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Proposed Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
ALEXANDER GALLO HOLDINGS,	:	Case No. 11-14220
LLC, <i>et al.</i> , <sup>1</sup>	:	
	:	(Jointly Administered)
Debtors.	:	
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**NOTICE OF FILING REVISED DEBTOR-IN-POSSESSION CREDIT, SECURITY, PLEDGE, AND GUARANTY AGREEMENT IN CONNECTION WITH MOTION FOR ENTRY OF FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, AND 507, BANKRUPTCY RULES 2002, 4001, AND 6004 AND LOCAL RULE 4001-2 (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPER-PRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, AND (V) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that on September 8, 2011, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507, Bankruptcy Rules 2002, 4001, and 6004 and Local Rule 4001-2 (i) Authorizing Debtors to Obtain Postpetition Financing, (ii) Authorizing Use of Cash Collateral, (iii) Granting Liens and Providing Super-Priority Administrative Expense Status, (iv) Granting Adequate Protection, and (v) Granting*

<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Alexander Gallo Holdings, LLC (4040); Set Depo, LLC (4236); AG/Sanction LLC (2187); Unlimited Languages, Inc. (7755); The Hobart West Group, Inc. (9849); Deponet, LLC (0336); Esquire Deposition Services, LLC (9684); Esquire Litigation Solutions, LLC (0947); Esquire Solutions, LLC (9382); Hobart West Solutions, LLC (6005); and D-M Information Systems, Inc. (3504).



*Related Relief* (Doc. No. 22) (the “Motion”). Attached as Exhibit B to the Motion was a draft Debtor-in-Possession Credit, Security, Pledge, and Guaranty Agreement (the “DIP Financing Agreement”).

**PLEASE TAKE FURTHER NOTICE** that on September 14, 2011, the Court entered an order approving the Motion on an interim basis (Doc. No. 60).

**PLEASE TAKE FURTHER NOTICE** that on September 26, 2011, the Debtors filed a revised version of the DIP Financing Agreement.

**PLEASE TAKE FURTHER NOTICE** that at the hearing scheduled before the Court on October 5, 2011 at 10:30 a.m. (prevailing Eastern Time), the Debtors will seek entry of an order approving the Motion on a final basis.

**ATTACHED HERETO** as Exhibit “A” is a further revised version of the DIP Financing Agreement.

**ATTACHED HERETO** as Exhibit “B” is a blackline copy comparing the further revised DIP Financing Agreement against the version filed on September 26, 2011.

Dated: October 4, 2011  
New York, New York

/s/ Thomas R. Califano  
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*Proposed Attorneys for the Debtors and Debtors in Possession*

## **EXHIBIT A**

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**DEBTOR-IN-POSSESSION CREDIT, SECURITY, PLEDGE  
AND GUARANTY AGREEMENT**

Dated as of September 22, 2011

among

**ALEXANDER GALLO HOLDINGS, LLC**

a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code

and

**THE HOBART WEST GROUP, INC.**

a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code

as Borrowers,

**THE GUARANTORS REFERRED TO HEREIN**

**THE LENDERS REFERRED TO HEREIN**

and

**BAYSIDE GALLO RECOVERY, LLC,**

as Administrative Agent

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**DEBTOR IN POSSESSION CREDIT, SECURITY, PLEDGE AND GUARANTY AGREEMENT**, dated as of September 22, 2011 (as amended, supplemented or otherwise modified, renewed or replaced from time to time, this “Credit Agreement”) among (i) **ALEXANDER GALLO HOLDINGS, LLC**, a Georgia limited liability company (“AGH”), and **THE HOBART WEST GROUP, INC.**, a Delaware corporation (“Hobart West”), as Borrowers, each of which is a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (such cases, together, the “Borrowers’ Cases”), (ii) the **GUARANTORS** referred to herein, each of which (other than the Parent Entity) is a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (such cases, the “Guarantors’ Cases”, and together with the Borrowers’ Cases, the “Cases”), (iii) the **LENDERS** referred to herein and (iv) **BAYSIDE GALLO RECOVERY, LLC**, as Administrative Agent.

### **INTRODUCTORY STATEMENT**

Terms not otherwise defined above or in this Introductory Statement are as defined in Article 1 hereof or as defined elsewhere herein.

On September 7, 2011, the Borrowers and each of the Guarantors (other than the Parent Entity) filed voluntary petitions with the Bankruptcy Court under Chapter 11 of the Bankruptcy Code initiating the Cases and have continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code.

Prior to the Filing Date, (a) various financial institutions provided financings (the “Existing First Lien Facilities”) to AGH pursuant to that certain Credit Agreement, dated as of November 30, 2007, as amended, restated, supplemented or otherwise modified from time to time, among AGH, the lenders party thereto (the “Existing First Lien Lenders”) and Wells Fargo Bank, National Association, as administrative agent (in such capacity, the “Existing First Lien Agent”), (b) various financial institutions provided additional financings (the “Existing Second Lien Facilities” and, together with the Existing First Lien Facilities, the “Existing Facilities”) to AGH pursuant to that certain Second Amended and Restated Note Purchase Agreement, dated as of November 30, 2007, as amended, supplemented, modified, restated or replaced from time to time, among AGH, the guarantors identified therein and Grace Bay Holdings II, LLC (“Existing Purchaser”), (c) various financial institutions provided additional financings (the “Existing Winston Notes”) to AGH pursuant to that certain Contribution and Subscription Agreement, dated as of September 22, 2008, as amended, restated, supplemented or otherwise modified from time to time, among AGH, Winston Noteholders, LLC, Harvest Equity Partners, LLC and the other parties thereto from time to time and (d) various financial institutions provide additional financings (the “Existing AKKR Notes”) to AGH pursuant to that certain Note Purchase Agreement, dated as of September 22, 2008, as amended, restated, supplemented or otherwise modified from time to time, among AGH and Gallo Holdings, LLC.

The Borrowers have requested that the Lenders provide a senior subordinated secured revolving credit facility in an aggregate principal amount of up to \$20,000,000 as set

forth herein, all of the Borrowers' obligations under which will be guaranteed by the Guarantors (the "Facility").

The proceeds of the Loans will be used for general working capital purposes of the Debtors and to pay the fees and expenses of the Debtors incurred in connection with the Cases and the transactions contemplated by this Credit Agreement, in each case in accordance with the Budget and Section 5.13 of this Credit Agreement.

To provide assurance for the repayment of the Loans and the other Obligations of the Borrowers hereunder, the Borrowers will, among other things, provide or cause to be provided to the Administrative Agent, for the benefit of itself and the Lenders, the following (in each case subject to the applicable Order and the security interest priorities set forth therein and as more fully described herein):

- (i) a security interest in the Collateral from each of the Credit Parties pursuant to Article 8;
- (ii) a guaranty of the Obligations by each of the Guarantors pursuant to Article 9; and
- (iii) a pledge by each of the Pledgors of the Pledged Securities owned by it pursuant to Article 10.

Subject to the terms and conditions set forth herein, the Administrative Agent is willing to act as agent for the Lenders and each Lender is willing to make Loans to the Borrowers, each as provided herein, in an aggregate principal amount at any one time outstanding not in excess of its Commitment hereunder.

Accordingly, the parties hereto hereby agree as follows:

## **1. DEFINITIONS**

SECTION 1.1. Definitions. For the purposes hereof unless the context otherwise requires, all Section references herein shall be deemed to correspond with Sections herein, the following terms shall have the meanings indicated, all accounting terms not otherwise defined herein shall have the respective meanings accorded to them under GAAP and all terms defined in the UCC and not otherwise defined herein shall have the respective meanings accorded to them therein and if defined in more than one article of the UCC, shall have the meaning set forth in Article 9 thereof. Unless the context otherwise requires, any of the following terms may be used in the singular or the plural, depending on the reference:

"Account Control Agreement" shall mean an account control agreement in form and substance reasonably satisfactory to the Administrative Agent.

“Additional Credit” shall have the meaning given to such term in Section 4.2(e).

“Administrative Agent” shall mean Bayside Gallo Recovery, LLC, in its capacity as agent for the Lenders hereunder, and together with its Affiliates, or such successor Administrative Agent as may be appointed pursuant to Section 12.11 hereof.

“Affiliate” shall mean any Person, which, directly or indirectly, is in control of, is controlled by, or is under common control with, another Person. For purposes of this definition, (w) a Person shall be deemed to be “controlled by” another Person if such latter Person possesses, directly or indirectly, power either to direct or cause the direction of the management and policies of such controlled Person whether by contract or otherwise; (x) the term “Affiliate” shall include any Person that possesses, directly or indirectly, the power to vote five percent (5%) or more of the Equity Interests having ordinary voting power for the election of the Governing Body of such Person; and (y) none of the Administrative Agent, any Lender or any of their respective Affiliates shall be considered an Affiliate of any Credit Party.

“AGH” shall have the meaning given to such term in the initial paragraph of this Credit Agreement.

“Alternative Transaction” shall mean (a) any sale of all or substantially all of the assets of the Credit Parties pursuant to section 363 of the Bankruptcy Code or otherwise or (b) any financing, restructuring, plan of reorganization, plan of liquidation or other similar restructuring arrangement, in each case, other than the Bayside Sale.

“Applicable Law” shall mean all provisions of statutes, rules, regulations and orders of the United States of America, any state thereof or municipality therein or of any foreign governmental body or of any regulatory agency applicable to the Person in question, and all orders and decrees of all courts and arbitrators in proceedings or actions in which the Person in question is a party.

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

“Assignment and Assumption” shall mean an agreement substantially in the form of Exhibit G hereto, executed by the assignor, assignee and other parties as contemplated thereby.

“Authorized Officer” shall mean, with respect to any Person, any one of its Chairman, Chief Executive Officer, President, Chief Financial Officer (or Executive Vice President, Finance if no Chief Financial Officer is then utilized), Chief Restructuring Officer,

Chief Operating Officer, Executive Vice President of Finance or Senior Vice President of Finance.

