shall be true and correct as if made on the date of such extension of credit.
- (b) there is no event which is, or with notice or lapse of time or both would be, a default under this Agreement.

## 6. REPRESENTATIONS AND WARRANTIES

When the Borrower signs this Agreement, and until the Bank is repaid in full, the Borrower makes the following representations and warranties. Each request for an extension of credit constitutes a renewal of these representations and warranties as of the date of the request:

### 6.1 Formation.

Each Related Party is duly formed and existing under the laws of the state or other jurisdiction where organized.

### 6.2 Authorization.

This Agreement, and any instrument or agreement required under this Agreement, are within the each Obligor's powers, have been duly authorized, and do not conflict with any of its organizational papers.

### 6.3 Enforceable Agreement.

This Agreement is a legal, valid and binding agreement of the Borrower, subject to applicable bankruptcy, insolvency and other debtor relief laws, and general principles of equity, enforceable against the Borrower in accordance with its terms, and any instrument or agreement required under this Agreement, when executed and delivered by the applicable Obligor, will be similarly legal, valid, binding and enforceable as to each Obligor party thereto.

### 6.4 Good Standing.

In each state in which any Related Party does business, it is properly licensed, in good standing, and, where required, in compliance with fictitious name (e.g. trade name or d/b/a) statutes, unless the failure to comply could not reasonably be expected to have a Material Adverse Effect.

### 6.5 No Conflicts.

This Agreement does not conflict with (a) any Obligor's organizational papers or (b) except as could not reasonably be expected to have a Material Adverse Effect, any law, agreement, or obligation by which such Obligor is bound.

### 6.6 Financial Information.

All financial and other information that has been or will be supplied to the Bank is sufficiently complete to give the Bank accurate knowledge of the Borrower's (and any other Obligor's) financial condition, including all material contingent liabilities. Since the date of the most recent financial statement provided to the Bank, there has been no Material Adverse Effect.

### 6.7 Lawsuits.

There is no lawsuit, tax claim or other dispute pending or threatened in writing against any Related Party which, if lost, could reasonably be expected to cause a Material Adverse Effect.

### 6.8 Collateral.

All collateral required in this Agreement is owned by the grantor of the security interest free of any title defects or any liens or interests of others, except those permitted by this Agreement.

6.9 Permits, Franchises.

Each Related Party possesses all permits, memberships, franchises, contracts and licenses required and all trademark rights, trade name rights, patent rights, copyrights, and fictitious name rights necessary to enable it to conduct the business in which it is now engaged.

6.10 Other Obligations.

No Related Party is in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation, except to the extent that such default could not reasonably be expected to cause a Material Adverse Effect.

6.11 Tax Matters.

The Borrower has no knowledge of any pending assessments or adjustments of income tax for any Related Party for any year and all taxes due have been paid, other than taxes that are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Related Party.

6.12 No Event of Default.

There is no event which is, or with notice or lapse of time or both would be, a default under this Agreement.

6.13 Insurance.

Each Related Party has obtained, and maintained in effect, the insurance coverage required in the "Covenants" section of this Agreement.

6.14 ERISA Plans.

(a) Each Plan (other than a multiemployer plan) is in compliance in all material respects with ERISA, the Code and other federal or state law, including all applicable minimum funding standards and there have been no prohibited transactions with respect to any Plan (other than a multiemployer plan), which has resulted or could reasonably be expected to result in a Material Adverse Effect.

(b) With respect to any Plan subject to Title IV of ERISA:

(i) No reportable event has occurred under Section 4043(c) of ERISA which requires notice.

(ii) No action by the Borrower or any ERISA Affiliate to terminate or withdraw from any Plan has been taken and no notice of intent to terminate a Plan has been filed under Section 4041 or 4042 of ERISA.

(c) The following terms have the meanings indicated for purposes of this Agreement:

(i) "Code" means the Internal Revenue Code of 1986, as amended.

(ii) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

- (iii) "ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code.
- (iv) "Plan" means a plan within the meaning of Section 3(2) of ERISA maintained or contributed to by the Borrower or any ERISA Affiliate, including any multiemployer plan within the meaning of Section 4001(a)(3) of ERISA.

6.15 No Plan Assets.

The Borrower represents that, as of the date hereof and throughout the term of this Agreement, no Obligor is (1) an employee benefit plan subject to Title I of ERISA, (2) a plan or account subject to Section 4975 of the Code; (3) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code; or (4) a "governmental plan" within the meaning of ERISA.

6.16 Government Sanctions.

(a) The Borrower represents that no Obligor, nor any affiliated entities of any Obligor, including subsidiaries, nor, to the knowledge of the Borrower, any owner, trustee, director, officer, employee, agent, affiliate or representative of the Borrower or any other Obligor is an individual or entity ("Person") currently the subject of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions"), nor is the Borrower or any other Obligor located, organized or resident in a country or territory that is the subject of Sanctions.

(b) The Borrower represents and covenants that it will not, directly or indirectly, use the proceeds of the credit provided under this Agreement, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

7. COVENANTS

The Borrower agrees, so long as credit is available under this Agreement and until the Bank is repaid in full, the Borrower shall, and shall cause each other Related Party:

7.1 Use of Proceeds.

- (a) To use the proceeds of the credit extended under this Agreement only for (i) permitted acquisitions, (ii) stock repurchases and (iii) working capital and other general corporate purposes.
- (b) The proceeds of the credit extended under this Agreement may not be used directly or indirectly to purchase or carry any "margin stock" as that term is defined in Regulation U of the Board of Governors of the Federal Reserve System, or extend credit to or invest in other parties for the purpose of purchasing or carrying any such "margin stock," or to reduce or retire any indebtedness incurred for such purpose.

7.2 Financial Information.

To provide the following financial information and statements in form and content acceptable to the Bank, and such additional information as requested by the Bank from time to time.



- (a) Within 120 days of the fiscal year end, the annual financial statements of the Borrower certified and dated by an authorized financial officer. These financial statements must be audited (with an opinion satisfactory to the Bank) by a Certified Public Accountant acceptable to the Bank. The statements shall be prepared on a consolidated basis.
- (b) Within 45 days after each period's end (including the last period in each fiscal year) quarterly financial statements of the Borrower certified and dated by an authorized financial officer. These financial statements may be company-prepared. The statements shall be prepared on a consolidated basis.
- (c) Promptly, upon sending or receipt, copies of any management letters and correspondence relating to management letters, sent or received by the Borrower to or from the Borrower's auditor.
- (d) Financial projections covering a time period acceptable to the Bank and specifying the assumptions used in creating the projections. The projections shall be provided to the Bank no less often than sixty (60) days after the end of each fiscal year.
- (e) Concurrently with the financial statements required to be delivered pursuant to Sections 7.2(a) and 7.2(b), a compliance certificate of the Borrower, signed by an authorized financial officer and setting forth (i) the information and computations (in sufficient detail) to establish compliance with all financial covenants at the end of the period covered by the financial statements then being furnished and (ii) whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any default under this Agreement applicable to the party submitting the information and, if any such default exists, specifying the nature thereof and the action the party is taking and proposes to take with respect thereto.
- (f) The budget of the Borrower, in form and content acceptable to the Bank, within sixty (60) days after the end of each fiscal year.
- (g) Promptly upon the Bank's request, such other public filings with the Securities and Exchange Commission, books, records, statements, lists of property and accounts, budgets, forecasts or reports as to the Borrower and as to each other Obligor as the Bank may request.

Documents required to be delivered pursuant to Section 7.2(a) or 7.2(b) (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which the Bank has access (including [www.sec.gov](http://www.sec.gov)).

### 7.3 Funded Debt to EBITDA Ratio.

To maintain on a consolidated basis a ratio of Funded Debt to EBITDA not exceeding 2.50 to 1.0.

"Funded Debt" means (a) all outstanding liabilities for borrowed money, including current and long term debt (but excluding trade accounts payable in the ordinary course of business), (b) direct or contingent obligations under letters of credit and similar instruments, (c) obligations under capital leases, (d) obligations under synthetic leases and securitization transactions, and (e) guarantees of the foregoing.

"EBITDA" means net income, plus (to the extent deducted in calculating such net income) (a) losses from discontinued operations, (b) extraordinary losses, (c) income taxes, (d) interest expense, (e) depreciation and amortization, (e) non-cash impairment charges (other than write-downs of current assets), (f) non-cash expenses resulting from the grant of stock and stock options and other compensation to management personnel of any Obligor or Related Party pursuant to a written incentive plan or agreement, (g) other non-cash items that are unusual or otherwise non-recurring and do not represent an accrual or a reserve for a future cash expense, (g) (i) non-recurring charges during such period (including severance, relocation costs,

one-time compensation changes and losses or charges associated with derivative agreements, (ii) restructuring charges or reserves, and (iii) any non-capitalized transaction costs incurred in connection with the closing of this Agreement or in connection with the issuance, resale or secondary offering of securities or any refinancing transaction, in each case whether or not consummated, provided that the amounts added back pursuant to this clause (g) shall not exceed more than 5% of EBITDA (calculated prior to giving effect to such addbacks), and (h) any fees and expenses related to Permitted Acquisitions, minus (to the extent included in calculating such net income) (1) income from discontinued operations, (b) extraordinary gains and (c) other non-cash income or gains. This ratio will be calculated at the end of each reporting period for which the Bank requires financial statements, using the results of the twelve-month period ending with that reporting period.

#### 7.4 Dividends and Distributions.

Not to declare or pay any dividends, redemptions of stock or membership interests, distributions and withdrawals (as applicable) to its owners, except:

- (a) dividends payable in capital stock;
- (b) subsidiaries of the Borrower may pay dividends to the Borrower or to other subsidiaries of the Borrower;
- (c) during any fiscal year, dividends from earnings available for such purposes and earned during the immediately preceding fiscal year, and in any event, not in excess of 15% of EBITDA for such preceding fiscal year in the aggregate; and
- (d) so long as no default exists under this Agreement or would result therefrom, the Borrower may repurchase its stock.

#### 7.5 Other Debts.

Not to have outstanding or incur any direct or contingent liabilities or lease obligations (other than those to the Bank or to any affiliate of the Bank), or become liable for the liabilities of others, without the Bank's written consent. This does not prohibit:

- (a) operating leases or acquiring goods, supplies, services, or merchandise on normal trade credit.
- (b) liabilities, lines of credit and capital leases in existence on the date of this Agreement set forth on Schedule 7.5, including amendments to or refinancings of such obligations that do not increase the principal amount or shorten the maturity of such obligations.
- (c) obligations (contingent or otherwise) existing or arising under any hedging arrangement, provided that (i) such obligations are (or were) entered into in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such person, or changes in the value of securities issued by such person, and not for purposes of speculation or taking a "market view;" and (ii) such hedging arrangement does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party.
- (d) obligations in respect of purchase money debt and capital leases; provided that the aggregate principal amount of all such debt shall not exceed Twenty-Five Million Dollars (\$25,000,000) at any one time outstanding.
- (e) liabilities between Obligor, liabilities of an Obligor to a Related Party that is not an Obligor, liabilities between Related Parties that are not Obligor, a guaranty by a Related Party of a liability of an

Obligor that is otherwise permitted hereunder, or a guaranty by a Related Party that is not an Obligor of a liability of another Related Party that is not an Obligor that is otherwise permitted hereunder.

- (f) indebtedness of acquired entities in connection with a Permitted Acquisition, provided that such indebtedness (i) was not incurred in connection with or in anticipation of the Permitted Acquisition transaction and (ii) constitutes purchase money debt and capital leases .
- (g) unsecured indebtedness (or, solely in the case of Related Parties that are not Obligors, indebtedness secured by assets of such Related Parties) not otherwise permitted hereunder in a maximum aggregate outstanding amount not to exceed \$25,000,000 at any time.
- (h) liabilities for outstanding balances for transactions made under employee purchasing card ("P Card") programs in the ordinary course of business.
- (i) contingent liabilities that may arise under standard indemnification obligations in commercial agreements.
- (j) comfort letters given by the Borrower in support of Related Parties (that are not Obligors) in connection with local statutory financial audits.
- (k) guarantees in favor of Related Parties issued in the ordinary course in support of commercial agreements, but excluding guarantees for borrowed money.
- (l) customary indemnification obligations for employees, officers, and directors.
- (m) ordinary course liabilities and contingent liabilities of Related Parties in connection with employee benefits.

#### 7.6 Other Liens.

Not to create, assume, or allow any security interest or lien (including judicial liens) on property any Related Party now or later owns without the Bank's written consent. This does not prohibit:

- (a) liens and security interests in favor of the Bank or any affiliate of the Bank.
- (b) liens for taxes not yet due.
- (c) liens outstanding on the date of this Agreement and set forth on Schedule 7.6.
- (d) liens securing debt permitted by Section 7.5(d) provided that (i) such liens do not at any time encumber any property other than the property financed by such debt and (ii) such liens attach to such property concurrently with or within ninety days after the acquisition thereof.
- (e) liens on assets of acquired entities securing obligations permitted under Section 7.5(f); provided, that such liens do not extend to property not subject to such liens at the time of acquisition (other than improvements thereon) and are no more favorable to the lienholders than such existing lien.
- (f) liens on the assets of Related Parties (other than Obligors) securing obligations permitted under Section 7.5(g).
- (g) statutory liens of landlords, banks (and rights of setoff), of carriers, warehousemen, mechanics, repairmen, sellers of goods and services (including "retention of title" provisions applicable to certain Related Parties that are not Obligors), and other liens imposed by law (other than any such lien imposed pursuant to Section 430(k) of the Internal Revenue Code), in each case incurred in the

ordinary course of business for (i) amounts not yet overdue or (ii) for amounts that are overdue and that are being contested in good faith by appropriate proceedings.

- (h) deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and similar obligations, so long as no foreclosure, sale or similar proceedings have been commenced on account thereof.
- (i) easements, rights-of-way, restrictions, encroachments, minor defects or irregularity in title and other similar charges, in each case which do not and will not interfere in any material respect with the use or value of the property or asset to which it relates.
- (j) any interest or title of a lessor or sublessor under any operating or true lease of real estate entered into by a Related Party in the ordinary course of its business covering only the assets so leased.
- (k) purported liens evidenced by the filing of precautionary UCC financing statements related solely to operating leases of personal property entered into in the ordinary course of business.
- (l) any attachment or judgment lien not constituting an event of default under this Agreement.
- (m) non-exclusive licenses of intellectual property granted by a Related Party in the ordinary course consistent with past practices and not interfering in any respect with the ordinary conduct of business of such Related Party.
- (n) liens granted by Related Parties that are not Obligors in favor of Obligors.