“Bankruptcy Code” shall mean the Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, as codified at 11 U.S.C. § 101 et seq.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of New York or any other United States federal court having jurisdiction over the Cases.

“Bayside Sale” shall mean a sale of all or substantially all of the assets of the Credit Parties pursuant to section 363 of the Bankruptcy Code to the Administrative Agent or an Affiliate thereof as a stalking horse bidder as set forth in the Sale Motion.

“Board” shall mean the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” or “Borrowers” shall mean AGH and Hobart West, individually or collectively as the context requires.

“Borrowing” shall mean an advance of a Loan by the Lenders in accordance with Article 2.

“Borrowing Certificate” shall mean a borrowing certificate, substantially in the form of Exhibit E hereto, to be delivered by the Borrowers to the Administrative Agent in connection with each Borrowing.

“Budget” shall have the meaning given to such term in Section 4.1(o).

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks are required or permitted to close in the State of New York.

“Business Plan” shall mean the business plan for the Credit Parties, to be delivered to the Administrative Agent prior to December 31, 2011, in form and substance satisfactory to the Administrative Agent in its sole discretion, and containing forecasted financial statements consisting of balance sheets, cash flow statements and income statements, with supporting detail and underlying assumptions, together with management commentary on such assumptions, all covering an eighteen (18) month period commencing with the date of the entry of the Interim Order, as may be updated, supplemented or amended from time to time with the consent of the Administrative Agent.

“Capital Expenditures” shall mean, with respect to any Person for any period, the aggregate of all expenditures (whether paid in cash or accrued as a liability) by such Person



during that period which, in accordance with GAAP, are required to be included in “additions to property, plant or equipment” or similar items included in cash flows (including Capital Leases).

“Capital Lease”, as applied to any Person, shall mean any lease of any property (whether real, personal or mixed) by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

“Carve-Out” shall have the meaning set forth in the applicable Order.

“Cases” shall have the meaning set forth in the initial paragraph of this Credit Agreement.

“Cash Collateral Orders” shall mean the orders of the Bankruptcy Court (a) authorizing the use of cash collateral in which the lenders under the Existing Facilities have an interest and (b) granting adequate protection to such lenders, which orders shall be in form and substance satisfactory to the Administrative Agent.

“Cash Equivalents” shall mean: (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof; (b) investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s; (c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$1,000,000,000 or that it is a Lender; (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; (e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P or Aaa by Moody’s, and (iii) have portfolio assets of at least \$1,000,000,000; and (f) direct obligations of any State of the United States of America (or by any subdivision thereof to the extent such obligations are backed by the full faith and credit of such State), in each case, (i) maturing within one year from the date of acquisition thereof, and (ii) rated AAA by S&P or Aaa by Moody’s.

“Cash Flow Projections” shall have the meaning set forth in Section 5.1(i) hereof.

“Change in Control” shall mean: (i) a majority of the members of the Governing Body of the Borrowers are not Continuing Directors, (ii) Alexander Gallo shall at any time cease to own and control, directly or indirectly, at least one hundred percent (100%) of the issued and outstanding Equity Interests of the Parent Entity, (iii) the Parent Entity shall at any time cease to

(x) own and control, directly or indirectly, at least one hundred percent (100%) of the issued and outstanding Equity Interests of AGH on a fully-diluted basis, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2) or (y) have and exercise the right, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2), to directly elect a majority of the members of the Governing Body of AGH; (iv) AGH shall at any time cease to (x) own and control, directly or indirectly, at least fifty nine and fifty two hundredths percent (59.52%) of the issued and outstanding common Equity Interests of Hobart West on a fully-diluted basis, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2) or (y) have and exercise the right, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2), to directly elect a majority of the members of the Governing Body of Hobart West; or (v) other than AGH solely with respect to its ownership of Hobart West and of Alexander Gallo Management, LLC, the Borrowers shall collectively at any time cease to own and control, directly or indirectly, one hundred percent (100%) of the issued and outstanding Equity Interests of each of their respective Subsidiaries, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2).

“Change in Law” shall mean (a) the adoption of any law, rule or regulation after the date of this Credit Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Credit Agreement or (c) compliance by any Lender with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Credit Agreement.

“Closing Date” shall mean the date on which each of the conditions precedent to the initial extension of credit under this Credit Agreement set forth in Section 4.1 hereof have been satisfied in full.

“Code” shall mean the Internal Revenue Code of 1986 and the rules and regulations issued thereunder, as now and hereafter in effect, as codified at 26 U.S.C. § 1 et seq. or any successor provision thereto.

“Collateral” shall have the meaning set forth in Section 8.1.

“Commitment” shall mean the commitment of each Lender to make Loans from the Initial Date applicable to such Lender through the Termination Date up to an amount at any one time outstanding not in excess of the amount set forth (i) opposite its name under the column entitled “Commitment” in the Schedule of Commitments or (ii) in any applicable Assignment and Assumption(s) to which it may be a party, as the case may be, as such amount may be reduced from time to time in accordance with the terms of this Credit Agreement.

“Commitment Fees” shall have the meaning given to such term in Section 2.4(a) hereof.

“Compliance Certificate” shall mean a certificate substantially in the form of Exhibit J hereto, which shall reflect compliance by the Credit Parties with the covenants set forth in Section 5.17 for the relevant period covered thereby and which shall be supported by such detail as shall be reasonably acceptable to the Administrative Agent.

“Consolidated Subsidiaries” shall mean all Subsidiaries of a Person which are required or permitted to be consolidated with such Person for financial reporting purposes in accordance with GAAP.

“Continuing Director” shall mean, as of any date of determination, each member of the Governing Body of each Borrower who (a) was a member of such Governing Body on the Filing Date, or (b) was endorsed for election or elected to such Governing Body with the approval of a majority of the Continuing Directors who were members of such Governing Body at the time of such nomination or election.

“Controlled Foreign Subsidiary” shall mean a Subsidiary that is a “controlled foreign corporation” as defined in Section 957(a) of the Code or any successor provision thereto.

“Copyright Security Agreement” shall mean a Copyright Security Agreement, in form and substance satisfactory to the Administrative Agent, as the same may be amended, supplemented or otherwise modified, renewed or replaced from time to time.

“Copyrights” shall mean all copyrights now existing or hereafter created, including all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Copyright 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, including any and all renewals thereof.

“Credit Parties” shall mean the Borrowers and each of the Guarantors.

“Cumulative” shall mean, with respect to any specific Weekly Period, cumulative from the first day of the first full Weekly Period occurring during the calendar month in which such specific Weekly Period begins.

“Debtors” shall mean the Borrowers, any of the Guarantors and any other Affiliate of the Borrowers which is a debtor and debtor-in-possession under any of the Cases.

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

“Defaulting Lender” shall mean any Lender that (a) has failed to perform any of its funding obligations hereunder within three (3) Business Days of the date required to be performed by it hereunder, (b) has become the subject of a proceeding under the Bankruptcy Code or any similar debtor relief laws or (c) has had a receiver, conservator, trustee,

administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

“Disposition” shall mean any transaction, or series of related transactions, pursuant to which any Credit Party sells, assigns, transfers or otherwise disposes of any property or assets (whether now owned or hereafter acquired), but excluding obsolete equipment and inventory in the ordinary course of business, to any Person (other than a Credit Party or any Subsidiary of any Credit Party), in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person.

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

“Eligible Assignee” shall mean (i) a commercial bank organized under the laws of the United States of America, or any State thereof, and, in the case of assignments under the Facility, having total assets in excess of \$250,000,000, (ii) a savings and loan association or savings bank organized under the laws of the United States of America, or any State thereof, and, in the case of assignments under the Facility, having a net worth of at least \$100,000,000, calculated in accordance with GAAP, (iii) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development (“OECD”), or a political subdivision of any such country, and having total assets in excess of \$250,000,000; provided, that such bank is acting through a branch, subsidiary or agency located in the country in which it is organized or another country which is also a member of the OECD, (iv) the central bank of any country which is a member of the OECD, (v) a financial institution, insurance company or fund which regularly engages in making, purchasing or otherwise investing in commercial loans, in the case of assignments under the Facility, having total assets in excess of \$250,000,000, (vi) a “Qualified Institutional Buyer”, as defined in Rule 144A under the Securities Act of 1933, (vii) an Approved Fund or (viii) any other Person consented to by the Borrowers (which consent shall not be unreasonably withheld or delayed and which consent shall not be required if an Event of Default shall have occurred and be continuing) and the Administrative Agent.

“Environmental Laws” shall mean any and all applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Governmental Authority regulating, relating to, or imposing liability or standards of conduct concerning, any Hazardous Material or environmental protection, occupational health and safety, as now or at any time hereafter in effect, including the Clean Water Act also known as the Federal Water Pollution Control Act (“FWPCA”), 33 U.S.C. § 1251 et seq., the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. §§ 136 et seq., the Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. §§ 1201 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., the Superfund

Amendments and Reauthorization Act of 1986 (“SARA”), Public Law 99-499, 100 Stat. 1613, the Emergency Planning and Community Right to Know Act (“EPCRA”), 42 U.S.C. § 11001 et seq., the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq., the Occupational Safety and Health Act as amended (“OSHA”), 29 U.S.C. § 655 and § 657 (only to the extent related to workplace exposure to Hazardous Materials), together, in each case, with any amendment thereto, and the regulations adopted and the publications promulgated thereunder and all substitutions thereof.

“Environmental Permit” shall mean any federal, state, local, provincial, or foreign permits, licenses, approvals, consents or authorizations required or issued by any Governmental Authority under or in connection with any Environmental Law.

“Equity Interests” shall mean shares of the capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any Person or any warrants, options or other rights to acquire such interests.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as heretofore and hereafter amended, as codified at 29 U.S.C. § 1001 et seq. and the regulations promulgated thereunder.

“ERISA Affiliate” shall mean each Person (as defined in Section 3(9) of ERISA) which is treated as a single employer with any Credit Party under Section 414(b), (c), (m) or (o) of the Code.

“Event of Default” shall have the meaning given to such term in Article 7 hereof.

“Excess Availability” shall mean, as of any date of determination, (a) the Total Commitments as of such date minus (b) the aggregate principal amount of all outstanding Loans as of such date minus (c) the amount of any Reserve in effect as of such date.

“Excluded Assets” shall have the meaning given to such term in Section 8.1.

“Excluded Equity” shall mean any voting Equity Interests in excess of sixty five percent (65%) of the outstanding voting Equity Interests of any Foreign Subsidiary of any Pledgor.

“Excluded Taxes” shall mean, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrowers hereunder, (a) income or franchise Taxes imposed on (or measured by) its net income by the United States of America (or any subdivision thereof or therein), or by the jurisdiction under the laws of which such recipient is organized or in which its principal office (or other fixed place of business) is located or, in the case of any Lender, in which its applicable Lending Office is located (or any subdivision thereof or therein), (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction

described in clause (a) above, (c) in the case of a Foreign Lender, any U.S. federal withholding Tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Credit Agreement (or designates a new Lending Office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to Section 2.9(a), and (d) any withholding tax that is attributable to such Lender's failure to comply with Section 2.9(e).

"Existing AKKR Notes" shall have the meaning given to such term in the Introductory Statement.

"Existing Facilities" shall have the meaning given to such term in the Introductory Statement.

"Existing First Lien Agent" shall have the meaning given to such term in the Introductory Statement.

"Existing First Lien Facilities" shall have the meaning given to such term in the Introductory Statement.

"Existing First Lien Lenders" shall have the meaning given to such term in the Introductory Statement.

"Existing Purchaser" shall have the meaning given to such term in the Introductory Statement.

"Excluded Peachtree Assets" shall mean any assets or property of the Parent Entity, whether now owned or hereafter acquired, other than (i) one hundred percent (100%) of the Equity Interests in AGH and (ii) any other properties or assets that are used or useful in the business of the Credit Parties.

"Existing Second Lien Facilities" shall have the meaning given to such term in the Introductory Statement.

"Existing Winston Notes" shall have the meaning given to such term in the Introductory Statement.

"Facility" shall have the meaning given to such term in the Introductory Statement.

"FASB" shall mean the Financial Accounting Standards Board.

"Filing Date" shall mean September 7, 2011.

“Final Order” shall have the meaning given such term in Section 4.2(e).

“Foreign Lender” shall mean any Lender that is not a United States person, within the meaning of Section 7701(a)(30) of the Code.

“Foreign Subsidiary” shall mean any Subsidiary that is incorporated or organized under the laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“Fundamental Documents” shall mean this Credit Agreement, the Notes, any IP Security Agreement, the Account Control Agreements, the Instruments of Assumption and Joinder, UCC financing statements and any other ancillary documents, instruments or certificates which are required to be or are otherwise executed by any Credit Party and delivered to the Administrative Agent in connection with this Credit Agreement or any of the documents listed above.

“GAAP” shall mean generally accepted accounting principles in the United States of America in effect, from time to time consistently applied (except for accounting changes in response to FASB releases, or other authoritative pronouncements).

“Governing Body” shall mean, as to any Person, the board of directors, board of managers, board of representatives, board of advisors or any similar governing or advisory body of such Person.

“Governmental Authority” shall mean any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or any court, in each case whether of the United States of America or any foreign jurisdiction.

“Guarantors” shall mean the Parent Entity, any entity that executes this Credit Agreement as a “Guarantor” and any and all other direct and indirect Subsidiaries of the Borrowers, whether now existing or hereafter acquired or created.

“Guaranty” shall mean the guaranty of the Obligations by the Guarantors pursuant to Article 9.

“Guaranty Obligations” shall mean, as to any Person, (a) any obligation of such Person as a result of such Person being a general partner or joint venturer of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner or joint venturer, and (b) any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (i) to purchase, repurchase or otherwise acquire any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds or other support (x) for the purchase or payment of any such primary obligation

or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (iv) arising under any Swap Agreement, or (v) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term “Guaranty Obligations” shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guaranty Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guaranty Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“Hazardous Materials” shall mean any flammable materials, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or similar materials defined in any Environmental Law.

“Hobart West” shall have the meaning given to such term in the initial paragraph of this Credit Agreement.

“Indebtedness” shall mean, as to any Person, without duplication, (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services, (ii) the maximum amount available to be drawn or paid under all letters of credit, bankers’ acceptances, bank guaranties, surety and appeal bonds and similar obligations issued for the account of such Person and all unpaid drawings and unreimbursed payments in respect of such letters of credit, bankers’ acceptances, bank guaranties, surety and appeal bonds and similar obligations, (iii) all indebtedness of others of the types described in this definition secured by any Lien on, or payable out of the proceeds of any property owned by such Person, whether or not such indebtedness has been assumed by such Person (provided that, if such Person has not assumed or otherwise become liable in respect of such indebtedness, such indebtedness shall be deemed to be in an amount equal to the fair market value of the property to which such Lien relates), (iv) all obligations of such Person in respect of Capital Leases, (v) all obligations of such Person to pay a specified purchase price for goods or services, whether or not delivered or accepted, i.e., take-or-pay and similar obligations, (vi) all Guaranty Obligations of such Person, (vii) all obligations under any Swap Agreement, (viii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made or accrued, (ix) all obligations of such Person under a conditional sale or other title retention agreement relating to property purchased by such Person (other than customary reservations under agreements with suppliers entered into in the ordinary course of business) and (x) all Equity Interests issued by such Person and which by the terms thereof could be (at the request of the holders thereof or otherwise) subject to mandatory sinking fund payments, redemption or other acceleration. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner or any



unincorporated joint venture in which such Person is a joint venturer) to the extent such Person is directly liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, Indebtedness shall not include trade payables, accrued expenses and deferred tax and other credits incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes and Other Taxes.

"Initial Cash Flow Projection" shall have the meaning set forth in Section 4.1(o).

"Initial Date" shall mean (i) in the case of the Administrative Agent, the date hereof, (ii) in the case of each Lender which is an original party to this Credit Agreement, the date hereof and (iii) in the case of any other Lender, the effective date of the Assignment and Assumption pursuant to which it became a Lender.

"Instrument of Assumption and Joinder" shall mean an Instrument of Assumption and Joinder in form and substance reasonably satisfactory to the Administrative Agent.

"Intellectual Property" shall mean all rights in and to intellectual or industrial property, arising in any jurisdiction, whether registered or unregistered, whether owned or held under license, including (a) Copyrights, (b) Patents, (c) Trademarks and (d) all other "intellectual property" (as defined in the UCC)

"Interest Deficit" shall have the meaning given to such term in Section 2.10(a) hereof.

"Interest Payment Date" shall mean the last Business Day of each month (commencing with the last Business Day of September 2011).

"Interim Order" shall have the meaning given such term in Section 4.1(c) hereof.

"Investment" shall mean any stock, evidence of indebtedness or other securities of any Person, any loan, advance, contribution of capital, extension of credit or commitment therefor (including any Guaranty Obligations of loans made to others, but excluding current trade and customer accounts receivable arising in the ordinary course of business and payable in accordance with customary trading terms in the ordinary course of business), or any purchase of any security of another Person. The amount of each Investment will be determined at the time such Investment is made and without giving effect to subsequent changes in value.

"IP Security Agreement" shall mean that certain Intellectual Property Security Agreement, dated as of the date hereof, by and between the AGH, the other Credit Parties party thereto and the Administrative Agent.

“Lender” and “Lenders” shall mean financial institutions whose names appear on the Schedule of Commitments, or an assignee of a Lender pursuant to Section 13.3 hereof, and their respective successors.

“Lending Office” shall mean, with respect to any of the Lenders, the branch or branches (or affiliate or affiliates) from which such Lender’s Loans are made or maintained and for the account of which all payments of principal of, and interest on, such Lender’s Loans are made, as notified to the Administrative Agent from time to time.

“Lien” shall mean any mortgage, copyright mortgage, pledge, security interest, encumbrance, lien or charge of any kind whatsoever (including any conditional sale or other title retention agreement, any agreement to grant a security interest at a future date, any lease in the nature of security, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction).

“Loans” shall have the meaning given such term in Section 2.1(a) hereof.

“Margin Stock” shall be as defined in Regulation U of the Board.

“Material Adverse Effect” shall mean any change or effect that individually or in the aggregate (a) has had or could reasonably be expected to have a materially adverse effect on the business, assets, operations, properties, condition (financial or otherwise), liabilities (including contingent liabilities), prospects or Material Agreements of the Borrowers, individually, or the Credit Parties, taken as a whole (provided that the rejection of an executory contract by any Credit Party with the prior written consent of the Administrative Agent shall not, in and of itself, be deemed to constitute or give rise to a Material Adverse Effect), (b) materially impairs the legal right, power or authority of any Borrower or any other Credit Party to perform its respective obligations under the Fundamental Documents to which it is a party, or (c) materially impairs the validity or enforceability of, or materially impairs the rights, remedies or benefits available to the Administrative Agent for the benefit of itself and the Lenders under, the Fundamental Documents; provided, however, the events leading up to the filing of the Cases that have been disclosed in writing (including electronic communication) to the Lenders prior to the Initial Date and the act and effects caused directly by the filing of the Cases shall not, in and of itself, be deemed to constitute or give rise to a Material Adverse Effect.

“Material Agreement” shall mean any agreement, contract, license or lease of any Credit Party (a) involving monetary liabilities or obligations in excess of \$50,000 per annum, (b) the failure to maintain or comply with which could reasonably be expected to have a Material Adverse Effect or (c) that is material to the business operations of the Credit Parties.

“Material Pleadings” shall mean all material pleadings, motions, applications, judicial information, financial information, reports or other documents filed by or on behalf of any Borrower or any Guarantor with the Bankruptcy Court in the Cases, or distributed by or on behalf of any Borrower or any Guarantor to any official committee appointed in the Cases.