#### 7.7 Maintenance of Assets.

- (a) Not to sell, assign, lease, transfer or otherwise dispose of any part of any Related Party's business or any Related Party's assets except (i) inventory sold in the ordinary course of the Borrower's business, (ii) sales, assignments, leases, transfers or dispositions to Obligors, (iii) sales, assignments, leases, transfers or dispositions by Related Parties that are not Obligors to other Related Parties, (iv) sales or issuances of equity interests in the Borrower that do not constitute a Change in Control, (v) sales, transfers, assignments or other dispositions of intellectual property rights by an Obligor to a Related Party or by a Related Party that is not an Obligor to another Related Party, and (vi) other assets so long as the aggregate amount of all such assets sold during any fiscal year shall not exceed 15% of consolidated tangible assets of the Borrower and its subsidiaries as of the last day of the immediately preceding fiscal year.
- (b) Not to sell, assign, lease, transfer or otherwise dispose of any assets for less than fair market value, or enter into any agreement to do so.
- (c) Not to enter into any sale and leaseback agreement covering any of its fixed assets with an aggregate fair market value in excess of \$10,000,000.
- (d) To maintain and preserve all rights, privileges, and franchises any Related Party now has, to the extent that such rights, privileges or franchises are necessary to the operation of its business.
- (e) To make any repairs, renewals, or replacements to keep each Related Party's properties in good working condition, to the extent that such properties are necessary to the operation of its business.

7.8 Investments.

Not to have any existing, or make any new, investments in any individual or entity, or make any capital contributions or other transfers of assets to any individual or entity, except for:

- (a) existing investments set forth on Schedule 7.8.
- (b) investments in any of the following:
  - (i) certificates of deposit;
  - (ii) U.S. treasury bills and other obligations of the federal government;
  - (iii) readily marketable securities (including commercial paper, but excluding restricted stock and stock subject to the provisions of Rule 144 of the Securities and Exchange Commission).
- (c) investments by Obligors in other Obligors.
- (d) investments by Related Parties that are not Obligors in other Related Parties.
- (e) investments (including, without limitation, investments in joint ventures) in an aggregate outstanding amount not to exceed 5% of consolidated tangible assets of the Borrower and its subsidiaries at any one time.
- (f) Loans permitted under Section 7.9 hereof.

7.9 Loans.

Not to make any loans, advances or other extensions of credit to any individual or entity, except for:

- (a) existing extensions of credit set forth on Schedule 7.9.
- (b) extensions of credit among Obligors, extensions of credit from Related Parties that are not Obligors to Obligors and extensions of credit among Related Parties that are not Obligors.
- (c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the ordinary course of business to non-affiliated entities.
- (d) extensions of credit not otherwise permitted hereunder that do not exceed an aggregate amount of Ten Million Dollars (\$10,000,000) outstanding at any one time.

7.10 Change of Control.

Not to cause, permit, or suffer any Change of Control, unless all obligations hereunder are paid in full and the Commitment is terminated concurrently with such Change of Control. "Change of Control" means an event or series of events by which: (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all equity interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of voting equity interests of the Borrower representing 35% or more of the combined voting power of all voting equity interests of the Borrower on a fully diluted basis (and taking into account all such securities

that such person or group has the right to acquire pursuant to any option right); or (b) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was nominated, appointed or approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was nominated, appointed or approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

7.11 Additional Negative Covenants.

Not to, without the Bank's written consent:

- (a) enter into any consolidation, merger, or other combination, or become a partner in a partnership, a member of a joint venture (except as permitted under Section 7.8), or a member of a limited liability company, provided that (a) the Borrower may merge or consolidate with any of its subsidiaries provided that the Borrower is the continuing or surviving entity, (b) any subsidiary may merge or consolidate with any other subsidiary provided that if a Guarantor is a party to such transaction, the continuing or surviving entity is a Guarantor, (c) the Borrower or any subsidiary may merge with any other entity in connection with a Permitted Acquisition provided that (i) if the Borrower is a party to such transaction, the Borrower is the continuing or surviving entity and (ii) if a Guarantor is a party to such transaction, such Guarantor is the surviving entity and (d) any Related Party (other than the Borrower) may be liquidated or dissolved provided that the assets of such Related Party are transferred to another Related Party (or, in the case of the liquidation or dissolutions of an Obligor, to another Obligor).
- (b) acquire or purchase a business or its assets unless such acquisition or purchase is a Permitted Acquisition. "Permitted Acquisition" means an acquisition or purchase a business or its assets by the Borrower or any of its subsidiaries, provided that (a) no default hereunder or under any other loan document shall have occurred and be continuing or would result from such acquisition, (b) the property acquired (or the property of the entity acquired) in such acquisition is used or useful in the same or a similar line of business as the Borrower and its subsidiaries were engaged in on the date of this Agreement (or any reasonable extensions or expansions thereof), (c) in the case of an acquisition of the equity interests of another entity, the board of directors (or other comparable governing body) of such other entity shall have duly approved such acquisition (provided, however, that this provision shall not prohibit purchases out of bankruptcy or pursuant to sales permitted under Article 9 of the Uniform Commercial Code) and (d) if such transaction involves the purchase of an interest in a partnership between the Borrower or any of its subsidiaries as a general partner and entities unaffiliated with the Borrower as the other partners, such transaction shall be effected by having such equity interest acquired by a corporate holding company directly or indirectly wholly owned by the Borrower or such subsidiary newly formed for the sole purpose of effecting such transaction.
- (c) engage in any business activities substantially different from its present business or any reasonable extensions or expansions thereof.
- (d) liquidate or dissolve its business, except as expressly permitted in Section 7.11(a).
- (e) voluntarily suspend its business.

7.12 Notices to Bank.

To promptly notify the Bank in writing of:

- (a) any lawsuit in which the claim for damages exceeds Twenty Million Dollars (\$20,000,000) against any Related Party.
- (b) any substantial dispute between any governmental authority and any Related Party that could reasonably be expected to result in a Material Adverse Effect.
- (c) any event of default under this Agreement, or any event which, with notice or lapse of time or both, would constitute an event of default.
- (d) at any time after the Collateral Trigger Event, any change in any Obligor's name, legal structure, principal residence, or name on any driver's license or special identification card issued by any state (for an individual), state of registration (for a registered entity), place of business, or chief executive office if the Obligor has more than one place of business.

7.13 Insurance.

- (a) General Business Insurance. To maintain insurance satisfactory to the Bank as to amount, nature and carrier covering property damage (including loss of use and occupancy) to any of the Obligor's properties, business interruption insurance, public liability insurance including coverage for contractual liability, product liability and workers' compensation, and any other insurance which is usual for such Obligor's business. Each policy shall provide for at least thirty (30) days prior notice to the Bank of any cancellation thereof.
- (b) Insurance Covering Collateral. At all times after the Collateral Trigger Event, to maintain all risk property damage insurance policies (including without limitation windstorm coverage, flood coverage, and hurricane coverage as applicable) covering the tangible property comprising the collateral. Each insurance policy covering Collateral must be in an amount acceptable to the Bank. Such insurance must be issued by an insurance company acceptable to the Bank and must (after the occurrence of a Collateral Trigger Event and with respect to insurance of Obligors only) include a lender's loss payable endorsement in favor of the Bank in a form acceptable to the Bank.

Notwithstanding the foregoing, at any time after the occurrence of a Collateral Trigger Event when a lender's loss payable endorsement is in effect and as long as no event of default under this Agreement exists, the Obligors shall be entitled to reinvest any proceeds of insurance in an aggregate amount of up to \$10,000,000 in long-term productive assets of the general type used in their business, which investment may include the repair, restoration or replacement of the assets that gave rise to such proceeds, provided that such investment will be made within 365 days of receipt of such proceeds (which period may be extended in the discretion of the Bank upon request of an Obligor).

- (c) Evidence of Insurance. Upon the request of the Bank, to deliver to the Bank a copy of each insurance policy or a certificate of insurance listing all insurance in force.

7.14 Compliance with Laws.

To comply with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to cause a Material Adverse Effect, or, in the case of the Controlled Substances Act, result in the forfeiture of any material property of any Related Party.

7.15 Books and Records.

To maintain adequate books and records in all material respects.

7.16 Audits.

To allow the Bank and its agents to inspect Related Party's properties and examine, audit, and make copies of books and records at any reasonable time and upon reasonable notice. If any Obligor's properties, books or records are in the possession of a third party, the Borrower authorizes that third party to permit the Bank or its agents to have access to perform inspections or audits and to respond to the Bank's requests for information concerning such properties, books and records, provided that the Bank shall be limited to one such inspection or audit per calendar year unless an event of default under this Agreement has occurred and is continuing and further provided that no collateral audits will be required at any time when collateral is not required hereunder.

7.17 Cooperation.

To take any action reasonably requested by the Bank to carry out the intent of this Agreement.

7.18 Subsidiary Guaranties and Collateral.

- (a) Guarantors. The Borrower will cause each of its domestic subsidiaries whether newly formed, after acquired or otherwise existing to promptly (and in any event within thirty (30) days after such subsidiary is formed or acquired (or such longer period of time as agreed to by the Bank in its reasonable discretion)) become a Guarantor hereunder by way of execution of a guaranty, in form and substance satisfactory to the Bank. In connection therewith, the Borrower shall give notice to the Bank not less than ten (10) days prior to creating a subsidiary (or such shorter period of time as agreed to by the Bank in its reasonable discretion), or acquiring the equity interests of any other entity. In connection with the foregoing, the Borrower shall deliver to the Bank, with respect to each new Guarantor, such other documents and agreements as reasonably required by the Bank, including, without limitation, resolutions, organizational documents and incumbency certificates with respect to such new Guarantor. Notwithstanding the foregoing, Illumination MergerSub, Inc. shall not be required to become a Guarantor hereunder as long as it owns no material assets or conducts any business.
- (b) Collateral. At all times following the Collateral Trigger Event, the Borrower will cause each Obligor's tangible and intangible personal property now owned or hereafter acquired by it to be subject at all times to a first priority, perfected lien (subject to liens permitted hereunder) in favor of the Bank to secure the obligations incurred under this Agreement or otherwise in connection with this Agreement or any guaranty, and in connection therewith, the Borrower shall cause each Obligor to execute and deliver to the Bank the security agreement in the form of Annex I hereto and all other pledge agreements, control agreements, filings and other collateral documents requested by the Bank. The Borrower shall provide opinions of counsel and any filings and deliveries reasonably necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Bank. The Borrower hereby irrevocably appoints the Bank to act as, and the Bank shall have the right to act as, the Borrower's and each Guarantor's lawful attorney-in-fact, with full power of substitution, in the name of the Borrower and such Guarantors, to execute any collateral documents and to take generally any action in connection with any of the collateral documents; provided, however, that the Bank shall not exercise its rights as attorney-in-fact unless and until the Collateral Trigger Event occurs and the Borrower and the Guarantors have failed to execute and deliver the collateral documents within fifteen (15) calendar days after demand by the Bank.

Notwithstanding anything to the contrary contained herein, if the principal balance outstanding of the credit extended under this Agreement exceeds Fifty Million Dollars (\$50,000,000) at any time, then upon the request of the Bank, the Borrower shall cause 65% (or such greater percentage that, due to a change in an applicable law after the date hereof, (i) could not reasonably be expected to cause the undistributed earnings of such subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such subsidiary's parent and (ii) could not



reasonably be expected to cause any material adverse tax consequences to the Borrower) of the issued and outstanding equity interests entitled to vote (within the meaning of Treas. Reg. Section 1.956 2(c)(2)) and 100% of the issued and outstanding equity interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956 2(c)(2)) of AEI International Holdings CV (Netherlands) and AEI Global Holdings C.V. (Netherlands) to be subject at all times to a first priority, perfected lien in favor of the Bank pursuant to the terms and conditions of pledge agreements in form and substance satisfactory to the Bank, and in connection therewith, the Borrower shall deliver to the Bank such opinions of counsel and any filings and deliveries reasonably necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Bank.

- (c) Further Assurances. At any time upon request of the Bank, promptly execute and deliver any and all further instruments and documents and take all such other action as the Bank may deem necessary or desirable to maintain in favor of the Bank, liens and insurance rights on the collateral required to be delivered hereby that are duly perfected in accordance with the requirements hereof, all other documents executed in connection herewith and all applicable laws.

## 8. HAZARDOUS SUBSTANCES

### 8.1 Indemnity Regarding Hazardous Substances.

The Borrower will indemnify and hold harmless the Bank from any loss or liability the Bank incurs in connection with or as a result of this Agreement, which directly or indirectly arises out of the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a hazardous substance. This indemnity will apply whether the hazardous substance is on, under or about any Related Party's property or operations or property leased to any Related Party. The indemnity includes but is not limited to reasonable attorneys' fees (including the reasonable estimate of the allocated cost of in-house counsel and staff). The indemnity extends to the Bank, its parent, subsidiaries and all of their directors, officers, employees, agents, successors, attorneys and assigns.

### 8.2 Compliance Regarding Hazardous Substances.

The Borrower represents and warrants that each Related Party has complied with all current and future laws, regulations and ordinances or other requirements of any governmental authority relating to or imposing liability or standards of conduct concerning protection of health or the environment or hazardous substances, except to the extent that failure to comply could not reasonably be expected to cause a Material Adverse Effect.

### 8.3 Notices Regarding Hazardous Substances.

Until full repayment of the loan, the Borrower will promptly notify the Bank in writing of any threatened in writing or pending investigation of any Related Party or its operations by any governmental agency under any current or future law, regulation or ordinance pertaining to any hazardous substance.