“Maturity Date” shall mean March 22, 2012.

“Moody’s” shall mean Moody’s Investors Service, Inc.

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

“Net Proceeds” shall mean one hundred percent (100%) of the aggregate cash proceeds received by any of the Credit Parties (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment or otherwise, but only as and when received) from any Disposition by any Credit Party or the issuance of Indebtedness by any Credit Party, net of (i) reasonable attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, required debt payments and required payments of other obligations relating to the applicable asset (other than with respect to any subordinated debt), other customary and reasonable expenses and brokerage, consultant and other customary and reasonable fees actually incurred in connection therewith and (ii) Taxes paid or payable as a result thereof.

“Note” shall have the meaning given to such term in Section 2.2(a) hereof.

“Obligations” shall mean the obligation of the Borrowers to make due and punctual payment of principal of and interest on the Loans, the Commitment Fees, costs, expenses, fees and premiums, including any costs and disbursements of counsel or consultants, and all other monetary obligations of the Borrowers to the Administrative Agent or any Lender under this Credit Agreement, the Notes, any other Fundamental Document or any fee letter in respect of the Facility, whenever arising, whether due or to become due, matured or unmatured, liquidated or unliquidated, contingent or non-contingent, and all covenants and duties regarding such amounts, of any kind or nature, present or future.

“Orders” shall mean the Interim Order and the Final Order, as applicable.

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

“Other Taxes” shall mean any and all present or future stamp, court, documentary, intangible, recording, or filing or similar Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Credit Agreement.

“Parent Entity” shall mean Peachtree Holdings, Inc., an Illinois corporation.

“Patent Security Agreement” shall mean a Patent Security Agreement, in form and substance satisfactory to the Administrative Agent, as the same may be amended, supplemented or otherwise modified, renewed or replaced from time to time.

“Patents” shall mean (a) all letters patent (of the United States or any other country, now existing or hereafter arising, and all improvement patents, reissues, reexaminations, patents of additions, renewals and extensions thereof, and (b) all applications for letters patent of the United States or any other country, now existing or hereafter arising, and all provisionals, divisions, continuations and continuations-in-part and substitutes thereof.

“PBGC” shall mean the Pension Benefit Guaranty Corporation or any successor thereto.

“Percentage” shall mean with respect to any Lender, the percentage of the Total Commitment represented by such Lender’s Commitment; provided, that in the case of Section 2.14 hereof, when a Defaulting Lender shall exist, the term “Percentage” shall mean the percentage of the Total Commitments (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Permitted Encumbrances” shall mean Liens permitted under Section 6.2 hereof.

“Person” shall mean any natural person, corporation, division of a corporation, limited liability company, partnership, trust, joint venture, association, company, estate, unincorporated organization or government or any agency or political subdivision thereof.

“Plan” shall mean an employee benefit plan within the meaning of Section 3(3) of ERISA, other than a Multiemployer Plan, maintained or contributed to by any Credit Party, or any ERISA Affiliate, or any other plan covered by Title IV of ERISA that covers employees of the Credit Parties.

“Pledged Collateral” shall mean the Pledged Securities and any proceeds (as defined in Section 9-102(64) of the UCC) including cash proceeds (as defined in Section 9-102(9) of the UCC) of the Pledged Securities.

“Pledged Securities” shall mean all Equity Interests, other than Excluded Equity, owned by any Credit Party in any other Person, whether or not evidenced by a certificate.

“Pledgors” shall mean those Credit Parties that own any of the Pledged Securities.

“Prepayment Event” shall mean the occurrence of any of the following events which have a value in excess of \$50,000 in the aggregate: (a) any Disposition by any Credit Party; (b) any issuance of any Indebtedness by any Credit Party; (c) receipt by any Credit Party of any amount that is comprised of indemnity payments, litigation proceeds or settlement proceeds in lieu of litigation (but excluding the amount of reasonable legal fees incurred in connection therewith); (d) (i) any theft, loss, physical destruction or damage of any property of any Credit Party, (ii) any pending or threatened institution of any proceedings for the condemnation or seizure of any property of any Credit Party or for the exercise of any right of eminent domain with respect thereto or (iii) any actual condemnation, seizure, taking or any other similar event with respect to any property of any Credit Party, or confiscation of such property or the requisition of the use of such property; or (e) any Equity Issuance by any Credit Party; provided that the foregoing shall not operate as, or be deemed to constitute, the consent of the Administrative Agent or any Lender to any transaction or action to the extent that such transaction or action giving rise to any prepayment is not otherwise permitted by the terms of this Credit Agreement.

“Pre-Petition Payment” shall mean a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition or pre-filing Indebtedness or trade payables or other pre-petition or pre-filing claims against the Borrowers or any Guarantor or any of their Affiliates.

“Pro Rata Share” shall mean with respect to any Obligation or other amount, each Lender’s pro rata share of such Obligation or other amount determined in accordance with such Lender’s Percentage.

“Regulation D” shall mean Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Reportable Event” shall mean any reportable event as defined in Section 4043(c) of ERISA, other than a reportable event as to which provision for 30-day notice to the PBGC has been waived under applicable regulations.

“Required Lenders” shall mean, as of any date of determination, Lenders holding in the aggregate more than fifty percent (50%) of the Total Commitments on such date or, if the Total Commitments have terminated, Lenders holding in the aggregate more than fifty percent (50%) of the outstanding principal balance of the Loans on such date.

“Reserve” shall mean a reserve established in the reasonable credit judgment of the Administrative Agent pursuant to the Orders, including a reserve in the amount of the Carve-Out.

“Restricted Payment” shall mean (i) any direct or indirect distribution, cash dividend or other payment by any Credit Party on account of shares of any Equity Interest in any Credit Party, (ii) any direct or indirect redemption or other acquisition, re-acquisition or retirement by a Credit Party of any Equity Interests in any Credit Party or any Subsidiary thereof, now or hereafter outstanding, (iii) any direct or indirect payment made by any Credit Party to retire, or obtain the surrender of, any outstanding warrants, puts or options or other rights to purchase or otherwise acquire any Equity Interest in any Credit Party or any Subsidiary thereof, now or hereafter outstanding, (iv) any direct or indirect payment, prepayment or redemption by any Credit Party with respect to any unsecured Indebtedness or subordinated Indebtedness, (v) any direct or indirect payment by any Credit Party under any Synthetic Purchase Agreement, (vi) any direct or indirect payment by any Credit Party to (A) any shareholder of the Parent Entity arising out of any shareholder litigation or any settlement thereof, or (B) any officer or director of any Debtor or its Affiliates under any indemnity or similar reimbursement obligations to the extent not otherwise permitted by Section 6.10; and (vii) any other direct or indirect payment to or for the benefit of the Parent Entity.

“S&P” shall mean Standard & Poor’s Ratings Group.

“Sale Date” shall mean the date on which the Credit Parties consummate or substantially consummate a sale of all or substantially all of their assets under section 363 of the Bankruptcy Code or otherwise.

“Sale Motion” shall have the meaning given to such term in Section 5.18.

“Schedule of Commitments” shall mean, with respect to all Loans, the schedule of Commitments of the Lenders set forth on Schedule 1 hereto, as the same may be amended from time to time by operation of Assignments and Assumptions in accordance with Section 13.3 hereof (as determined by the Administrative Agent) or in connection with an amendment to this Credit Agreement that is executed in accordance with Section 13.10 hereof.

“SEC” shall mean the U.S. Securities and Exchange Commission and any successor agency.

“Subsidiary” shall mean with respect to any Person, any corporation, association, joint venture, partnership or other business entity (whether now existing or hereafter organized) of which at least a majority of the voting stock or other ownership interests having ordinary voting power for the election of directors (or the equivalent) is, at the time as of which any determination is being made, owned or controlled by such Person or one or more subsidiaries of such Person or by such Person and one or more subsidiaries of such Person.

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

“Synthetic Purchase Agreement” shall mean any Swap Agreement or similar agreement or combination of agreements pursuant to which any Credit Party is or may become obligated to make (i) any payment in connection with a purchase by any third party from a Person other than a Credit Party of any Equity Interest in any Credit Party or any subordinated Indebtedness, or (ii) any payment (other than on account of a permitted purchase by it of any Equity Interest in any Credit Party or any subordinated Indebtedness) the amount of which is determined by reference to the price or value at any time of any Equity Interest in any Credit Party or any subordinated Indebtedness.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” shall mean the earliest to occur of (a) the Maturity Date, (b) the Sale Date, (c) a conversion of the Cases to one or more cases under Chapter 7 of the Bankruptcy Code, (d) the date on which the Obligations are declared immediately due and payable in accordance with Article 7 and (e) the appointment of a trustee or an examiner with expanded powers in the Cases.

“Total Commitments” shall mean, at any time, the aggregate amount of the Commitments then in effect of all of the Lenders, as such aggregate amount shall be decreased from time to time in accordance with the terms of this Credit Agreement (including pursuant to Section 2.5 hereof).

“Trademark Security Agreement” shall mean a Trademark Security Agreement, in form and substance satisfactory to the Administrative Agent, as the same may be amended, supplemented or otherwise modified, renewed or replaced from time to time.

“Trademarks” shall mean all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, elements of package or trade dress of goods or services, logos and other source or business identifiers, together with 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, and all renewals thereof.

“UCC” shall mean the Uniform Commercial Code as in effect in the State of New York on the date of execution of this Credit Agreement (as such Uniform Commercial Code is amended from time to time).

“Unrestricted Cash” shall mean cash and Cash Equivalents of the Borrowers and the Guarantors which (i) are not the subject of any Lien or other arrangement with any creditor to have a claim satisfied out of such cash or Cash Equivalent prior to the general creditors of the owner of the asset (other than any right of set-off or recoupment) and (ii) if not in the form of cash, may be converted to cash within five (5) days.

“Up-Front Fees” shall mean up-front fees payable to the Administrative Agent for the benefit of the Lenders as a condition to the Closing Date in consideration for the Lenders’ extension of their respective Commitments, one-half of which are payable upon entry of the Interim Order and the remainder of which are payable upon entry of the Final Order, in an amount equal to \$600,000.

“USA Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act) (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“Weekly Period” shall mean any period of seven (7) calendar days beginning on Saturday and ending on the immediately following Friday.

#### SECTION 1.2. Other Interpretive Provisions.

(a) Unless otherwise specified therein, all terms defined in this Credit Agreement shall have the defined meanings set forth herein when used in the Fundamental Documents or any certificate or other document made or delivered pursuant hereto.

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

(c) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Credit Agreement shall refer to this Credit Agreement as a whole and not to any particular provision of this Credit Agreement.

(d) Section, subsection, Schedule and Exhibit references contained in this Credit Agreement shall refer to such Section or subsection of this Credit Agreement or such Schedule or Exhibit to this Credit Agreement, as applicable, unless otherwise specified.



(e) The words “include”, “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.

(f) The words “writing”, “written” and comparable terms shall refer to printing, typing, computer disk, e-mail and other means of reproducing words in a visible form.

(g) References to any agreement or contract are to such agreement or contract as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of such Person.

## **2. THE LOANS**

### **SECTION 2.1. Revolving Credit Loans.**

(a) Each Lender, severally and not jointly, agrees, upon the terms and subject to the conditions hereof, to make loans (the “Loans”) to the Borrowers, on any Business Day and from time to time on or after the Closing Date to but excluding the Termination Date, each in an aggregate principal amount which, when added to the aggregate principal amount of all Loans then outstanding to the Borrowers from such Lender, does not exceed such Lender’s Commitment.

(b) Subject to the terms and conditions of this Credit Agreement, the Borrowers may borrow, repay and re-borrow amounts constituting the Total Commitments.

(c) Notwithstanding anything to the contrary in this Section 2.1, a Lender shall not be obligated to make any additional Loans if, as a result thereof, the aggregate principal amount of all Loans then outstanding plus the amount of any Reserve then in effect exceeds the Total Commitments then in effect.

(d) Each Loan requested hereunder on any date shall be made by each Lender in accordance with its respective Percentage.

(e) The Borrowers shall give the Administrative Agent prior written, facsimile or telephonic (promptly confirmed in writing) notice of each Borrowing hereunder. Such notice (i) shall be irrevocable, (ii) shall specify the amount of the requested Loan, (iii) shall contain a certification as to the information required by Section 4.2(g), including any necessary supporting calculations or documentation, and (iv) to be effective, must be received by the Administrative Agent not later than 5:00 p.m. (New York City time) on the second Business Day of each calendar week for a Borrowing to be made not earlier than 12:00 p.m. (New York City time) on the first Business Day of the following calendar week.

(f) The Administrative Agent shall promptly notify each Lender of its Percentage of each Borrowing and the date of such Borrowing. On the borrowing date specified in such notice, each Lender shall make its Percentage of the Borrowing available to the Administrative Agent by wire transfer of immediately available funds to the account of the Administrative Agent specified on Schedule 2 or otherwise as specified by the Administrative Agent in writing from time to time, in each case, no later than 12:00 p.m. (New York City time).

(g) Each Borrowing shall be in a principal amount of \$1,000,000 and integral multiples of \$1,000,000 in excess thereof (or such lesser amount as shall equal the Excess Availability as of the requested date of Borrowing).

(h) The Administrative Agent shall disburse the proceeds of Loans by depositing them directly to the account specified to the Administrative Agent by the Borrowers in writing.

#### SECTION 2.2. Notes; Repayment.

(a) Any Lender may request that the Loans made by such Lender hereunder be evidenced by a promissory note (each a “Note”) in the face amount of such Lender’s Commitment, payable to such Lender, duly executed on behalf of the Borrowers and dated as of the date hereof. The outstanding principal balance of each Loan, whether or not evidenced by a Note, shall be payable in full on the Termination Date, subject to mandatory prepayments as provided in Section 2.7 hereof and acceleration as provided in Article 7 hereof and, notwithstanding anything to the contrary contained in this Agreement, any remaining Obligations under the Facility shall be paid in full in cash on the Termination Date.

(b) Each of the Loans shall bear interest on the outstanding principal balance thereof as set forth in Section 2.3 hereof. Each Lender and the Administrative Agent on its behalf is hereby authorized, but not obligated, by the Borrowers to enter the amount of each Loan and the amount of each payment or prepayment of principal or interest thereon in the appropriate spaces on the reverse of or on an attachment to its Note, if any; provided, however, that the failure of any Lender or the Administrative Agent to set forth such Loans, principal payments or other information shall not in any manner affect the obligations of the Borrowers to repay such Loans.

#### SECTION 2.3. Interest on Loans.

(a) Subject to paragraph (c) below, interest on the outstanding principal amount of the Loans shall accrue from the date on which such Loan is advanced until repaid in full at a rate per annum equal to ten percent (10%). Interest shall accrue and be computed on the basis of the actual number of days elapsed over a year of 365/366 days, as the case may be.

(b) Accrued but unpaid interest on the outstanding principal amount of the Loans shall be payable in cash in arrears on each Interest Payment Date, on the Termination Date and on the day of any prepayment made hereunder.

(c) Upon the occurrence and during the continuance of any Event of Default, and after the Termination Date, interest on the outstanding Obligations shall accrue at a rate per annum equal to (i) the interest rate then in effect plus (ii) two percent (2%) and shall be payable (after as well as before entry of judgment thereon to the extent permitted by Applicable Law) in cash.

(d) Anything in this Credit Agreement or any Note to the contrary notwithstanding, the interest rate on the Loans shall in no event be in excess of the maximum rate permitted by Applicable Law.

#### SECTION 2.4. Commitment Fees and Other Fees.

(a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender on the last Business Day of each month (commencing with the last Business Day of September 2011) prior to the Termination Date and on the Termination Date, an aggregate fee (the "Commitment Fees") of one percent (1.00%) per annum, computed on the basis of the actual number of days elapsed over a year of 365/366 days, as the case may be, on the average daily amount by which such Lender's Commitment, as such Commitment may be reduced in accordance with the provisions of this Credit Agreement, exceeds the sum of the outstanding principal balance of such Lender's Loans during the applicable period of measurement. The Commitment Fees shall begin to accrue on the Closing Date.

(b) The Borrowers agree to pay to the Administrative Agent on the Closing Date any and all other fees that are then due and payable by it to the Administrative Agent pursuant to the Credit Agreement or any other Fundamental Document, including any fee letter in respect of the Facility.

(c) The Borrowers agree to pay to the Administrative Agent on the Termination Date, a fee of \$500,000.

#### SECTION 2.5. Optional Termination or Reduction of Commitments.

(a) Upon at least three (3) Business Days' prior written, facsimile or telephonic notice (provided, that such telephonic notice is immediately followed by written or facsimile confirmation) to the Administrative Agent, the Borrowers may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Total Commitments. In the case of a partial reduction, each such reduction of the Total Commitments shall be in an aggregate principal amount of \$1,000,000 and integral multiples of \$1,000,000 in excess thereof; provided, however, that the Total Commitments may not be reduced to an amount less than the sum of (i) the aggregate outstanding principal amount of the Loans as of the date of such

reduction plus (ii) the amount of any Reserve then in effect, unless the Borrowers make a prepayment pursuant to Section 2.7(c). Any partial reduction of the Total Commitments shall be made among the Lenders pro rata in accordance with their respective Percentages.

(b) Simultaneously with each such termination or reduction of the Total Commitments, the Borrowers shall pay to the Administrative Agent for the benefit of each Lender all accrued and unpaid Commitment Fees on the amount of the Commitments so terminated or reduced through the date of such termination or reduction.

#### SECTION 2.6. Reserved.

#### SECTION 2.7. Mandatory Prepayment of Loans.

(a) If at any time the sum of (i) the aggregate principal amount of outstanding Loans plus (ii) the amount of any Reserve then in effect exceeds the Total Commitments, the Borrowers shall immediately eliminate such excess by repaying Loans outstanding in an amount at least equal to such excess amount.

(b) Subject in all respects to any limitations set forth in the Orders, including any subordination provisions contained therein, the Borrowers shall prepay the Loans in an amount equal to 100% of the Net Proceeds received by any Credit Party from any Prepayment Event within two (2) Business Days of receipt; provided that, in the event that any Credit Party vacates any premises occupied by it on the Closing Date and, in connection therewith, enters into one or more Dispositions of equipment and furniture located at the vacated premises, subject to not less than ten (10) days' prior written notice from such Credit Party to the Administrative Agent of its intention to enter into any such Disposition and to reinvest the Net Proceeds thereof in accordance herewith, such Credit Party may apply the Net Proceeds of any such Disposition toward the reinvestment by such Credit Party in equipment and furniture of a similar nature to be located at any alternate premises to be occupied by such Credit Party thereafter, in which case, no prepayment shall be required under this Section 2.7(b); provided further that (i) any reinvestment of Net Proceeds as set forth in the preceding proviso shall be consummated within ninety (90) days of the applicable Disposition, (ii) until such reinvestment is consummated, 100% of such Net Proceeds shall be held on deposit in an account of such Credit Party that is subject to an Account Control Agreement in accordance with Section 5.14 and (iii) the aggregate amount of Net Proceeds of Dispositions that may be reinvested in accordance with this Section 2.7(b) shall not exceed \$1,000,000 during the term of this Agreement.

(c) To the extent required pursuant to Section 2.5, concurrent with any applicable termination and/or optional reduction of the Total Commitment pursuant to Section 2.5, the Borrowers shall prepay the Loans in an aggregate amount at least equal to the amount by which the sum of (i) the aggregate outstanding principal amount of the Loans plus (ii) the amount of any Reserve then in effect exceeds the Total Commitments, in each case, after giving effect to such termination or reduction.

(d) All prepayments under this Section 2.7 shall be accompanied by accrued but unpaid interest on the principal amount being prepaid to but not including the date of prepayment.