### 8.4 Site Visits, Observations and Testing.

The Bank and its agents and representatives will have the right at any reasonable time when collateral is required hereunder, after giving reasonable notice to the Borrower, to enter and visit any locations where the collateral securing this Agreement (the "Collateral") is located for the purposes of observing the Collateral, taking and removing environmental samples, and conducting tests. The Borrower shall reimburse the Bank on demand for the costs of any such environmental investigation and testing, provided that reimbursement for such testing shall not be required more than once per calendar year per location if no event of default under this Agreement has occurred and is continuing hereunder. The Bank will make reasonable efforts during any site visit, observation or testing conducted pursuant to this paragraph to avoid interfering with the Obligors' use of the Collateral. The Bank is under no duty to observe the Collateral or to conduct tests,

and any such acts by the Bank will be solely for the purposes of protecting the Bank's security and preserving the Bank's rights under this Agreement. No site visit, observation or testing or any report or findings made as a result thereof ("Environmental Report") (i) will result in a waiver of any default of any Obligor; (ii) impose any liability on the Bank; or (iii) be a representation or warranty of any kind regarding the Collateral (including its condition or value or compliance with any laws) or the Environmental Report (including its accuracy or completeness). In the event the Bank has a duty or obligation under applicable laws, regulations or other requirements to disclose an Environmental Report to the Borrower or any other party, the Borrower authorizes the Bank to make such a disclosure. The Bank may also disclose an Environmental Report to any regulatory authority, and to any other parties as necessary or appropriate in the Bank's judgment. The Borrower further understands and agrees that any Environmental Report or other information regarding a site visit, observation or testing that is disclosed to the Borrower by the Bank or its agents and representatives is to be evaluated (including any reporting or other disclosure obligations of the Borrower) by the Borrower without advice or assistance from the Bank.

#### 8.5 Definition of Hazardous Substances.

"Hazardous substance" means any substance, material or waste that is or becomes designated or regulated as "toxic," "hazardous," "pollutant," or "contaminant" or a similar designation or regulation under any current or future federal, state or local law (whether under common law, statute, regulation or otherwise) or judicial or administrative interpretation of such, including without limitation petroleum or natural gas.

#### 8.6 Continuing Obligation.

The Borrower's obligations to the Bank under this Article, except the obligation to give notices to the Bank, shall survive termination of this Agreement and repayment of the Borrower's obligations to the Bank under this Agreement.

### 9. DEFAULT AND REMEDIES

If any of the following events of default occurs, the Bank may do one or more of the following without prior notice except as required by law or expressly agreed in writing by Bank: declare the Borrower in default, stop making any additional credit available to the Borrower, and require the Borrower to repay its entire debt immediately. If an event which, with notice or the passage of time, will constitute an event of default has occurred and is continuing, the Bank has no obligation to make advances or extend additional credit under this Agreement. In addition, if any event of default occurs, the Bank shall have all rights, powers and remedies available under any instruments and agreements required by or executed in connection with this Agreement, as well as all rights and remedies available at law or in equity. If an event of default occurs under the paragraph entitled "Bankruptcy/Receivers," below with respect to any Obligor, then the entire debt outstanding under this Agreement will automatically be due immediately.

#### 9.1 Failure to Pay.

The Borrower fails to make a payment of principal under this Agreement when due, or fails to make a payment of interest, any fee or other sum under this Agreement within three (3) days after the date when due.

#### 9.2 Covenants.

Any default in the performance of or compliance with (i) Sections 7.1(b), 7.2(a), (b) and (e), 7.3, 7.4, 7.5, 7.6, 7.7(a), (b) and (c), 7.8, 7.9, 7.10, 7.11, and 7.12(c), or (ii) any obligation, agreement or other provision contained in this Agreement (other than those specifically described as an event of default in this Article or in subsection (i)) which failure continues for thirty days after the earlier of (A) knowledge thereof by the Borrower and (B) notice to the Borrower from the Bank.

### 9.3 Other Bank Agreements.

(i) Any default occurs under any other document executed or delivered in connection with this Agreement, including without limitation, any note, guaranty, subordination agreement, mortgage or other collateral agreement, after giving effect to any applicable period of grace, (ii) any Obligor purports to revoke or disavow any guaranty or collateral agreement provided in connection with this Agreement; (iii) any representation or warranty made by any Obligor is false in any material respect when made or deemed to be made; or (iv) any default occurs under any other agreement the Borrower (or any Obligor) or any of the Borrower's related entities or affiliates has with the Bank or any affiliate of the Bank, after giving effect to any applicable period of grace.

### 9.4 Cross-default.

Any default occurs under any agreement in connection with any credit any Related Party has obtained from anyone else or which any Related Party has guaranteed in the amount of Twenty Million Dollars (\$20,000,000) or more in the aggregate if the default consists of failing to make a payment when due or gives the other lender the right to accelerate the obligation.

### 9.5 False Information.

The Borrower or any other Obligor has given the Bank false or misleading information or representations in any material respect.

### 9.6 Bankruptcy/Receivers.

(i) Any Related Party files a bankruptcy petition, (ii) a bankruptcy petition is filed against any Related Party (other than an Immaterial Subsidiary) and is not dismissed or stayed within 60 days, or an order for relief is entered in any such proceeding, (iii) any Related Party (other than an Immaterial Subsidiary) makes a general assignment for the benefit of creditors, (iv) a receiver or similar official is appointed for a substantial portion of any Related Party's (other than an Immaterial Subsidiary's) business; or (v) the business is terminated, or any Related Party is liquidated or dissolved (except as expressly permitted under this Agreement). For purposes hereof, "Immaterial Subsidiary" means any subsidiary of the Borrower that (a) is not an Obligor, (b) on a sub-consolidated basis, has assets comprising less than 2.5% of consolidated total assets of the Borrower and (c) on a sub-consolidated basis, has revenues comprising less than 2.5% of consolidated total revenues of the Borrower.

### 9.7 Lien Priority.

The Bank fails to have an enforceable first lien (except for any prior liens to which the Bank has consented in writing) on or security interest in any property given as security for this Agreement (or any guaranty) except where the Bank has failed to maintain possession of certificates actually delivered to it representing securities pledged as collateral hereunder or to file Uniform Commercial Code financing statements or continuation statements or other equivalent filings.

### 9.8 Judgments.

Any notice of judgment lien is filed against any Related Party; or a notice of levy and/or of a writ of attachment or execution, or other like process, is served against the assets of any Related Party in an aggregate amount of Twenty Million Dollars (\$20,000,000) or more (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the claim and does not dispute coverage) and (i) enforcement proceedings are commenced by any creditor upon such judgment or order, or (ii) there is a period of thirty consecutive days during which such judgment is not paid or a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect.

9.9 Forfeiture.

A judicial or nonjudicial forfeiture or seizure proceeding is commenced by a government authority and remains pending with respect to any material property of any Related Party or any part thereof, on the grounds that the property or any part thereof had been used to commit or facilitate the commission of a criminal offense by any person, including any tenant, pursuant to any law, including under the Controlled Substances Act or the Civil Asset Forfeiture Reform Act, regardless of whether or not the property shall become subject to forfeiture or seizure in connection therewith.

9.10 ERISA Plans.

A reportable event occurs under Section 4043(c) of ERISA, or any Plan termination (or commencement of proceedings to terminate a Plan) or the full or partial withdrawal from a Plan under Section 4041 or 4042 of ERISA occurs; provided such event or events could reasonably be expected to have a Material Adverse Effect.

10. ENFORCING THIS AGREEMENT; MISCELLANEOUS

10.1 GAAP.

Except as otherwise stated in this Agreement, all financial information provided to the Bank and all financial covenants will be made under generally accepted accounting principles, consistently applied; provided, however, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the financial statements of the Borrower for the most recently ended fiscal year prior to the date of this Agreement for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes.

10.2 Governing Law.

Except to the extent that any law of the United States may apply, this Agreement shall be governed and interpreted according to the laws of New York (the "Governing Law State"), without regard to any choice of law, rules or principles to the contrary. Nothing in this paragraph shall be construed to limit or otherwise affect any rights or remedies of the Bank under federal law.

10.3 Venue and Jurisdiction.

The Borrower agrees that any action or suit against the Bank arising out of or relating to this Agreement shall be filed in federal court or state court located in the Governing Law State. The Borrower agrees that the Bank shall not be deemed to have waived its rights to enforce this section by filing an action or suit against the Borrower or any Obligor in a venue outside of the Governing Law State. If the Bank does commence an action or suit arising out of or relating to this Agreement, the Borrower agrees that the case may be filed in federal court or state court in the Governing Law State. The Bank reserves the right to commence an action or suit in any other jurisdiction where any Borrower, any other Obligor, or any Collateral has any presence or is located. The Borrower consents to personal jurisdiction and venue in such forum selected by the Bank and waives any right to contest jurisdiction and venue and the convenience of any such forum. The provisions of this section are material inducements to the Bank's acceptance of this Agreement.

10.4 Successors and Assigns.

This Agreement is binding on the Borrower's and the Bank's successors and assignees. The Borrower agrees that it may not assign this Agreement without the Bank's prior consent. The Bank may sell participations in or assign this loan and the related loan documents, and may exchange information about the Borrower and any other Obligor (including, without limitation, any information regarding any hazardous

substances) with actual or potential participants or assignees. If a participation is sold or the loan is assigned, the purchaser will have the right of set-off against the Borrower. Notwithstanding the foregoing, unless an event of default under this Agreement has occurred and is continuing, the Bank shall not assign or sell its interest in the loan or related loan documents without the prior written consent of Borrower (not to be unreasonably withheld or delayed) other than to an affiliate or related fund of the Bank.

#### **10.5 Waiver of Jury Trial.**

**EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER DOCUMENTS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION AND (c) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE.**

#### **10.6 Waiver of Class Actions.**

The terms "Claim" or "Claims" refer to any disputes, controversies, claims, counterclaims, allegations of liability, theories of damage, or defenses between Bank of America, N.A., its subsidiaries and affiliates, on the one hand, and the other parties to this Agreement, on the other hand (all of the foregoing each being referred to as a "Party" and collectively as the "Parties"). Whether in state court, federal court, or any other venue, jurisdiction, or before any tribunal, the Parties agree that all aspects of litigation and trial of any Claim will take place without resort to any form of class or representative action. Thus the Parties may only bring Claims against each other in an individual capacity and waive any right they may have to do so as a class representative or a class member in a class or representative action. **THIS CLASS ACTION WAIVER PRECLUDES ANY PARTY FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS OR REPRESENTATIVE ACTION REGARDING A CLAIM.**

#### **10.7 Severability: Waivers.**

If any part of this Agreement is not enforceable, the rest of the Agreement may be enforced. The Bank retains all rights, even if it makes a loan after default. If the Bank waives a default, it may enforce a later default. Any consent or waiver under this Agreement must be in writing.

#### **10.8 Expenses.**

- (a) The Borrower shall pay to the Bank immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees, expended or incurred by the Bank in connection with (i) the negotiation and preparation of this Agreement and any related agreements, the Bank's continued administration of this Agreement and such related agreements, and the preparation of any amendments and waivers related to this Agreement or such related agreements, (ii) filing, recording and search fees, appraisal fees, field examination fees, title report fees, and documentation fees with respect to any collateral and books and records of the Borrower or any other Obligor, (iii) the Bank's costs or losses arising from any changes in law which are allocated to this Agreement or any credit outstanding under this Agreement, and (iv) costs or expenses required to be paid by the Borrower or any other Obligor that are paid, incurred or advanced by the Bank.

- (b) The Borrower will indemnify and hold the Bank harmless from any loss, liability, damages, judgments, and costs of any kind relating to or arising directly or indirectly out of (i) this Agreement or any document required hereunder, (ii) any credit extended or committed by the Bank to the Borrower hereunder, and (iii) any litigation or proceeding related to or arising out of this Agreement, any such document, or any such credit, including, without limitation, any act resulting from the Bank complying with instructions the Bank reasonably believes are made by any Authorized Individual. This paragraph will survive this Agreement's termination, and will benefit the Bank and its officers, employees, and agents.
- (c) The Borrower shall reimburse the Bank for any reasonable costs and attorneys' fees incurred by the Bank in connection with (i) the enforcement or preservation of the Bank's rights and remedies and/or the collection of any obligations of the Borrower which become due to the Bank and in connection with any "workout" or restructuring, and (ii) the prosecution or defense of any action in any way related to this Agreement, the credit provided hereunder or any related agreements, including without limitation, any action for declaratory relief, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by the Bank or any other person) relating to the Borrower or any other person or entity.
- (d) Notwithstanding anything to the contrary set forth in clause (b) and (c) above, the Borrower shall not be required to indemnify or reimburse the Bank for, or hold the Bank harmless for, any loss, liability, damages, judgments or costs arising from the Bank's gross negligence, willful misconduct, or material breach by the Bank of its obligations hereunder.

**10.9** Set-Off.

Upon and during the occurrence of an event of default under this Agreement, (a) the Borrower hereby authorizes the Bank at any time without notice and whether or not the Bank shall have declared any amount owing by the Borrower to be due and payable, to set off against, and to apply to the payment of, the Borrower's indebtedness and obligations to the Bank under this Agreement and all related agreements, whether matured or unmatured, fixed or contingent, liquidated or unliquidated, any and all amounts owing by the Bank to the Borrower, and in the case of deposits, whether general or special (except trust and escrow accounts), time or demand and however evidenced, and (b) pending any such action, to hold such amounts as collateral to secure such indebtedness and obligations of the Borrower to the Bank and to return as unpaid for insufficient funds any and all checks and other items drawn against any deposits so held as the Bank, in its sole discretion, may elect. The Borrower hereby grants to the Bank a security interest in all deposits and accounts maintained with the Bank to secure the payment of all such indebtedness and obligations of the Borrower to the Bank.

**10.10** One Agreement.

This Agreement and any related security or other agreements required by this Agreement constitute the entire agreement between the Borrower and the Bank with respect to each credit subject hereto and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. In the event of any conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail.

**10.11** Notices.

Unless otherwise provided in this Agreement or in another agreement between the Bank and the Borrower, all notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Agreement, or sent by facsimile to the fax number(s) listed on the signature page, or to such other addresses as the Bank and the Borrower may specify from time to time in writing. Notices and other communications shall be effective (i) if mailed,

upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (ii) if telecopied, when transmitted, or (iii) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered.

**10.12 Headings.**

Article and paragraph headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Agreement.

**10.13 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement (or of any agreement or document required by this Agreement and any amendment to this Agreement) by telecopy or other electronic imaging means shall be as effective as delivery of a manually executed counterpart of this Agreement; provided, however, that the telecopy or other electronic image shall be promptly followed by an original if required by the Bank.