#### SECTION 2.8. Manner of Payments.

(a) All payments of principal, interest and other amounts due hereunder by the Borrowers shall be made to the Lenders pro rata in accordance with their respective Percentages. All payments by the Borrowers hereunder and under the Notes shall be made in Dollars in immediately available funds to the account of the Administrative Agent specified on Schedule 2 or otherwise as specified by the Administrative Agent in writing from time to time, in each case, no later than 1:00 p.m. (New York City time) on the date on which such payment is due.

(b) Except as otherwise specifically provided in this Article 2, should any payment or prepayment of principal of or interest on the Loans, or any other amount due hereunder, become due and payable on a day other than a Business Day, the due date of such payment or prepayment shall be extended to the next succeeding Business Day and, in the case of a payment or prepayment of principal, interest shall be payable thereon at the rate herein specified during such extension.

#### SECTION 2.9. Taxes.

(a) Any and all payments by or on account of any obligation of the Borrowers hereunder shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto, excluding Excluded Taxes. If the Borrowers shall be required by Applicable Law to deduct any Indemnified Taxes or Other Taxes from or in respect of any sum payable under this Credit Agreement or any Fundamental Document, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.9) the Administrative Agent or Lenders (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions, (iii) the Borrowers shall pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law, and (iv) the Borrowers shall furnish to the Administrative Agent and Lenders the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, the Borrowers shall pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Borrowers shall indemnify the Administrative Agent and each Lender, within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrowers hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to

amounts payable under this Section 2.9) whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority and including any penalties, interest and reasonable expenses arising therefrom or with respect thereto. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable (but in any event within ten (10) Business Days) after any payment of Indemnified Taxes or Other Taxes by the Borrowers to a Governmental Authority, the Borrowers shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Credit Agreement may deliver to the Borrowers (with a copy to the Administrative Agent), on or prior to the Initial Date with respect to such Lender (and from time to time thereafter at the time or times prescribed by Applicable Law or upon the request of the Borrowers or the Administrative Agent), such properly completed and duly executed documentation prescribed by Applicable Law or reasonably requested by the Borrowers as will permit such payments to be made without withholding or at a reduced rate of withholding; provided that such Foreign Lender has received written notice from the Borrowers advising it of the availability of such exemption or reduction and supplying all applicable documentation. Without limiting the generality of the foregoing, any Foreign Lender shall deliver to the Borrowers and the Administrative Agent on or prior to the Initial Date with respect to such Lender (and promptly from time to time thereafter upon the expiration, obsolescence or invalidity of any form previously delivered, if any form previously delivered becomes inaccurate or upon the request of the Borrowers or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), two copies of whichever of the following is applicable:

- (i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;
- (ii) duly completed copies of Internal Revenue Service Form W-8ECI;
- (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C)

a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN;

- (iv) duly completed copies of Internal Revenue Service Form W-8IMY together with the additional documentation that must be transmitted with Form W-8IMY, including the appropriate forms described in Sections 2.9(e)(i), (ii) and (iii); or
- (v) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrowers to determine the withholding or deduction required to be made.

(f) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which the Borrowers have paid additional amounts pursuant to this Section 2.9, it shall pay over such refund to the Borrowers (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrowers under this Section 2.9 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrowers, upon the request of the Administrative Agent or such Lender, agree to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.9 shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrowers or any other Person.

(g) Each Lender shall severally indemnify the Administrative Agent for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrowers have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrowers to do so) and (ii) any Excluded Taxes, in each case attributable to such Lender, that are paid or payable by the Administrative Agent in connection with this Credit Agreement or any Fundamental Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Excluded Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.9(g) shall be paid within ten (10) days after the Administrative Agent delivers to the applicable Lender a certificate stating the amount of Taxes or Excluded Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

#### SECTION 2.10. Interest Adjustments.

(a) If the provisions of this Credit Agreement or any Note would at any time require payment by the Borrowers to a Lender of any amount of interest in excess of the maximum amount then permitted by Applicable Law, the interest payments to that Lender shall be reduced to the extent necessary so that such Lender shall not receive interest in excess of such maximum amount. If, as a result of the foregoing, a Lender shall receive interest payments hereunder or under a Note in an amount less than the amount otherwise provided hereunder, such deficit (the “Interest Deficit”) will, to the fullest extent permitted by Applicable Law, continue to accrue until the termination of this Credit Agreement and the indefeasible payment in full in cash of the Obligations. Interest otherwise payable to a Lender hereunder and under a Note for any subsequent period shall be increased by the maximum amount of the Interest Deficit that may be so added without causing such Lender to receive interest in excess of the maximum amount then permitted by Applicable Law.

(b) The amount of any Interest Deficit shall be treated as a prepayment penalty and shall, to the fullest extent permitted by Applicable Law, be paid in full at the time of any optional termination in full of the Commitments pursuant to Section 2.5.

#### SECTION 2.11. Priority and Liens.

(a) Subject to the Orders, the Credit Parties hereby covenant, represent and warrant that, upon entry of the Interim Order (and the Final Order, when applicable) by the Bankruptcy Court, the Obligations of the Credit Parties, shall at all times, pursuant to:

- (i) Section 364(c)(1) of the Bankruptcy Code, constitute joint and several allowed superpriority administrative expense claims in the Cases having priority over all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code;
- (ii) Section 364(c)(2) of the Bankruptcy Code, be secured by a perfected first priority Lien on all pre-petition and post-petition property of the Credit Parties and their respective estates that as of the Filing Date was not subject to valid, perfected and non-avoidable Liens as set forth in paragraph 9(a)(ii) of the Interim Order and the analogous section of the Final Order, with such Lien extending to any proceeds of avoidance actions to the extent set forth in such paragraphs in the Orders; and
- (iii) Section 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior Lien upon all pre-petition and post-petition property of the Credit Parties and their respective estates (other than the property described in



clause (ii) of this Section 2.11 as to which the Liens in favor of the Administrative Agent with respect to such property shall be as described in such clause) that is subject to (x) any Liens securing the Existing First Lien Facilities, (y) the Carve-Out or (z) valid, perfected and unavoidable Liens in existence on the Filing Date, in each case, junior to such Liens;

Each of the Liens granted in favor of the Administrative Agent pursuant to the preceding clauses (ii) and (iii) shall at all times be, for the avoidance of doubt, valid, binding, continuing, enforceable and fully-perfected; provided that the Liens and claims granted to the Administrative Agent in the preceding clauses (i) to (iii) shall be subject to the payment in full in cash of the Carve-Out.

(b) Subject to the Orders, no portion of the Carve-Out or any of the proceeds of the Loans may be used to litigate (including discovery), object to, contest or challenge in any manner or raise any defenses to the debt or collateral position of the Administrative Agent and/or any of the Lenders under the Facility, whether by challenging the validity, extent, amount, perfection, priority or enforceability of the indebtedness under the Facility or the validity, perfection or priority of any mortgage, security interest or lien with respect thereto or any other rights or interests or replacement liens with respect thereto or any other rights or interests of the Administrative Agent and/or any of the Lenders, or by seeking to subordinate or recharacterize the Facility or to disallow or avoid any claim, mortgage, security interest, lien, or replacement lien or by asserting any claims or causes of action, including any actions under Chapter 5 of the Bankruptcy Code, against the Administrative Agent, any of the Lenders, or any of their respective officers, directors, agents or employees.

(c) Upon the Closing Date, and on behalf of itself and its estate, and for so long as any Obligations shall be outstanding, each Credit Party hereby irrevocably waives any right, pursuant to sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations (other than as expressly set forth in the applicable Order).

(d) In the event of any inconsistency between the provisions of this Credit Agreement on the one hand and the Interim Order or the Final Order described below on the other hand, as applicable, the provisions of the Interim Order or the Final Order, as applicable, shall govern.

**SECTION 2.12. Payment of Obligations.** Subject to Article 7, upon the maturity (whether by acceleration, upon the Termination Date, or otherwise) of any of the Obligations of the Credit Parties, the Lenders shall be entitled to immediate indefeasible payment in full in cash of such Obligations and the right to enforce remedies with respect to the Collateral without further application to or order of the Bankruptcy Court.

**SECTION 2.13. Reserved.**

SECTION 2.14. Defaulting Lenders. Notwithstanding any provision of this Credit Agreement to the contrary, if any Lender becomes a Defaulting Lender, the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) Commitment Fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.4 hereof.

(b) The Commitment of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or modification pursuant to Section 13.10(a) hereof); provided that any amendment, waiver or modification which by the terms of Section 13.10(a) requires the consent of all Lenders or each affected Lender which affects such Defaulting Lender or all Defaulting Lenders differently than other affected Lenders shall require the consent of such Defaulting Lender.

(c) So long as no Event of Default has occurred and is continuing, any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 12.2 but excluding payments to the Defaulting Lender pursuant to Section 13.10(b) hereof) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by the Administrative Agent (i) first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; (ii) second, if so determined by the Administrative Agent, to be held as cash collateral for future funding obligations of that Defaulting Lender; (iii) third, as the Borrowers may request, to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required hereunder, as determined by the Administrative Agent; (iv) fourth, if so determined by the Administrative Agent and the Borrowers, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans hereunder; (v) fifth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations hereunder; (vi) sixth, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations hereunder; and (vii) seventh, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its Pro Rata Share and (y) such Loans were made at a time when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders pro rata in accordance with their respective Percentages prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral

pursuant to this Section 2.14(c) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(d) So long as an Event of Default has occurred and is continuing, all amounts which would otherwise be payable to the Defaulting Lender shall, in lieu of being distributed to such Defaulting Lender, be applied to satisfy in full the Obligations owing to the Administrative Agent and the Lenders (other than the Defaulting Lender) in accordance with the other provisions of this Credit Agreement.

(e) If the Administrative Agent determines that a Defaulting Lender has adequately remedied all matters that caused such Lender to become a Defaulting Lender, then on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Percentage.

(f) Neither the provisions of this Section 2.14 nor the provisions of any other Section of this Credit Agreement relating to a Defaulting Lender are intended by the parties hereto to be liquidated damages. Subject to the limitations contained in Section 13.8 hereof regarding special, indirect, consequential and punitive damages, each of the Administrative Agent, each non-Defaulting Lender and each Credit Party hereby reserves its respective rights to proceed against such Defaulting Lender for any damages incurred as a result of it becoming a Defaulting Lender hereunder.

### **3. REPRESENTATIONS AND WARRANTIES OF THE CREDIT PARTIES**

In order to induce the Administrative Agent and the Lenders to enter into this Credit Agreement and make the Loans provided for herein, the Credit Parties, jointly and severally, make the following representations and warranties to, and agreements with, the Administrative Agent and the Lenders, all of which shall survive the execution and delivery of this Credit Agreement, the issuance of the Notes and the making of the Loans.

#### **SECTION 3.1. Existence and Power.**

(a) Each Credit Party is a corporation, limited liability company or limited partnership (w) duly incorporated or otherwise organized, (x) validly existing, (y) in good standing under the laws of its jurisdiction of organization and (z) duly qualified and in good standing as a foreign entity in all jurisdictions where the nature of its properties or business so requires. A list of such jurisdictions as of the date hereof is attached hereto as Schedule 3.1.

(b) Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), each Credit Party has the power and authority (i) to own its respective properties and carry on its respective business as now being conducted, (ii) to execute and deliver the Fundamental Documents to which it is a party and perform its obligations thereunder, and (iii) to grant to the Administrative Agent, for the benefit of the Administrative Agent and the

Lenders, a security interest in the Collateral as contemplated by Article 8; and, in the case of each Pledgor, to grant in favor of the Administrative Agent a security interest in the Pledged Securities as contemplated by Article 10; and, in the case of the Guarantors, to guaranty the Obligations as contemplated by Article 9.

SECTION 3.2. Authority and No Violation. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the execution, delivery and performance of this Credit Agreement and the other Fundamental Documents to which it is a party by each Credit Party, the grant to the Administrative Agent for the benefit of the Administrative Agent and the Lenders of the security interest in the Collateral and the Pledged Securities as contemplated by the Fundamental Documents by each Credit Party and, in the case of the Borrowers, the Borrowings hereunder and the execution, delivery and performance of the Notes and, in the case of each Guarantor, the guaranty of the Obligations as contemplated in Article 9, (a) have been duly authorized by all necessary corporate action (or similar action) on the part of each Credit Party and (b) will not (i) constitute a violation of any provision of Applicable Law or any order of any Governmental Authority applicable to such Credit Party, or any of its properties or assets, (ii) violate any provision of the Organizational Documents of such Credit Party, (iii) violate any provision of any Material Agreement to which such Credit Party is a party or by which such Credit Party or any of its properties or assets are bound, (iv) be in conflict with, result in a breach of, constitute (with due notice or lapse of time or both) a default under, or terminate or accelerate (or give rise to any right to terminate or accelerate) any obligations under any Material Agreement, or (v) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever (other than Permitted Encumbrances) upon any of the properties or assets of any Credit Party other than pursuant to this Credit Agreement or the other Fundamental Documents.

SECTION 3.3. Governmental Approval. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), all material authorizations, approvals, registrations or filings from or with any Governmental Authority required for the execution, delivery and performance by any Credit Party of this Credit Agreement and the other Fundamental Documents to which it is a party, and the execution and delivery by the Borrowers of the Notes, have been duly obtained or made, and are in full force and effect, and if any further material authorizations, approvals, registrations or filings should hereafter become necessary, the Credit Parties shall obtain or make all such authorizations, approvals, registrations or filings.

SECTION 3.4. Binding Agreements. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), this Credit Agreement and the other Fundamental Documents when executed will constitute the legal, valid and binding obligations of each Credit Party that is a party thereto, enforceable against each Credit Party in accordance with their respective terms and the Orders, subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

### SECTION 3.5. Financial Statements; Undisclosed Liabilities; Projections.

(a) The (i) audited consolidated balance sheet of AGH and its Consolidated Subsidiaries as at December 31, 2010, and related audited consolidated statements of income, stockholders' equity and cash flows for the fiscal year then ended and (ii) the unaudited consolidated balance sheet of AGH and its Consolidated Subsidiaries as at March 31, 2011, and June 30, 2011, and, in each case, together with the related statements of income, stockholders' equity and cash flows and for the fiscal quarter then ended (collectively, the "Current Financial Statements") have, in each case, been prepared in accordance with GAAP in effect as of such date consistently applied, except as set forth on Schedule 3.5(a) or as otherwise indicated in the notes, if any, to such financial statements and subject in the case of unaudited financial statements to changes resulting from year-end audit adjustments, none of which shall be material. All of such financial statements fairly present the financial position and the results of operations of AGH and its Consolidated Subsidiaries on a consolidated basis at the dates or for the periods indicated, subject, in the case of the unaudited financial statements, to year-end audit adjustments (none of which shall be material, either individually or in the aggregate).

(b) Except as disclosed on Schedule 3.5(b), no Credit Party has any material Guaranty Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or forward or long-term commitments, including any Swap Agreement, that are not reflected in the most recent financial statements referred to in this paragraph.

(c) Each Credit Party maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with reasonable procedures established therefor, (ii) transactions are recorded as necessary to permit preparation of accurate and complete financial statements and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with reasonable policies established therefor and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

SECTION 3.6. No Material Adverse Change; No Default. There has occurred no event or circumstance that could reasonably be expected to have a Material Adverse Effect (a) from August 18, 2011, or (b) from the Filing Date. No Default or Event of Default has occurred and is continuing.

### SECTION 3.7. Capitalization, Subsidiaries, Fictitious Names, Places of Business.

(a) Schedule 3.7(a) is a correct and complete list as of the date hereof, of the capital structure of each Credit Party including, as to each, (i) the name of such Credit Party, (ii) the jurisdiction in which such Credit Party was incorporated or organized and (iii) its authorized capitalization, the number of Equity Interests outstanding, the ownership of its Equity Interests and whether or not its Equity Interests are certificated. Each Credit Party's taxpayer identification number and organizational identification number is listed on Schedule 3.7(a).

(b) Except as set forth on Schedule 3.7(b), no Credit Party owns any voting stock, Equity Interest or other beneficial interest, either directly or indirectly, in any Person other than Equity Interests reflected on Schedule 3.7(a). As of the Closing Date, no Credit Party has a direct or indirect Subsidiary other than as listed on Schedule 3.7(b).

(c) Except as disclosed on Schedule 3.7(c), no Credit Party has done business, is doing business or intends to do business by or under any fictitious name, trade name or other name that is not its full corporate name. Schedule 3.7(c) also sets forth a list of any jurisdiction of organization or legal name of any Credit Party for the five (5) years preceding the Closing Date (or, if applicable, such shorter period since the formation of such Credit Party).

(d) Schedule 3.7(d) hereto lists (a) the chief executive office of each Credit Party as of the date hereof, and (b) each location where any Credit Party keeps (or intends to keep) the material records concerning the business operations of such Credit Party or the Collateral or keeps (or intends to keep) any material goods included in the Collateral as of the date hereof.

**SECTION 3.8. Intellectual Property.** Each of the Credit Parties owns or has the right to use, and has obtained assignments of all leases, licenses and other rights of whatever nature with respect to, all Intellectual Property necessary for the present conduct of its business. To the knowledge of each Credit Party, (a) the conduct and operations of its business do not infringe, misappropriate, dilute, violate or otherwise impair any Intellectual Property owned by any other Person, and (b) no other Person has contested any right, title or interest of any Credit Party in, or relating to, any Intellectual Property, other than, in each case, as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Credit Party has received a written notice in the past six (6) years alleging that Intellectual Property owned by a Credit Party infringes, misappropriates or otherwise conflicts with any Intellectual Property owned by any other Person. Schedule 3.8 sets forth a true, correct and complete list of all Intellectual Property owned by any Credit Party.

**SECTION 3.9. Insurance.** Schedule 3.9 sets forth a true, correct and complete listing of all insurance policies maintained by the Credit Parties as of the Closing Date, with the amounts insured (and any deductibles) set forth therein. Each Credit Party maintains, with financially sound and reputable insurance companies (which are not Affiliates of any Credit Party), policies of insurance (including liability insurance and casualty insurance) with respect to its properties and business of such types and in such amounts, with such deductibles and covering such risks, as are customarily maintained by Persons engaged in the same or similar businesses and owning similar properties in localities where any Credit Party operates.

**SECTION 3.10. Title to Properties.**

(a) The Credit Parties have good title to each of the properties and assets reflected in the most recent financial statements referred to in Section 3.5 or delivered pursuant to Section 5.1(a) hereof and all such properties and assets are free and clear of Liens, except

Permitted Encumbrances, in each case, except for defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purpose.

(b) All property owned or leased by the Credit Parties as of the Closing Date, and the nature of the applicable Credit Party's interest therein, is set forth on Schedule 3.10, including the common address and primary use of such property, and each Credit Party has delivered to the Administrative Agent true and complete copies of any leases or sub-leases to which it is a party with respect to such property. All permits or licenses required to have been obtained to enable any property owned or leased by the Credit Parties to be lawfully occupied and used for all of the purposes for which such property is currently occupied and used have been obtained and are in full force and effect.

(c) All properties and assets that are used or useful in the business of the Credit Parties as of the date hereof are owned beneficially and of record by a Credit Party.

#### SECTION 3.11. Anti-Terrorism.

(a) None of the Credit Parties is in violation of any Applicable Law relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "Executive Order"), and the USA Patriot Act.

(b) No Credit Party is any of the following:

- (i) a person that is listed in the annex to, or it otherwise subject to the provisions of, the Executive Order;
- (ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) a person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
- (iv) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or
- (v) a person that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") at its official website or any replacement website or other replacement official publication of such list.