**10.14 Borrower/Obligor Information; Reporting to Credit Bureaus.**

The Borrower authorizes the Bank at any time to verify or check any information given by the Borrower to the Bank, check the Borrower's credit references, verify employment, and obtain credit reports and other credit bureau information from time to time in connection with the administration, servicing and collection of the loans under this Agreement. The Borrower agrees that the Bank shall have the right at all times to disclose and report to credit reporting agencies and credit rating agencies such information pertaining to the Borrower and all other Obligors as is consistent with the Bank's policies and practices from time to time in effect.

**10.15 Customary Advertising Material.**

The Borrower consents to the publication by the Bank of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Obligors, subject to the prior review and approval by the Borrower (not to be unreasonably withheld or delayed).

**10.16 Amendments.**

This Agreement may be amended or modified only in writing signed by each party hereto.

**10.17 Confidentiality.**

The Bank agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed to (a) its and its affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidentiality of the Information and informed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by a governmental authority or any subpoena or legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any of the remedies hereunder or any suit, action or proceeding related to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing substantially the same provisions as this Section, to (i) any assignee or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction related to the Borrower or its obligations, (g) with the consent of the Borrower, or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Bank on a non-confidential basis from a source other

than an Obligor. For purposes of this Section "Information" means all information received from Borrower or an Obligor relating to their business, other than any such information that is available to Bank on a non-confidential basis prior to disclosure by Borrower or an Obligor.

THE BANK ACKNOWLEDGES THAT INFORMATION DEFINED IN SECTION 10.17 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING BORROWER AND ITS AFFILIATES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAWS, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

**10.18 Termination.**

Notwithstanding anything to the contrary contained in this Agreement or in any other related loan document, upon the termination of the Commitment and payment in full of all obligations payable hereunder (other than contingent obligations for which no claim has been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit which the Borrower has cash collateralized in an amount and manner satisfactory to the Bank), this Agreement, each guaranty and the other related loan documents shall have no further force or effect and shall terminate (other than those provisions which by their terms expressly survive termination), and the Bank shall promptly execute and deliver to the Borrower, at the Borrower's expense, all documents that the Borrower shall reasonably request to release any and all liens held by the Bank pursuant to this Agreement and the other related loan documents.

**10.19 Limitation of Interest and Other Charges.**

If, at any time, the rate of interest, together with all amounts which constitute interest and which are reserved, charged or taken by the Bank as compensation for fees, services or expenses incidental to the making, negotiating or collection of the loan evidenced hereby, shall be deemed by any competent court of law, governmental agency or tribunal to exceed the maximum rate of interest permitted to be charged by the Bank to the Borrower under applicable law, then, during such time as such rate of interest would be deemed excessive, that portion of each sum paid attributable to that portion of such interest rate that exceeds the maximum rate of interest so permitted shall be deemed a voluntary prepayment of principal. As used herein, the term "applicable law" shall mean the law in effect as of the date hereof; provided, however, that in the event there is a change in the law which results in a higher permissible rate of interest, then this Agreement shall be governed by such new law as of its effective date.

[Signatures pages follow.]



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

**Bank of America, N.A.**

By: /s/ Marc Rosenberg  
Typed Name: Marc Rosenberg  
Title: Senior Vice President

**Advanced Energy Industries, Inc.**

By: /s/ Tom Liguori  
Typed Name: Tom Liguori  
Title: Executive Vice President and Chief Financial Officer

By: /s/ Tom McGimpsey  
Typed Name: Tom McGimpsey  
Title: Executive Vice President, General Counsel and Corporate Secretary

Prepared by: Moore & Van Allen PLLC

Address where notices to  
the Bank are to be sent:

Doc Retention – GCF  
CT2-515-BB-03  
70 Batterson Park Road  
Farmington, CT 06032

With a copy to:

Marc Rosenberg  
Bank of America, N.A.  
370 Seventeenth Street  
Suite 5195  
Denver, CO 80202  
Telephone: (303) 825-7588

Address where notices to  
the Borrower are to be sent:

Advanced Energy Industries, Inc.  
1625 Sharp Point Drive  
Fort Collins, CO 80525  
Attention: Tom Liguori, Executive Vice President and Chief Financial Officer  
Telephone: (970) 407-6570

With a copy to:

Advanced Energy Industries, Inc.  
1625 Sharp Point Drive  
Fort Collins, CO 80525  
Attention: Tom McGimpsey, Executive Vice President, General Counsel and Corporate Secretary

Telephone: (970) 407-6326

***Federal law requires Bank of America, N.A. (the "Bank") to provide the following notice. The notice is not part of the foregoing agreement or instrument and may not be altered. Please read the notice carefully.***

**USA PATRIOT ACT NOTICE**

Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account or obtains a loan. The Bank will ask for the Borrower's legal name, address, tax ID number or social security number and other identifying information. The Bank may also ask for additional information or documentation or take other actions reasonably necessary to verify the identity of the Borrower, guarantors or other related persons.

[Schedules Omitted]



BORROWER: Advanced Energy Industries, Inc.

GUARANTORS: UltraVolt Group, Inc.  
UltraVolt, INC.  
AEI US Subsidiary, LLC  
AEI Global Holdings, LLC  
Sekidenko, Inc.  
AE Solar Energy, Inc.

CONTINUING AND UNCONDITIONAL GUARANTY

1. The Guaranty. For valuable consideration, the undersigned (whether one or more than one "Guarantor") hereby unconditionally guarantees and promises to pay promptly to Bank of America, N.A., its subsidiaries and affiliates (collectively, "Bank"), or order, in lawful money of the United States, any and all Indebtedness (defined below) to Bank when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter. The liability of Guarantor under this Guaranty is not limited as to the principal amount of the Indebtedness guaranteed and includes, without limitation, liability for all interest, fees, indemnities, and other costs and expenses relating to or arising out of the Indebtedness and for all swap, derivative, foreign exchange or hedge or other similar transaction or arrangement ("Swap Obligations") now or hereafter owing from Advanced Energy Industries, Inc. ("Borrower") or any Guarantor to Bank. No Guarantor will be deemed to be a guarantor of any Swap Obligation to the extent that such Guarantor is not an Eligible Contract Participant at the time such guaranty becomes effective with respect to such Swap Obligations as set forth in the Commodities Exchange Act (7 U.S.C., Sec. 1, et. seq.). The liability of Guarantor is continuing and relates to any Indebtedness, including that arising under successive transactions which shall either continue the Indebtedness or from time to time renew it after it has been satisfied. This Guaranty is cumulative and does not supersede any other outstanding guaranties, and the liability of Guarantor under this Guaranty is exclusive of Guarantor's liability under any other guaranties signed by Guarantor. If multiple entities sign this Guaranty, their obligations under this Guaranty shall be joint and several. If multiple entities sign this Guaranty, each entity comprising Guarantor waives any rights it has or may have under C.R.S. § 13-50-102 or § 13-50-103 (or under any corresponding future statute or rule of law in any jurisdiction) by reason of any release of fewer than all of the parties comprising Guarantor. "Indebtedness" shall mean and includes (a) any and all advances, debts, obligations and liabilities of Borrower previously, now or later made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, under that certain Loan Agreement dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Loan Agreement"; capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Loan Agreement) among Borrower and the Bank, (b) any and all advances, debts, obligations and liabilities of Borrower or any Guarantor previously, now or later made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, arising under Swap Obligations and (c) obligations of Borrower or any Guarantor under any treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services, and whether the Borrower or any Guarantor may be liable individually or jointly with others, or whether recovery upon such Indebtedness may be or later becomes unenforceable.

2. Obligations Independent. The obligations under this Guaranty are independent of the obligations of Borrower or any other guarantor, and a separate action or actions may be brought and prosecuted against Guarantor whether action is brought against Borrower or any other guarantor or whether Borrower or any other guarantor be

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joined in any such action or actions.

3. Rights of Bank. Guarantor authorizes Bank, without notice or demand and without affecting its liability hereunder, from time to time to:

(a) renew, compromise, extend, accelerate, or otherwise change the time for payment, or otherwise change the terms, of the Indebtedness or any part thereof, including increase or decrease of the rate of interest, or otherwise change the terms of any Bank Agreements;

(b) receive and hold security for the payment of this Guaranty or any Indebtedness and exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any such security;

(c) apply such security and direct the order or manner of sale thereof as Bank in its discretion may determine;

(d) release or substitute any Guarantor or any one or more of any endorsers or other guarantors of any of the Indebtedness; and

(e) permit the Indebtedness to exceed Guarantor's liability under this Guaranty, and Guarantor agrees that any amounts received by Bank from any source other than Guarantor shall be deemed to be applied first to any portion of the Indebtedness not guaranteed by Guarantor.

4. Guaranty to be Absolute. Guarantor agrees that until the Indebtedness has been paid in full in immediately available funds and any commitments of Bank or facilities provided by Bank with respect to the Indebtedness have been terminated, Guarantor shall not be released by or because of the taking, or failure to take, any action that might in any manner vary, discharge or otherwise reduce, limit, or modify Guarantor's obligations under this Guaranty. Guarantor waives and surrenders any defense to any liability under this Guaranty based upon any such action, including but not limited to any action of Bank described in the immediately preceding paragraph of this Guaranty. It is the express intent of Guarantor that Guarantor's obligations under this Guaranty are and shall be absolute and unconditional. This is a guaranty of payment and not merely a guaranty of collection. If this Guaranty is revoked, returned, or canceled, and subsequently any payment or transfer of any interest in property by Borrower to Bank is rescinded or must be returned by Bank to Borrower, this Guaranty shall be reinstated with respect to any such payment or transfer, regardless of any such prior revocation, return, or cancellation; and any guaranty of any indemnities, shall survive any termination of this Guaranty. In the event of the death of a Guarantor, the liability of the estate of the deceased Guarantor shall continue in full force and effect as to (i) the Indebtedness existing at the date of death, and any renewals or extensions, and (ii) loans or advances made to or for the account of Borrower after the date of the death of the deceased Guarantor pursuant to a commitment made by Bank to Borrower prior to the date of such death. As to all surviving Guarantors, this Guaranty shall continue in full force and effect after the death of a Guarantor, not only as to the Indebtedness existing at that time, but also as to the Indebtedness later incurred by Borrower to Bank. In the event that acceleration of the time for payment of any of the Indebtedness is stayed upon the insolvency, bankruptcy, or reorganization of Borrower or otherwise, all such Indebtedness guaranteed by Guarantor shall nonetheless be payable by Guarantor immediately if requested by Bank.

5. Guarantor's Waivers of Certain Rights and Certain Defenses. Guarantor waives:

(a) any right to require Bank to:

(i) proceed against Borrower or any other person;

(ii) marshal assets or proceed against or exhaust any security held from any of the Borrowers or any other person;

(iii) give notice of the terms, time and place of any public or private sale or other disposition of personal property security held from Borrower or any other person;

(iv) take any other action or pursue any other remedy in Bank's power; or

(v) make any presentment or demand for performance, or give any notice of nonperformance, acceleration, protest, notice of protest or notice of dishonor hereunder or in

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connection with any obligations or evidences of indebtedness held by Bank as security for or which constitute in whole or in part the Indebtedness guaranteed hereunder, or in connection with the creation of new or additional Indebtedness, or give any notice of acceptance of this Guaranty, or notices of any fact that might increase Guarantor's risk.

(b) any defense to its obligations under this Guaranty based upon or arising by reason of:

(i) any disability or other defense of Borrower or any other person;

(ii) the cessation or limitation from any cause whatsoever, other than payment in full, of the Indebtedness of Borrower or any other person;

(iii) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf Borrower which is a corporation, partnership or other type of entity, or any defect in the formation of Borrower;

(iv) the application by Borrower of the proceeds of any Indebtedness for purposes other than the purposes represented by Borrower to, or intended or understood by, Bank or Guarantor;

(v) any act or omission by Bank which directly or indirectly results in or aids the discharge of Borrower or any portion of the Indebtedness by operation of law or otherwise, or which in any way impairs or suspends any rights or remedies of Bank against Borrower;

(vi) any impairment of the value of any interest in any security for the Indebtedness, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security;

(vii) any modification of the Indebtedness, in any form whatsoever, including any modification made after revocation hereof to any Indebtedness incurred prior to such revocation, and including without limitation the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, the Indebtedness, including increase or decrease of the rate of interest;

(viii) any requirement that Bank give any notice of acceptance of this Guaranty;

(ix) any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of Borrower;

(x) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty; or

(xi) any election of remedies by Bank, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Indebtedness, destroys Guarantor's rights of subrogation or Guarantor's rights to proceed against Borrower for reimbursement.

(c) until the Indebtedness has been paid in full and any commitments of Bank or facilities provided by Bank with respect to the Indebtedness have been terminated, even though the Indebtedness may be in excess of Guarantor's liability hereunder, to the extent permitted by applicable law, any right of subrogation, reimbursement, indemnification, and contribution (contractual, statutory, or otherwise).

No provision or waiver in this Guaranty shall be construed as limiting the generality of any other waiver contained in this Guaranty.

6. Lien and Setoff. Guarantor grants to Bank a continuing lien, security interest, and right of setoff as security for all of Guarantor's liabilities and obligations to Bank, whether now existing or later arising, upon and against all the deposits, credits, collateral and property of Guarantor (other than clients' trust and other fiduciary accounts or escrows) now or hereafter in the possession, custody, or control of Bank or any entity under the control of Bank of America Corporation and its successors and assigns or in transit to any of them. At any time, without further

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demand or notice (any such notice being expressly waived by Guarantor), Bank may set off the same or any part thereof and apply the same to any liability or obligation of Guarantor even though unmatured and regardless of the adequacy of any other collateral securing this Guaranty. **TO THE EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LIABILITIES PRIOR TO EXERCISING ITS RIGHT OF SET OFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF GUARANTOR, ARE VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVED.**

7. Subordination. Any obligations of Borrower to Guarantor, now or hereafter existing, including but not limited to any obligations to Guarantor as subrogee of Bank or resulting from Guarantor's performance under this Guaranty, are hereby subordinated to the Indebtedness. Guarantor agrees that, if Bank so requests, Guarantor shall not demand, take, or receive from Borrower, by setoff or in any other manner, payment of any other obligations of Borrower to Guarantor until the Indebtedness has been paid in full and any commitments of Bank or facilities provided by Bank with respect to the Indebtedness have been terminated. If any payments are received by Guarantor in violation of such waiver or agreement, such payments shall be received by Guarantor as trustee for Bank and shall be paid over to Bank on account of the Indebtedness, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty. Any security interest, lien, or other encumbrance that Guarantor may now or hereafter have on any property of Borrower is hereby subordinated to any security interest, lien, or other encumbrance that Bank may have on any such property.

8. Revocation of Guaranty.

(a) This Guaranty may be revoked at any time by Guarantor in respect to future transactions. Such revocation shall be effective upon actual receipt by Bank, at the address shown below or at such other address as may have been provided to Guarantor by Bank, of written notice of revocation. Revocation shall not affect any of Guarantor's obligations or Bank's rights with respect to transactions committed or entered into prior to Bank's receipt of such notice, nor shall it affect Guarantor's obligations with respect to any indemnities, executed prior to Bank's receipt of such notice.

(b) Guarantor acknowledges and agrees that this Guaranty may be revoked only in accordance with the foregoing provisions of this paragraph and shall not be revoked simply as a result of any change in name, location, ownership or composition or structure of Borrower, or the dissolution of Borrower.

9. Extent of Guaranty. If Guarantor is a subsidiary or affiliate of Borrower, Guarantor's liability hereunder shall not exceed at any one time the largest amount during the period commencing with Guarantor's execution of this Guaranty and thereafter that would not render Guarantor's obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code (Title 11, United States Code) or any comparable provisions of any applicable state law, including without limitation any law regarding fraudulent transfers.

10. Taxes.

(a) Guarantor represents and warrants that it is organized and resident in the United States of America. All payments by Guarantor hereunder shall be paid in full, without setoff or counterclaim or any deduction or withholding whatsoever, including, without limitation, for any and all present and future taxes. If Guarantor must make a payment under this Guaranty, Guarantor represents and warrants that it will make the payment from one of its U.S. resident offices to Bank so that no withholding tax is imposed on the payment. Notwithstanding the foregoing, if Guarantor makes a payment under this Guaranty to which withholding tax applies or if any taxes (other than taxes on net income (i) imposed by the country or any subdivision of the country in which Bank's principal office or actual lending office is located and (ii) measured by the United States taxable income Bank would have received if all payments under or in respect of this Guaranty were exempt from taxes levied by Guarantor's country) are at any time imposed on any payments under or in respect of this Guaranty including, but not limited to, payments made pursuant to this paragraph, Guarantor shall pay all such taxes to the relevant authority in accordance with applicable law such that Bank receives the sum it would have received had no such deduction or withholding been made (or, if Guarantor cannot legally comply with the foregoing, Guarantor shall pay to Bank such additional amounts as will result in Bank receiving the sum it would have received had no such deduction or withholding been made). Further, Guarantor shall also pay to Bank, on demand, all additional amounts that Bank specifies as necessary to preserve the after-tax yield Bank would have received if such taxes had not been imposed.

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(b) Guarantor shall promptly provide Bank with an original receipt or certified copy issued by the relevant authority evidencing the payment of any such amount required to be deducted or withheld.

11. Information Relating to Borrower. Guarantor acknowledges and agrees that it has made such independent examination, review, and investigation of the Bank Agreements as Guarantor deems necessary and appropriate, and shall have sole responsibility to obtain from Borrower any information required by Guarantor about any modifications to the Bank Agreements. Guarantor further acknowledges that Bank has no duty, and Guarantor is not relying on Bank, at any time to disclose to Guarantor any information relating to the business operations or financial condition of Borrower. "Bank Agreements" shall mean all agreements, documents, and instruments evidencing any of the Indebtedness, including but not limited to all loan agreements between Borrower and Bank and promissory notes from Borrower in favor of Bank, and all deeds of trust, mortgages, security agreements, and other agreements, documents, and instruments executed by Borrower in connection with the Indebtedness, all as now in effect and as hereafter amended, restated, renewed, or superseded.

12. Borrower's Authorization. It is not necessary for Bank to inquire into the powers of Borrower or of the officers, directors, partners, members, managers, or agents acting or purporting to act on its behalf, and any Indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty, subject to any limitations on Guarantor's liability set forth in this Guaranty.

13. Guarantor Information: Reporting to Credit Bureaus. Guarantor authorizes Bank to verify or check any information given by Guarantor to Bank, check Guarantor's credit references, verify employment, and obtain credit reports. Guarantor shall provide such financial statements and other financial information about Guarantor as Bank may request from time to time. Guarantor agrees that Bank shall have the right at all times to disclose and report to credit reporting agencies and credit rating agencies such information pertaining to the Indebtedness and/or Guarantor as is consistent with Bank's policies and practices from time to time in effect. Guarantor acknowledges and agrees that the authorizations provided in this paragraph apply to any individual general partner of Guarantor.

14. Change of Status. Any Guarantor that is a business entity shall not enter into any consolidation, merger, or other combination unless the surviving business entity is such Guarantor or, to the extent such consolidated, merger or other combination is permitted by the Loan Agreement, Borrower or another Guarantor. Further, Guarantor shall not change its legal structure unless (a) Guarantor obtains the prior written consent of Bank and (b) all Guarantors' obligations under this Guaranty are assumed by the new business entity.

15. Remedies. If Guarantor fails to fulfill its duty to pay all Indebtedness guaranteed hereunder or shall breach or fail to comply with any term or provision of this Guaranty, Bank shall have all of the remedies of a creditor and, to the extent applicable, of a secured party, under all applicable law. Without limiting the foregoing to the extent permitted by law, Bank may, at its option and without notice or demand:

(a) declare any Indebtedness due and payable at once;

(b) take possession of any collateral pledged by Borrower or Guarantor, wherever located, and sell, resell, assign, transfer, and deliver all or any part of the collateral at any public or private sale or otherwise dispose of any or all of the collateral in its then condition, for cash or on credit or for future delivery, and in connection therewith Bank may impose reasonable conditions upon any such sale. Further, Bank, unless prohibited by law the provisions of which cannot be waived, may purchase all or any part of the collateral to be sold, free from and discharged of all trusts, claims, rights of redemption and equities of Borrower or Guarantor whatsoever. Guarantor acknowledges and agrees that the sale of any collateral through any nationally recognized broker-dealer, investment banker, or any other method common in the securities industry shall be deemed a commercially reasonable sale under the Uniform Commercial Code or any other equivalent statute or federal law, and expressly waives notice thereof except as provided in this Guaranty; and

(c) set off and apply any and all deposit accounts of Guarantor held by Bank or its affiliates against any and all obligations of Guarantor owing to Bank. The set-off may be made irrespective of whether or not Bank shall have made demand under this Guaranty, and although such obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit accounts and without regard for the availability or adequacy of other collateral. If exercised by Bank, Bank shall be deemed to have exercised such right of setoff and to have made a charge against any such money immediately upon the occurrence of such default although made or entered on the books after such default.

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16. Notices. All notices required under this Guaranty shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Guaranty, or sent by facsimile to the fax number(s) listed on the signature page, or to such other addresses as Guarantor may specify from time to time in writing. Notices and other communications shall be effective (i) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (ii) if telecopied, when transmitted, or (iii) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered.

17. Successors and Assigns. This Guaranty (a) binds Guarantor and Guarantor's executors, administrators, successors, and assigns, provided that Guarantor may not assign its rights or obligations under this Guaranty without the prior written consent of Bank, and (b) inures to the benefit of Bank and Bank's indorsees, successors, and assigns. Bank may, without notice to Guarantor and without affecting Guarantor's obligations, sell participations in, or assign the Indebtedness and this Guaranty, in whole or in part and may exchange information about Guarantor to any actual or potential participants or assignees.

18. Amendments, Waivers, and Severability. No provision of this Guaranty may be amended or waived except in writing. No failure by Bank to exercise, and no delay in exercising, any of its rights, remedies, or powers shall operate as a waiver of such rights, remedies or powers, and no single or partial exercise of any such right, remedy, or power shall preclude any other or further exercise thereof or the exercise of any other right, remedy, or power. The unenforceability or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision of this Guaranty.

19. Costs and Expenses. Guarantor agrees to pay all reasonable attorneys' fees and all other costs and expenses that may be incurred by Bank (a) in the enforcement of this Guaranty or (b) in the preservation, protection, or enforcement of any rights of Bank in any case commenced by or against Guarantor under the Bankruptcy Code (Title 11, United States Code) or any similar or successor statute.

20. Representations and Warranties. When Guarantor signs this Guaranty, and until the Indebtedness is repaid in full and any commitments or facilities provided by Bank with respect to the Indebtedness have been terminated, Guarantor makes the following representations and warranties:

(a) Guarantor is duly formed and existing under the laws of the state or other jurisdiction where organized.

(b) This Guaranty, and any instrument or agreement required hereunder, are within Guarantor's powers, have been duly authorized, and do not conflict with any of its organizational papers.

(c) In each state in which Guarantor does business, it is properly licensed, in good standing, and, where required, in compliance with fictitious name statutes, except, in each case, to the extent that failure to comply could not reasonably be expected to have a Material Adverse Effect.

(d) All financial and other information that has been or will be supplied to Bank is sufficiently complete to give Bank accurate knowledge of Guarantor's financial condition in all material respects, including all material contingent liabilities. Since the date of the most recent financial statement provided to Bank, there has been no material adverse change in the financial condition, operations or properties of Guarantor. If Guarantor is comprised of the trustees of a trust, the foregoing representations shall also pertain to the trustor(s) of the trust.

(e) There is no lawsuit, tax claim or other dispute pending or threatened in writing against Guarantor (other than warranty claims in the ordinary course of business) which, if lost, would materially impair Guarantor's financial condition or ability to repay the Indebtedness, except as have been disclosed in writing to Bank.

(f) Guarantor is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation, except as have been disclosed in writing to Bank.

(g) Guarantor has no knowledge of any pending assessments or adjustments of its income tax for any year and all taxes due have been paid, except as have been disclosed in writing to Bank.

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(h) There is no event which is, or with notice or lapse of time or both would be, a default by Guarantor under this Guaranty or under any other instrument or agreement executed in connection with the Indebtedness or this Guaranty.

(i) Guarantor will not be rendered insolvent by the execution, delivery, and performance of its obligations under this Guaranty.

21. Governing Law. Except to the extent that any law of the United States may apply, this Guaranty shall be governed and interpreted according to the laws of New York (the "Governing Law State"), without regard to any choice of law, rules or principles to the contrary. Nothing in this paragraph shall be construed to limit or otherwise affect any rights or remedies of Bank under federal law.

22. Venue and Jurisdiction. Guarantor agrees that any action or suit against Bank arising out of or relating to this Guaranty shall be filed in federal court or state court located in the Governing Law State. Guarantor agrees that Bank shall not be deemed to have waived its rights to enforce this section by filing an action or suit against Guarantor in a venue outside of the Governing Law State. If Bank does commence an action or suit arising out of or relating to this Guaranty, Guarantor agrees that the case may be filed in federal court or state court in the Governing Law State. Bank reserves the right to commence an action or suit in any other jurisdiction where Borrower, any Guarantor, or any collateral has any presence or is located. Guarantor consents to personal jurisdiction and venue in such forum selected by Bank and waives any right to contest jurisdiction and venue and the convenience of any such forum. The provisions of this section are material inducements to Bank's acceptance of this Guaranty.

23. Waiver of Jury Trial. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY AND THE OTHER DOCUMENTS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION AND (c) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE.**

24. Waiver of Class Actions. The terms "Claim" or "Claims" refer to any disputes, controversies, claims, counterclaims, allegations of liability, theories of damage, or defenses between Bank of America, N.A., its subsidiaries and affiliates, on the one hand, and the parties to this Guaranty, on the other hand (all of the foregoing each being referred to as a "Party" and collectively as the "Parties"). Whether in state court, federal court, or any other venue, jurisdiction, or before any tribunal, the Parties agree that all aspects of litigation and trial of any Claim will take place without resort to any form of class or representative action. Thus the Parties may only bring Claims against each other in an individual capacity and waive any right they may have to do so as a class representative or a class member in a class or representative action. **THIS CLASS ACTION WAIVER PRECLUDES ANY PARTY FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS OR REPRESENTATIVE ACTION REGARDING A CLAIM.**

25. Counterparts. This Guaranty may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same agreement. Delivery of an executed counterpart of this Guaranty (or of any agreement or document required by this Guaranty and any amendment to this Guaranty) by telecopy or other electronic imaging means shall be as effective as delivery of a manually executed counterpart of this Guaranty; provided, however, that the telecopy or other electronic image shall be promptly followed by an original if required by the Bank.

26. Application of Singular and Plural. In all cases where there is but a single Borrower, then all words used herein in the plural shall be deemed to have been used in the singular where the context and construction so require; and when there is more than one Borrower, or when this Guaranty is executed by more than one Guarantor, the word "Borrower" or "Borrowers" and the word "Guarantor" respectively shall mean all or any one or more of them as the context requires.

27. Final Agreement. This Agreement and any related security agreements or other agreements

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required by this Agreement constitute the entire agreement between Guarantor and Bank with respect to the subject matter of this Guaranty and with respect to the credit facilities provided by Bank to Borrower and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. In the event of any conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail.

**28. Notice of Final Agreement. THIS WRITTEN GUARANTY AND THE LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

[Signature Pages Follow]

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Executed this 28<sup>th</sup> day of July, 2017.

ULTRAVIOLET GROUP, INC.  
AE SOLAR ENERGY, INC.

By: /s/ Tom McGimpsey  
Title: President and Treasurer

Printed Name: Tom McGimpsey

ULTRAVOLT, INC.

By: /s/ Tom McGimpsey  
Printed Name: Tom McGimpsey  
Title: President, Vice President and Treasurer

AEI US SUBSIDIARY, LLC  
AEI GLOBAL HOLDINGS, LLC

By: /s/ Tom McGimpsey  
Printed Name: Tom McGimpsey  
Title: Manager

SEKIDENKO, INC.

By: /s/ Tom McGimpsey  
Printed Name: Tom McGimpsey  
Title: Executive Vice President, General Counsel  
and Corporate Secretary

[Signature page to Guaranty]

## FORM OF SECURITY AND PLEDGE AGREEMENT

THIS SECURITY AND PLEDGE AGREEMENT (this “Agreement”) is entered into as of [\_\_\_\_\_, 20\_\_] among ADVANCED ENERGY INDUSTRIES, INC., a Delaware corporation (the “Borrower”), the other parties identified as “Obligors” on the signature pages hereto and such other parties that may become Obligors hereunder after the date hereof (together with the Borrower, individually an “Obligor”, and collectively the “Obligors”) and BANK OF AMERICA, N.A. (collectively with its subsidiaries and affiliates, the “Lender”).

### RECITALS

WHEREAS, pursuant to that certain Loan Agreement, dated as of [\_\_\_\_\_, 20\_\_] (as amended, modified, supplemented, increased, extended, restated, renewed, refinanced or replaced from time to time, the “Loan Agreement”) among the Borrower and the Lender, the Lender has agreed to make loans and issue letters of credit upon the terms and subject to the conditions set forth therein; and

WHEREAS, this Agreement is required by the terms of the Loan Agreement.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

(1) Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement, and the following terms shall have the meanings set forth in Article 9 of the UCC (defined below): Accession, Account, Adverse Claim, As-Extracted Collateral, Chattel Paper, Commercial Tort Claim, Consumer Goods, Deposit Account, Document, Electronic Chattel Paper, Equipment, Farm Products, Financial Asset, Fixtures, General Intangible, Goods, Instrument, Inventory, Investment Company Security, Investment Property, Letter-of-Credit Right, Manufactured Home, Money, Proceeds, Securities Account, Security Entitlement, Security, Software, Supporting Obligation and Tangible Chattel Paper.

(2) In addition, the following terms shall have the meanings set forth below:

“Collateral” has the meaning provided in Section 2 hereof.

“Copyright License” means any written agreement, naming any Obligor as licensor, granting any right under any Copyright.

“Copyrights” means (a) all registered United States copyrights in all Works, now existing or hereafter created or acquired, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Copyright Office, and (b) all renewals thereof.

“Domestic Subsidiary” means any direct or indirect subsidiary of the Borrower that is organized under the laws of any state of the United States or the District of Columbia.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including

partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“Event of Default” means any of the events described in Section 9 of the Loan Agreement

“Foreign Subsidiary” means any direct or indirect subsidiary of the Borrower that is not a Domestic Subsidiary.

“Patent License” means any agreement, whether written or oral, providing for the grant by or to an Obligor of any right to manufacture, use or sell any invention covered by a Patent.

“Patents” means (a) all letters patent of the United States or any other country and all reissues and extensions thereof, and (b) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

“Pledged Equity” means, with respect to each Obligor, (i) 100% of the issued and outstanding Equity Interests of each Domestic Subsidiary that is directly owned by such Obligor and (ii) 65% (or such greater percentage that, due to a change in applicable law after the date hereof, (A) could not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Foreign Subsidiary’s United States parent and (B) could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) in each Foreign Subsidiary that is directly owned by such Obligor, including the Equity Interests of the Subsidiaries owned by such Obligor as set forth on Schedule 1(b) hereto, in each case together with the certificates (or other agreements or instruments), if any, representing such shares, and all options and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following:

(1) all Equity Interests representing a dividend thereon, or representing a distribution or return of capital upon or in respect thereof, or resulting from a stock split, revision, reclassification or other exchange therefor, and any subscriptions, warrants, rights or options issued to the holder thereof, or otherwise in respect thereof; and

(2) in the event of any consolidation or merger involving the issuer thereof and in which such issuer is not the surviving Person, all shares of each class of the Equity Interests of the successor Person formed by or resulting from such consolidation or merger, to the extent that such successor Person is a direct subsidiary of an Obligor.

“Secured Obligations” means, without duplication, (a) all obligations of the Obligors arising under the Loan Agreement and any guarantee thereof (including under that certain Continuing and Unconditional Guaranty, dated [\_\_\_\_\_, 20\_\_] given by certain Obligors in favor of the Lender) and (b) all costs and expenses incurred in connection with enforcement and collection of such obligations, including the fees, charges and disbursements of counsel. Such obligations also include all obligations to the Lender arising under any swap, derivative, foreign exchange, hedge, or other arrangement (“Swap”) now or hereafter entered into between any Obligor and the Lender; provided, that with respect to an Obligor, the Collateral of such Obligor shall not secure obligations arising under any Swap to which it is not party if, and to the extent that, all or a portion of the guaranty by such Obligor to the Lender of, or the grant by such Obligor of a security interest to the Lender to secure, such Swap, would violate the Commodity Exchange Act (7 U.S.C. Sec. 1, et. seq.) by virtue of such Obligor’s failure to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time such guaranty or grant of such security interest becomes effective with respect to such Swap.

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“Trademark License” means any agreement, written or oral, providing for the grant by or to an Obligor of any right to use any Trademark.

“Trademarks” means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and the goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise and (b) all renewals thereof.

“UCC” means the Uniform Commercial Code as in effect from time to time in the state of Colorado except as such term may be used in connection with the perfection of the Collateral and then the applicable jurisdiction with respect to such affected Collateral shall apply.

“United States” means the United States of America.

“Work” means any work that is subject to copyright protection pursuant to Title 17 of the United States Code.

2. Grant of Security Interest in the Collateral. To secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Secured Obligations, each Obligor hereby grants to the Lender, a continuing security interest in, and a right to set off against, any and all right, title and interest of such Obligor in and to all of the following, whether now owned or existing or owned, acquired, or arising hereafter (collectively, the “Collateral”): (a) all Accounts; (b) all Chattel Paper; (c) those certain Commercial Tort Claims set forth on Schedule 2(c) hereto; (d) all Copyrights; (e) all Copyright Licenses; (f) all Deposit Accounts; (g) all Documents; (h) all Equipment; (i) all Fixtures; (j) all General Intangibles; (k) all Instruments; (l) all Inventory; (m) all Investment Property; (n) all Letter-of-Credit Rights; (o) all Money; (p) all Patents; (q) all Patent Licenses; (r) all Pledged Equity; (s) all Software; (t) all Supporting Obligations; (u) all Trademarks; (v) all Trademark Licenses; and (w) all Accessions and all Proceeds of any and all of the foregoing.

Notwithstanding anything to the contrary contained herein, the security interests granted under this Agreement shall not extend to (i) any property which is subject to a lien of the type described in [Section 7.6(d)] of the Loan Agreement pursuant to documents which prohibit such Obligor from granting any other liens in such property and (ii) any General Intangible, permit, lease, license, contract or other Instrument of an Obligor to the extent the grant of a security interest in such General Intangible, permit, lease, license, contract or other Instrument in the manner contemplated by this Agreement, under the terms thereof or under applicable law, is prohibited and would result in the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise alter such Obligor’s rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both); provided that (a) any such limitation described in the foregoing clause (ii) on the security interests granted hereunder shall only apply to the extent that any such prohibition could not be rendered ineffective pursuant to the UCC or any other applicable law (including bankruptcy laws) or principles of equity and (b) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in any applicable law, General Intangible, permit, lease, license, contract or other Instrument, to the extent sufficient to permit any such item to become Collateral hereunder, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such General Intangible, permit, lease, license, contract or other Instrument shall be automatically and simultaneously granted hereunder and shall be included as Collateral hereunder.

The Obligors and the Lender hereby acknowledge and agree that the security interest created hereby in the Collateral (i) constitutes continuing collateral security for all of the Secured Obligations, whether now existing or hereafter arising and (ii) is not to be construed as an assignment of any Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks or Trademark Licenses.

3. Representations and Warranties. Each Obligor hereby represents and warrants to the Lender that:

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a. Ownership. Each Obligor is the legal and beneficial owner of its Collateral and has the right to pledge, sell, assign or transfer the same. There exists no Adverse Claim with respect to the Pledged Equity of such Obligor.

b. Security Interest/Priority. This Agreement creates a valid security interest in favor of the Lender in the Collateral of such Obligor and, when properly perfected by filing, shall constitute a valid and perfected, first priority security interest in such Collateral (including all uncertificated Pledged Equity consisting of partnership or limited liability company interests that do not constitute Securities), to the extent such security interest can be perfected by filing under the UCC, free and clear of all liens except for liens permitted by the Loan Agreement. The taking possession by the Lender of the certificated securities (if any) evidencing the Pledged Equity and all other Instruments constituting Collateral will perfect and establish the first priority of the Lender's security interest in all the Pledged Equity evidenced by such certificated securities and such Instruments. With respect to any Collateral consisting of a Deposit Account, Securities Entitlement or held in a Securities Account, upon execution and delivery by the applicable Obligor, the applicable depository bank or Securities Intermediary and the Lender of an agreement granting control to the Lender over such Collateral, the Lender shall have a valid and perfected, first priority security interest in such Collateral.

c. Types of Collateral. None of the Collateral consists of, or is the Proceeds of, As-Extracted Collateral, Consumer Goods, Farm Products, Manufactured Homes or standing timber.

d. Equipment and Inventory. With respect to any Equipment and/or Inventory of an Obligor, each such Obligor has exclusive possession and control of such Equipment and Inventory of such Obligor except for (i) Equipment leased by such Obligor as a lessee or (ii) Equipment or Inventory in transit with common carriers. No Inventory of an Obligor is held by a Person other than an Obligor pursuant to consignment, sale or return, sale on approval or similar arrangement.

e. Authorization of Pledged Equity. All Pledged Equity is duly authorized and validly issued, is fully paid and, to the extent applicable, nonassessable and is not subject to the preemptive rights of any Person.

f. No Other Equity Interests, Instruments, Etc. As of the date hereof, (i) no Obligor owns any certificated Equity Interests in any subsidiary that are required to be pledged and delivered to the Lender hereunder except as set forth on Schedule 1(b) hereto, and (ii) no Obligor holds any Instruments, Documents or Tangible Chattel Paper required to be pledged and delivered to the Lender pursuant to Section 4(a)(i) of this Agreement other than as set forth on Schedule 3(g) hereto. All such certificated securities, Instruments, Documents and Tangible Chattel Paper have been delivered to the Lender.

g. Partnership and Limited Liability Company Interests. Except as previously disclosed to the Lender, none of the Collateral consisting of an interest in a partnership or a limited liability company (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a Security governed by Article 8 of the UCC, (iii) is an Investment Company Security, (iv) is held in a Securities Account or (v) constitutes a Security or a Financial Asset.

h. Business Locations; Mergers, Etc. Set forth on Schedule 3(h)(I) is a list of all real property located in the United States that is owned or leased by any Obligor as of the date hereof. Set forth on Schedule 3(h)(II) is the jurisdiction of organization, chief executive office, exact legal name, U.S. tax payer identification number and organizational identification number of each Obligor as of the date hereof. Other than as set forth on Schedule 3(h)(III), no Obligor has been party to a merger, consolidation or other change in structure or used any tradename in the prior five years.

i. Consents; Etc. There are no restrictions in any organizational document governing any Pledged Equity or any other document related thereto which would limit or restrict (i) the grant of a lien pursuant to this Agreement on such Pledged Equity, (ii) the perfection of such lien or (iii) the exercise of remedies in

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respect of such perfected lien in the Pledged Equity as contemplated by this Agreement. Except for (i) the filing or recording of UCC financing statements, (ii) the filing of appropriate notices with the United States Patent and Trademark Office and the United States Copyright Office, (iii) obtaining control to perfect the liens created by this Agreement (to the extent required under Section 4(a) hereof), (iv) such actions as may be required by laws affecting the offering and sale of securities, (v) such actions as may be required by applicable foreign laws affecting the pledge of the Pledged Equity of Foreign Subsidiaries and (vi) consents, authorizations, filings or other actions which have been obtained or made, no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other Person (including, without limitation, any stockholder, member or creditor of such Obligor), is required for (A) the grant by such Obligor of the security interest in the Collateral granted hereby or for the execution, delivery or performance of this Agreement by such Obligor, (B) the perfection of such security interest (to the extent such security interest can be perfected by filing under the UCC, the granting of control (to the extent required under Section 4(a) hereof) or by filing an appropriate notice with the United States Patent and Trademark Office or the United States Copyright Office) or (C) the exercise by the Lender of the rights and remedies provided for in this Agreement.

j. Commercial Tort Claims. As of the date hereof, no Obligor has any Commercial Tort Claims seeking damages in excess of \$2,500,000 other than as set forth on Schedule 2(c) hereto.

k. Copyrights, Patents and Trademarks. Set forth on Schedule 3(k) is a list of (i) all Copyright, Patent and Trademark registered or pending registration with the United States Copyright Office or the United States Patent and Trademark Office that, as of the date hereof, an Obligor owns and (ii) all Copyright Licenses, Patent Licenses and Trademark Licenses of the Obligors as of the date hereof.

4. Covenants. Each Obligor covenants that until such time as the Secured Obligations have been paid in full and all commitments of the Lender to make credit extensions under the Loan Agreement have expired or been terminated, such Obligor shall:

a. Instruments/Chattel Paper/Pledged Equity/Control.

i. If any amount in excess of \$2,500,000 payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument or Tangible Chattel Paper, or if any property constituting Collateral shall be stored or shipped subject to a Document, ensure that such Instrument, Tangible Chattel Paper or Document is either in the possession of such Obligor at all times or, if requested by the Lender to perfect its security interest in such Collateral, is delivered to the Lender duly endorsed in a manner satisfactory to the Lender. Such Obligor shall ensure that any Collateral consisting of Tangible Chattel Paper is marked with a legend acceptable to the Lender indicating the Lender's security interest in such Tangible Chattel Paper.

ii. Deliver to the Lender promptly upon the receipt thereof by or on behalf of an Obligor, all certificates and instruments constituting Pledged Equity. Prior to delivery to the Lender, all such certificates constituting Pledged Equity shall be held in trust by such Obligor for the benefit of the Lender pursuant hereto. All such certificates representing Pledged Equity shall be delivered in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, substantially in the form provided in Exhibit 4(a)(ii) hereto.

iii. Execute and deliver all agreements, assignments, instruments or other documents as reasonably requested by the Lender for the purpose of obtaining and maintaining control with respect to any Collateral consisting of (i) Deposit Accounts, (ii) Investment Property, (iii) Letter-of-Credit Rights and (iv) Electronic Chattel Paper.

b. Filing of Financing Statements, Notices, etc. Each Obligor shall execute and deliver to the Lender such agreements, assignments or instruments (including affidavits, notices, reaffirmations and

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amendments and restatements of existing documents, as the Lender may reasonably request) and do all such other things as the Lender may reasonably deem necessary or appropriate (i) to assure to the Lender its security interests hereunder, including (A) such instruments as the Lender may from time to time reasonably request in order to perfect and maintain the security interests granted hereunder in accordance with the UCC, (B) with regard to Copyrights, a Notice of Grant of Security Interest in Copyrights in the form of Exhibit 4(b)(i), (C) with regard to Patents, a Notice of Grant of Security Interest in Patents for filing with the United States Patent and Trademark Office in the form of Exhibit 4(b)(ii) hereto and (D) with regard to Trademarks, a Notice of Grant of Security Interest in Trademarks for filing with the United States Patent and Trademark Office in the form of Exhibit 4(b)(iii) hereto, (ii) to consummate the transactions contemplated hereby and (iii) to otherwise protect and assure the Lender of its rights and interests hereunder. Furthermore, each Obligor also hereby irrevocably makes, constitutes and appoints the Lender, its nominee or any other person whom the Lender may designate, as such Obligor's attorney in fact with full power and for the limited purpose to sign in the name of such Obligor any financing statements, or amendments and supplements to financing statements, renewal financing statements, notices or any similar documents which in the Lender's reasonable discretion would be necessary or appropriate in order to perfect and maintain perfection of the security interests granted hereunder, such power, being coupled with an interest, being and remaining irrevocable until such time as the Secured Obligations arising have been paid in full and all commitments of the Lender to make credit extensions under the Loan Agreement have expired or been terminated. Each Obligor hereby agrees that a carbon, photographic or other reproduction of this Agreement or any such financing statement is sufficient for filing as a financing statement by the Lender without notice thereof to such Obligor wherever the Lender may in its sole discretion desire to file the same.

c. Change in Corporate Structure or Location. Not, without providing 10 days prior written notice to the Lender, change its registered legal name, change its state of organization, be party to a merger or consolidation or change its organizational existence.

d. Collateral Held by Warehouseman, Bailee, etc. If any Collateral is at any time in the possession or control of a warehouseman, bailee or any agent or processor of such Obligor and the Lender so requests (i) notify such Person in writing of the Lender's security interest therein, (ii) instruct such Person to hold all such Collateral for the Lender's account and subject to the Lender's instructions and (iii) use reasonable best efforts to obtain a written acknowledgment from such Person that it is holding such Collateral for the benefit of the Lender.

e. Commercial Tort Claims. (i) Promptly forward to the Lender an updated Schedule 2(c) listing any and all Commercial Tort Claims by or in favor of such Obligor seeking damages in excess of \$2,500,000 and (ii) execute and deliver such statements, documents and notices and do and cause to be done all such things as may be required by the Lender or required by law to create, preserve, perfect and maintain the Lender's security interest in any Commercial Tort Claims initiated by or in favor of any Obligor.

f. Books and Records. Mark its books and records (and shall cause the issuer of the Pledged Equity of such Obligor to mark its books and records) to reflect the security interest granted pursuant to this Agreement.

g. Nature of Collateral. At all times maintain the Collateral as personal property and not affix any of the Collateral to any real property in a manner which would change its nature from personal property to real property or a Fixture to real property, unless the Lender shall have a perfected lien on such Fixture or real property.

h. Issuance or Acquisition of Equity Interests in Partnerships or Limited Liability Companies. Not without executing and delivering, or causing to be executed and delivered, to the Lender such agreements, documents and instruments as the Lender may reasonably require, issue or acquire any Pledged Equity consisting of an interest in a partnership or a limited liability company that (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a Security governed by Article

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8 of the UCC, (iii) is an investment company security, (iv) is held in a Securities Account or (v) constitutes a Security or a Financial Asset.

5. Authorization to File Financing Statements. Each Obligor hereby authorizes the Lender to prepare and file such financing statements (including continuation statements) or amendments thereof or supplements thereto or other instruments as the Lender may from time to time deem necessary or appropriate in order to perfect and maintain the security interests granted hereunder in accordance with the UCC (including authorization to describe the Collateral as “all personal property”, “all assets” or words of similar meaning).

6. Advances. On failure of any Obligor to perform any of the covenants and agreements contained herein, in the Loan Agreement or in any related document, the Lender may, at its sole option and in its sole discretion, perform the same and in so doing may expend such sums as the Lender may reasonably deem advisable in the performance thereof, including, without limitation, the payment of any insurance premiums, the payment of any taxes, a payment to obtain a release of a lien or potential lien, expenditures made in defending against any adverse claim and all other expenditures which the Lender may make for the protection of the security hereof or which may be compelled to make by operation of law. All such sums and amounts so expended shall be repayable by the Obligors on a joint and several basis promptly upon timely notice thereof and demand therefor, shall constitute additional Secured Obligations and shall bear interest from the date said amounts are expended at the default rate of interest set forth in the Loan Agreement. No such performance of any covenant or agreement by the Lender on behalf of any Obligor, and no such advance or expenditure therefor, shall relieve the Obligors of any Event of Default. The Lender may make any payment hereby authorized in accordance with any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien, title or claim except to the extent such payment is being contested in good faith by an Obligor in appropriate proceedings and against which adequate reserves are being maintained in accordance with GAAP.

7. Remedies.

a. General Remedies. Upon the occurrence of an Event of Default and during continuation thereof, the Lender shall have, in addition to the rights and remedies provided herein, in the Loan Agreement and in any other documents relating to the Secured Obligations, or by law (including, but not limited to, levy of attachment, garnishment and the rights and remedies set forth in the UCC of the jurisdiction applicable to the affected Collateral), the rights and remedies of a secured party under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights and remedies are asserted and regardless of whether the UCC applies to the affected Collateral), and further, the Lender may, with or without judicial process or the aid and assistance of others, (i) enter on any premises on which any of the Collateral may be located and, without resistance or interference by the Obligors, take possession of the Collateral, (ii) dispose of any Collateral on any such premises, (iii) require the Obligors to assemble and make available to the Lender at the expense of the Obligors any Collateral at any place and time designated by the Lender which is reasonably convenient to both parties, (iv) remove any Collateral from any such premises for the purpose of effecting sale or other disposition thereof, and/or (v) without demand and without advertisement, notice, hearing or process of law (in each case, except as otherwise required by Article 9 of the UCC), all of which each of the Obligors hereby waives to the fullest extent permitted by law, at any place and time or times, sell and deliver any or all Collateral held by or for it at public or private sale (which in the case of a private sale of Pledged Equity, shall be to a restricted group of purchasers who will be obligated to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof), at any exchange or broker’s board or elsewhere, by one or more contracts, in one or more parcels, for Money, upon credit or otherwise, at such prices and upon such terms as the Lender deems advisable, in its reasonable discretion (subject to any and all mandatory legal requirements). Each Obligor acknowledges that any such private sale may be at prices and on terms less favorable to the seller than the prices and other terms which might have been obtained at a public sale and, notwithstanding the foregoing, agrees that such fact shall not, solely as a result thereof, render such private sale to be deemed to have been made in a commercially unreasonable manner and, in the case of a sale of Pledged Equity, that the Lender shall have no obligation to

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delay sale of any such securities for the period of time necessary to permit the issuer of such securities to register such securities for public sale under the Securities Act of 1933. Neither the Lender's compliance with applicable law nor its disclaimer of warranties relating to the Collateral shall be considered to adversely affect the commercial reasonableness of any sale. To the extent the rights of notice cannot be legally waived hereunder, each Obligor agrees that any requirement of reasonable notice shall be met if such notice, specifying the place of any public sale or the time after which any private sale is to be made, is personally served on or mailed, postage prepaid, to the Borrower in accordance with the notice provisions of Section 10.11 of the Loan Agreement at least 10 days before the time of sale or other event giving rise to the requirement of such notice. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Obligor further acknowledges and agrees that any offer to sell any Pledged Equity which has been (i) publicly advertised on a bona fide basis in a newspaper or other publication of general circulation in the financial community of New York, New York (to the extent that such offer may be advertised without prior registration under the Securities Act of 1933), or (ii) made privately in the manner described above shall be deemed to involve a "public sale" under the UCC, notwithstanding that such sale may not constitute a "public offering" under the Securities Act of 1933, and the Lender may, in such event, bid for the purchase of such securities. The Lender shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. To the extent permitted by applicable law, any holder of Secured Obligations may be a purchaser at any such sale. To the extent permitted by applicable law, each of the Obligors hereby waives all of its rights of redemption with respect to any such sale. Subject to the provisions of applicable law, the Lender may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, to the extent permitted by law, be made at the time and place to which the sale was postponed, or the Lender may further postpone such sale by announcement made at such time and place.

b. Remedies relating to Accounts. During the continuation of an Event of Default, whether or not the Lender has exercised any or all of its rights and remedies hereunder, (i) each Obligor will promptly upon request of the Lender instruct all account debtors to remit all payments in respect of Accounts to a mailing location selected by the Lender and (ii) the Lender shall have the right to enforce any Obligor's rights against its customers and account debtors, and the Lender or its designee may notify any Obligor's customers and account debtors that the Accounts of such Obligor have been assigned to the Lender or of the Lender's security interest therein, and may (either in its own name or in the name of an Obligor or both) demand, collect (including without limitation by way of a lockbox arrangement), receive, take receipt for, sell, sue for, compound, settle, compromise and give acquittance for any and all amounts due or to become due on any Account, and, in the Lender's discretion, file any claim or take any other action or proceeding to protect and realize upon the security interest of the holders of the Secured Obligations in the Accounts. Each Obligor acknowledges and agrees that the Proceeds of its Accounts remitted to or on behalf of the Lender in accordance with the provisions hereof shall be solely for the Lender's own convenience and that such Obligor shall not have any right, title or interest in such Accounts or in any such other amounts except as expressly provided herein. The Lender shall not have any liability or responsibility to any Obligor for acceptance of a check, draft or other order for payment of money bearing the legend "payment in full" or words of similar import or any other restrictive legend or endorsement or be responsible for determining the correctness of any remittance. Furthermore, during the continuation of an Event of Default, (i) the Lender shall have the right, but not the obligation, to make test verifications of the Accounts in any manner and through any medium that it reasonably considers advisable, and the Obligors shall furnish all such assistance and information as the Lender may require in connection with such test verifications, (ii) upon the Lender's request and at the expense of the Obligors, the Obligors shall cause independent public accountants or others satisfactory to the Lender to furnish to the Lender reports showing reconciliations, aging and test verifications of, and trial balances for, the Accounts and (iii) the Lender in its own name or in the name of others may communicate with account debtors on the Accounts to verify with them to the Lender's satisfaction the existence, amount and terms of any Accounts.

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c. Deposit Accounts. Upon the occurrence of an Event of Default and during continuation thereof, the Lender may prevent withdrawals or other dispositions of funds in Deposit Accounts maintained with the Lender.

d. Access. In addition to the rights and remedies hereunder, upon the occurrence of an Event of Default and during the continuance thereof, the Lender shall have the right to enter and remain upon the various premises of the Obligors without cost or charge to the Lender, and use the same, together with materials, supplies, books and records of the Obligors for the purpose of collecting and liquidating the Collateral, or for preparing for sale and conducting the sale of the Collateral, whether by foreclosure, auction or otherwise. In addition, the Lender may remove Collateral, or any part thereof, from such premises and/or any records with respect thereto, in order to effectively collect or liquidate such Collateral.

e. Nonexclusive Nature of Remedies. Failure by the Lender to exercise any right, remedy or option under this Agreement, the Loan Agreement, any other document relating to the Secured Obligations, or as provided by law, or any delay by the Lender in exercising the same, shall not operate as a waiver of any such right, remedy or option. No waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated, which in the case of the Lender shall only be granted as provided herein. To the extent permitted by law, neither the Lender nor any party acting as attorney for the Lender, shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct hereunder or material breach of their obligations hereunder. The rights and remedies of the Lender under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Lender may have.

f. Retention of Collateral. In addition to the rights and remedies hereunder, the Lender may, in compliance with Sections 9-620 and 9-621 of the UCC or otherwise complying with the requirements of applicable law of the relevant jurisdiction, accept or retain the Collateral in satisfaction of the Secured Obligations. Unless and until the Lender shall have provided such notices, however, the Lender shall not be deemed to have retained any Collateral in satisfaction of any Secured Obligations for any reason.

g. Deficiency. In the event that the proceeds of any sale, collection or realization are insufficient to pay all amounts to which the Lender is legally entitled, the Obligors shall be jointly and severally liable for the deficiency, together with interest thereon at the default rate of interest set forth in the Loan Agreement, together with the costs of collection and the fees, charges and disbursements of counsel. Any surplus remaining after the full payment and satisfaction of the Secured Obligations shall be returned to the Obligors or to whomsoever a court of competent jurisdiction shall determine to be entitled thereto.

#### 8. Rights of the Lender.

a. Power of Attorney. In addition to other powers of attorney contained herein, each Obligor hereby designates and appoints the Lender and each of its designees or agents, as attorney-in-fact of such Obligor, irrevocably and with power of substitution, with authority to take any or all of the following actions upon the occurrence and during the continuance of an Event of Default:

i. to demand, collect, settle, compromise, adjust, give discharges and releases, all as the Lender may reasonably determine;

ii. to commence and prosecute any actions at any court for the purposes of collecting any Collateral and enforcing any other right in respect thereof;

iii. to defend, settle or compromise any action brought and, in connection therewith, give such discharge or release as the Lender may deem reasonably appropriate;

iv. receive and open mail addressed to an Obligor and endorse checks, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents

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evidencing payment, shipment or storage of the goods giving rise to the Collateral of such Obligor on behalf of and in the name of such Obligor, or securing, or relating to such Collateral;

v. sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any Collateral or the goods or services which have given rise thereto, as fully and completely as though the Lender were the absolute owner thereof for all purposes;

vi. adjust and settle claims under any insurance policy relating thereto;

vii. execute and deliver all assignments, conveyances, statements, financing statements, renewal financing statements, security agreements, affidavits, notices and other agreements, instruments and documents that the Lender may determine necessary in order to perfect and maintain the security interests and liens granted in this Agreement and in order to fully consummate all of the transactions contemplated therein;

viii. institute any foreclosure proceedings that the Lender may deem appropriate;

ix. to sign and endorse any drafts, assignments, proxies, stock powers, verifications, notices and other documents relating to the Collateral;

x. to exchange any of the Pledged Equity or other property upon any merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Pledged Equity with any committee, depository, transfer agent, registrar or other designated agency upon such terms as the Lender may reasonably deem appropriate;

xi. to vote for a shareholder resolution, or to sign an instrument in writing, sanctioning the transfer of any or all of the Pledged Equity into the name of the Lender or into the name of any transferee to whom the Pledged Equity or any part thereof may be sold pursuant to Section 7 hereof;

xii. to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral;

xiii. to direct any parties liable for any payment in connection with any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Lender or as the Lender shall direct;

xiv. to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral; and

xv. do and perform all such other acts and things as the Lender may reasonably deem to be necessary, proper or convenient in connection with the Collateral.

This power of attorney is a power coupled with an interest and shall be irrevocable until such time as the Secured Obligations have been paid in full and all commitments of the Lender to make credit extensions under the Loan Agreement have expired or been terminated. The Lender shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Lender in this Agreement, and shall not be liable for any failure to do so or any delay in doing so. The Lender shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in its individual capacity or its capacity as attorney-in-fact except acts or omissions resulting from its gross negligence or willful misconduct. This power of attorney is conferred on the Lender solely to protect, preserve and realize upon its security interest in the Collateral.

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b. The Lender's Duty of Care. Other than the exercise of reasonable care to assure the safe custody of the Collateral while being held by the Lender hereunder, the Lender shall have no duty or liability to preserve rights pertaining thereto, it being understood and agreed that the Obligor shall be responsible for preservation of all rights in the Collateral, and the Lender shall be relieved of all responsibility for the Collateral upon surrendering it or tendering the surrender of it to the Obligor. The Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Lender accords its own property, which shall be no less than the treatment employed by a reasonable and prudent agent in the industry, it being understood that the Lender shall not have responsibility for taking any necessary steps to preserve rights against any parties with respect to any of the Collateral. In the event of a public or private sale of Collateral pursuant to Section 7 hereof, the Lender shall have no responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Lender has or is deemed to have knowledge of such matters, or (ii) taking any steps to clean, repair or otherwise prepare the Collateral for sale.

c. Liability with Respect to Accounts. Anything herein to the contrary notwithstanding, each of the Obligor shall remain liable under each of the Accounts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to each such Account. The Lender shall not have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Lender of any payment relating to such Account pursuant hereto, nor shall the Lender be obligated in any manner to perform any of the obligations of an Obligor under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

d. Voting and Payment Rights in Respect of the Pledged Equity.

i. So long as no Event of Default shall exist, each Obligor may (A) exercise any and all voting and other consensual rights pertaining to the Pledged Equity of such Obligor or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Loan Agreement and (B) receive and retain any and all dividends (other than stock dividends and other dividends constituting Collateral which are addressed hereinabove), principal or interest paid in respect of the Pledged Equity to the extent they are allowed under the Loan Agreement; and

ii. During the continuance of an Event of Default, (A) all rights of an Obligor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to clause (i)(A) above shall cease and all such rights shall thereupon become vested in the Lender which shall then have the sole right to exercise such voting and other consensual rights, (B) all rights of an Obligor to receive the dividends, principal and interest payments which it would otherwise be authorized to receive and retain pursuant to clause (i)(B) above shall cease and all such rights shall thereupon be vested in the Lender which shall then have the sole right to receive and hold as Collateral such dividends, principal and interest payments, and (C) all dividends, principal and interest payments which are received by an Obligor contrary to the provisions of clause (ii)(B) above shall be received in trust for the benefit of the Lender, shall be segregated from other property or funds of such Obligor, and shall be forthwith paid over to the Lender as Collateral in the exact form received, to be held by the Lender as Collateral and as further collateral security for the Secured Obligations.

e. Releases of Collateral. (i) If any Collateral shall be sold, transferred or otherwise disposed of by any Obligor in a transaction permitted by the Loan Agreement, then the Lender, at the request and sole expense of such Obligor, shall promptly execute and deliver to such Obligor all releases and other documents, and take such other action, reasonably necessary for the release of the liens created hereby or by any other

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Collateral Document on such Collateral. (ii) The Lender may release any of the Pledged Equity from this Agreement or may substitute any of the Pledged Equity for other Pledged Equity without altering, varying or diminishing in any way the force, effect, lien, pledge or security interest of this Agreement as to any Pledged Equity not expressly released or substituted, and this Agreement shall continue as a first priority lien on all Pledged Equity not expressly released or substituted.

9. Application of Proceeds. Any payments in respect of the Secured Obligations and any proceeds of the Collateral, when received by the Lender will be applied in reduction of the Secured Obligations in such manner as the Lender determines in its sole discretion.

10. Continuing Agreement.

a. This Agreement shall remain in full force and effect until such time as the Secured Obligations have been paid in full and all commitments of the Lender to make credit extensions under the Loan Agreement have expired or been terminated, at which time this Agreement shall be automatically terminated and the Lender shall, upon the request and at the expense of the Obligors, forthwith release all of its liens and security interests hereunder and shall execute and deliver all UCC termination statements and/or other documents reasonably requested by the Obligors evidencing such termination.

b. This Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment, in whole or in part, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Lender as a preference, fraudulent conveyance or otherwise under any bankruptcy or other debtor relief law, all as though such payment had not been made; provided that in the event payment of all or any part of the Secured Obligations is rescinded or must be restored or returned, all reasonable costs and expenses (including without limitation any reasonable legal fees and disbursements) incurred by the Lender in defending and enforcing such reinstatement shall be deemed to be included as a part of the Secured Obligations.

11. Amendments. This Agreement may be amended or modified only in writing signed by each party hereto.

12. Successors in Interest. This Agreement shall be binding upon each Obligor, its successors and assigns and shall inure, together with the rights and remedies of the Lender hereunder, to the benefit of the Lender and its successors and permitted assigns.

13. Notices. All notices required or permitted to be given under this Agreement shall be in conformance with Section 10.11 of the Loan Agreement.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which where so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Delivery of executed counterparts of this Agreement by facsimile or other electronic means shall be effective as an original.

15. Headings. The headings of the sections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

16. Governing Law; Submission to Jurisdiction; Venue; WAIVER OF JURY TRIAL.

a. Except to the extent that any law of the United States may apply, this Agreement shall be governed and interpreted according to the laws of New York (the "Governing Law State"), without regard to any choice of law, rules or principles to the contrary. Nothing in this paragraph shall be construed to limit or otherwise affect any rights or remedies of the Lender under federal law.

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b. Each Obligor agrees that any action or suit against the Lender arising out of or relating to this Agreement shall be filed in federal court or state court located in the Governing Law State. Each Obligor agrees that the Lender shall not be deemed to have waived its rights to enforce this section by filing an action or suit against any Obligor in a venue outside of the Governing Law State. If the Lender does commence an action or suit arising out of or relating to this Agreement, each Obligor agrees that the case may be filed in federal court or state court in the Governing Law State. The Lender reserves the right to commence an action or suit in any other jurisdiction where any Obligor or any Collateral has any presence or is located. Each Obligor consents to personal jurisdiction and venue in such forum selected by the Lender and waives any right to contest jurisdiction and venue and the convenience of any such forum. The provisions of this section are material inducements to the Lender's acceptance of this Agreement.

c. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER DOCUMENTS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION AND (iii) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE.

17. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

18. Entirety. This Agreement, the other Loan Documents and the other documents relating to the Secured Obligations represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, and any contemporaneous oral agreements and understandings, if any, including any commitment letters or correspondence relating to the Loan Documents, any other documents relating to the Secured Obligations, or the transactions contemplated herein and therein.

19. Other Security. To the extent that any of the Secured Obligations are now or hereafter secured by property other than the Collateral (including, without limitation, real property and securities owned by an Obligor), or by a guarantee, endorsement or property of any other Person, then the Lender shall have the right to proceed against such other property, guarantee or endorsement upon the occurrence of any Event of Default, and the Lender shall have the right, in its sole discretion, to determine which rights, security, liens, security interests or remedies the Lender shall at any time pursue, relinquish, subordinate, modify or take with respect thereto, without in any way modifying or affecting any of them or the Secured Obligations or any of the rights of the Lender under this Agreement, under the Loan Agreement or under any other document relating to the Secured Obligations.

20. Joinder. At any time after the date of this Agreement, one or more additional Persons may become party hereto by executing and delivering to the Lender a joinder agreement in form and substance satisfactory to the Lender. Immediately upon such execution and delivery of such joinder agreement (and without any further action), each such additional Person will become a party to this Agreement as an "Obligor" and have all of the rights and obligations of an Obligor hereunder and this Agreement and the schedules hereto shall be deemed amended by such joinder agreement.

21. Consent of Issuers of Pledged Equity. Each issuer of Pledged Equity party to this Agreement hereby acknowledges, consents and agrees to the grant of the security interests in such Pledged Equity by the applicable

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Obligors pursuant to this Agreement, together with all rights accompanying such security interest as provided by this Agreement and applicable law, notwithstanding any anti-assignment provisions in any operating agreement, limited partnership agreement or similar organizational or governance documents of such issuer.

[remainder of page intentionally left blank]

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Each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

OBLIGORS:

ADVANCED ENERGY INDUSTRIES, INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[OBLIGORS]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted and agreed to as of the date first above written.

BANK OF AMERICA, N.A., as Lender

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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SCHEDULE 1(b)

PLEDGED EQUITY

OBLIGOR:

<u>Name of Subsidiary</u>	<u>Number of Shares</u>	<u>Certificate Number</u>	<u>Percentage Ownership</u>	<u>Percentage Pledged</u>
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OBLIGOR:

<u>Name of Subsidiary</u>	<u>Number of Shares</u>	<u>Certificate Number</u>	<u>Percentage Ownership</u>	<u>Percentage Pledged</u>
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SCHEDULE 2(c)

COMMERCIAL TORT CLAIMS

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SCHEDULE 3(g)

INSTRUMENTS; DOCUMENTS; TANGIBLE CHATTEL PAPER

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SCHEDULE 3(h)

BUSINESS LOCATIONS; MERGERS, CONSOLIDATIONS, CHANGE IN STRUCTURE OR USE OF TRADENAMES

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SCHEDULE 3(k)

INTELLECTUAL PROPERTY

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EXHIBIT 4(a)(ii)

IRREVOCABLE STOCK POWER

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to the following Equity Interests of \_\_\_\_\_, a \_\_\_\_\_ corporation:

No. of Shares      Certificate No.

and irrevocably appoints \_\_\_\_\_ its agent and attorney-in-fact to transfer all or any part of such Equity Interests and to take all necessary and appropriate action to effect any such transfer. The agent and attorney-in-fact may substitute and appoint one or more persons to act for him.

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

EXHIBIT 4(b)(i)

NOTICE

OF

GRANT OF SECURITY INTEREST

IN

PATENTS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Security and Pledge Agreement dated as of \_\_\_\_\_, 20\_\_ (as the same may be amended, modified, extended or restated from time to time, the "Agreement") by and among the Obligors party thereto (each an "Obligor" and collectively, the "Obligors") and Bank of America, N.A. (the "Lender"), the undersigned Obligor has granted a continuing security interest in and a right to set off against the patents and patent applications shown below to the Lender:

PATENTS

Description of

Patent No.

Patent Item

Date of Patent

See Schedule 1 attached hereto

PATENT APPLICATIONS

Description of

Date of

Patent Applications No.

Patent Applied for

Patent Applications

See Schedule 1 attached hereto

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The undersigned Obligor and the Lender hereby acknowledge and agree that the security interest in the foregoing patents and patent applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any patent or patent application.

Very truly yours,

\_\_\_\_\_

[Obligor]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Accepted:

BANK OF AMERICA, N.A., as Lender

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

EXHIBIT 4(b)(ii)

NOTICE

OF

GRANT OF SECURITY INTEREST

IN

TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Security and Pledge Agreement dated as of \_\_\_\_\_, 20\_\_ (as the same may be amended, modified, extended or restated from time to time, the "Agreement") by and among the Obligors party thereto (each an "Obligor" and collectively, the "Obligors") and Bank of America, N.A. (the "Lender"), the undersigned Obligor has granted a continuing security interest in and a right to set off against the trademarks and trademark applications shown below to the Lender:

TRADEMARKS

Description of

Trademark Item

Date of Trademark

Trademark No.

See Schedule 1 attached hereto

TRADEMARK APPLICATIONS

Description of

Date of

Trademark Applied for

Trademark Applications

Trademark Applications No.

See Schedule 1 attached hereto

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The undersigned Obligor and the Lender hereby acknowledge and agree that the security interest in the foregoing trademarks and trademark applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any trademark or trademark application.

Very truly yours,

\_\_\_\_\_  
[Obligor]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Accepted:

BANK OF AMERICA, N.A., as Lender

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

EXHIBIT 4(b)(iii)

NOTICE

OF

GRANT OF SECURITY INTEREST

IN

COPYRIGHTS

United States Copyright Office

Ladies and Gentlemen:

Please be advised that pursuant to the Security and Pledge Agreement dated as of \_\_\_\_\_, 20\_\_ (as the same may be amended, modified, extended or restated from time to time, the "Agreement") by and among the Obligors party thereto (each an "Obligor" and collectively, the "Obligors") and Bank of America, N.A. (the "Lender"), the undersigned Obligor has granted a continuing security interest in and a right to set off against the copyrights and copyright applications shown below to the Lender:

COPYRIGHTS

Description of

Copyright Item

Copyright No.

Date of Copyright

See Schedule 1 attached hereto

COPYRIGHT APPLICATIONS

Description of

Date of

Copyright Applied for

Copyright Applications

Copyright Applications No.

See Schedule 1 attached hereto

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The undersigned Obligor and the Lender hereby acknowledge and agree that the security interest in the foregoing copyrights and copyright applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any copyright or copyright application.

Very truly yours,

\_\_\_\_\_

[Obligor]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Accepted:

BANK OF AMERICA, N.A., as Lender

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_