(c) None of the Credit Parties (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of a person described in Section 3.11(b), (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

SECTION 3.12. Litigation. Except as set forth on Schedule 3.12 and except for the filing of the Cases, there are no actions, suits or other proceedings at law or in equity by or before any arbitrator, arbitration panel or Governmental Authority (including matters relating to environmental liability) or any threatened action, suit or other proceeding against or affecting any Credit Party or of any of their respective properties or rights in any material respect. No Credit Party is in default with respect to any order, writ, injunction, decree, rule or regulation of any Governmental Authority binding upon such Person.

SECTION 3.13. Federal Reserve Regulations. None of the Credit Parties is engaged principally or as one of its important activities in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans will be used, directly or indirectly, whether immediately, incidentally or ultimately (i) to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock, or (ii) for any other purpose, in each case, violative of or inconsistent with any of the provisions of any regulation of the Board, including Regulations T, U and X thereto.

SECTION 3.14. Investment Company Act. None of the Credit Parties is, or will during the term of this Credit Agreement be, (i) an “investment company”, within the meaning of the Investment Company Act of 1940, as amended or (ii) a “holding company” under the Public Utility Holding Company Act of 1935, as amended.

SECTION 3.15. Taxes. Each Credit Party has filed or caused to be filed all federal, state, local and foreign tax returns which are required to be filed with any Governmental Authority, except as set forth on Schedule 3.15, which such tax returns are true, complete and correct in all respects, and has paid or has caused to be paid all Taxes (whether or not shown on any such tax returns or on any assessment received by it in writing), to the extent that such Taxes have become due, except as permitted by Section 5.8 hereof or as set forth on Schedule 3.15. No Credit Party knows of any additional assessments or any reasonable basis therefor. The charges, accruals and reserves on the books of each Credit Party in respect of Taxes or other governmental charges are accurate and adequate. Each Credit Party has paid or has caused to be paid, or has made adequate reserves for, all payroll Taxes which are required to be paid by it and has withheld the proper and accurate amounts from amounts paid or payable to its respective employees, in each case, for all periods in full and complete compliance with all Applicable Law.



SECTION 3.16. Compliance with ERISA. Except as disclosed on Schedule 3.16, which disclosed items could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect: (a) each of the Credit Parties' Plans, each of which has been maintained and operated in all material respects in accordance with all Applicable Laws, including ERISA and the Code, and each Plan intended to qualify under section 401(a) of the Code satisfies the requirements of such section; (b) no Reportable Event has occurred in the last five years as to any Plan, and the present value of all benefits under all Plans subject to Title IV of ERISA (based on those assumptions used to fund such Plans) did not, in the aggregate, as of the last annual valuation date (if any) applicable thereto, exceed the actuarial value of the assets of such Plans allocable to such benefits; (c) no liability has been, and no circumstances exist pursuant to which any material liability is reasonably likely to be, imposed upon any Credit Party or ERISA Affiliate (i) under sections 4971 through 4980E of the Code, sections 502(i) or 502(l) of ERISA, or Title IV of ERISA with respect to any Plan or Multiemployer Plan, (ii) for the failure to fulfill any obligation to contribute to any Multiemployer Plan, or (iii) with respect to any Plan that provides post-retirement welfare coverage (other than as required pursuant to Section 4980B of the Code); and (d) neither any Credit Party nor any ERISA Affiliate has received any notification that any Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA, and no Multiemployer Plan is reasonably expected to be in reorganization or to be terminated.

SECTION 3.17. Agreements.

- (a) Schedule 3.17(a) is a true and complete listing of all Material Agreements.
- (b) Other than defaults in existence as of the Filing Date which are scheduled on Schedule 3.17(b) hereof or defaults caused by the filing of the Cases (but not any ancillary effects resulting therefrom), no Credit Party is in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any Material Agreement.
- (c) None of the Credit Parties is a party to any Material Agreement or subject to any restriction under its Organizational Documents which, individually or in the aggregate, (a) imposes any restriction on the ability of any of the Credit Parties to grant a Lien to the Administrative Agent pursuant to Article 8 or (b) could otherwise reasonably be expected to have a Material Adverse Effect.

SECTION 3.18. Security Interest. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the provisions of Article 8 will, together with the Orders, create and grant to the Administrative Agent for the benefit of the Administrative Agent and the Lenders valid and perfected first lien security interests in the Collateral, including in the Pledged Securities, subject only to Liens securing the Existing First Lien Facilities and the Carve-Out.

SECTION 3.19. Environmental Liabilities.

(a) Except as set forth on Schedule 3.19, no Credit Party has used, stored, treated, transported, manufactured, refined, handled, produced or disposed of any Hazardous Materials on, under, at, from or in any way affecting, any of its properties or assets owned or leased by a Credit Party, in any manner which at the time of the action in question materially violated any Environmental Law governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and to the best of each Credit Party's knowledge, no prior owner of such property or asset or any tenant, subtenant, prior tenant or prior subtenant thereof has used Hazardous Materials on or affecting such property or asset, or otherwise, in any manner which at the time of the action in question materially violated any Environmental Law governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(b) To the best of each Credit Party's knowledge (i) no Credit Party has any obligations or liabilities, known or unknown, matured or not matured, absolute or contingent, assessed or unassessed, which could reasonably be expected to have a Material Adverse Effect, and (ii) no claims have been made against any of the Credit Parties in the past five years and no presently outstanding citations or notices have been issued against any of the Credit Parties, which in either case could reasonably be expected to have a Material Adverse Effect and which in either case have been or are imposed by reason of or based upon any provision of any Environmental Law, including any such obligations or liabilities relating to or arising out of or attributable, in whole or in part, to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of any Hazardous Materials by any Credit Party, or any of its employees, agents, representatives or predecessors in interest in connection with or in any way arising from or relating to any of the Credit Parties or any of their respective owned or leased properties, or relating to or arising from or attributable, in whole or in part, to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of any such substance, by any other Person at or on or under any of the real properties owned or used by any of the Credit Parties or any other location where such obligations or liabilities could reasonably be expected to have a Material Adverse Effect.

#### SECTION 3.20. Pledged Securities.

(a) All of the Pledged Securities are duly authorized, validly issued, fully paid and non-assessable, and are owned and held by the Pledgors, free and clear of any Liens, other than those created pursuant to this Credit Agreement and other Permitted Encumbrances, and there are no restrictions on the transfer of the Pledged Securities other than as a result of this Credit Agreement or applicable securities laws and the regulations promulgated thereunder. The Pledged Securities are owned by the Persons specified on Schedule 3.7(a) and Schedule 3.7(b).

(b) Except as set forth on Schedule 3.7(a) and Schedule 3.7(b), there are no outstanding rights, warrants, options, conversion or similar rights currently outstanding with respect to, and no agreements to purchase or otherwise acquire, any shares of the capital stock or other Equity Interests of any issuer of any of the Pledged Securities; and there are no securities

or obligations of any kind convertible into any shares of the capital stock or other Equity Interests of any issuer of any of the Pledged Securities.

(c) Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the provisions of Article 10 create in favor of the Administrative Agent (on behalf of itself and the Lenders) a valid, binding and enforceable security interest in and, subject to the Orders, first priority Lien upon, all right, title and interest of the Pledgors in the Pledged Securities and constitutes a fully perfected first priority security interest in and Lien upon all right, title and interest of the Pledgors in such Pledged Securities, in each case, subject only to Liens securing the Existing First Lien Facilities and the Carve-Out, provided that the definitive instruments (if any) representing all Pledged Securities shall have been delivered to the Administrative Agent or its designee, which shall include the Existing First Lien Agent (and the Administrative Agent or such designee has taken possession or control of such Pledged Securities) together (in the case of Pledged Securities comprising capital stock) with appropriate undated stock powers (or any comparable document for non-corporate entities to the extent certificated) endorsed or executed in blank by the appropriate Pledgor as required under Article 10.

SECTION 3.21. Compliance with Laws. Each Credit Party is in compliance with all Applicable Laws in respect of its business or properties, except for such noncompliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Borrowings hereunder, the intended use of the proceeds of the Loans as described in the preamble hereto and as contemplated by Section 5.13 hereof and any other transactions contemplated hereby will comply with all Applicable Laws except for such noncompliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 3.22. Use of Proceeds. The proceeds of the Loans will be used by the Borrowers in accordance with Section 5.13.

SECTION 3.23. No Fraud. No Credit Party has entered or is entering into the arrangements contemplated hereby and by the other Fundamental Documents, or intends to make any transfer or incur any obligations hereunder or thereunder, with actual intent to hinder, delay or defraud either present or future creditors.

SECTION 3.24. Employment and Labor Practices; Employee Benefits.

(a) No Credit Party is engaged in any unfair labor practice. There is (i) no unfair labor practice charge or complaint pending against any Credit Party or, to the knowledge of any Credit Party, threatened against any of them, before the National Labor Relations Board or any other Governmental Authority, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement so pending against any Credit Party or, to the knowledge of any Credit Party, threatened against any of them, (ii) no strike, labor dispute, slowdown, lockout or work stoppage pending against any Credit Party or, to the knowledge of

any Credit Party, threatened against any Credit Party, (iii) no union representation question that exists with respect to the employees of any Credit Party, and to the knowledge of any Credit Party, no union organization campaign in progress with respect to any of the employees of any Credit Party, (iv) no employment claims (including wage and hour, equal employment opportunity, occupational safety and health or immigration) pending before any Governmental Authority, or, to the knowledge of any Credit Party, threatened against any Credit Party and (v) within the past three (3) years, no government investigation relating to labor or employment practices (including wage and hour, equal employment opportunity, occupational safety and health or immigration) of any Credit Party. Except as set forth on Schedule 3.24(a), each Credit Party is and has been since January 1, 2008, in compliance with all Applicable Laws relating to labor or labor relations and employment practices, terms and conditions, and no Credit Party is liable for any arrearage or any other costs or penalties for failure to comply with any such laws. The activities of the employees of each Credit Party with respect to the business of such Credit Party do not conflict with or constitute a breach of the terms of any contract under which such employee is bound, and no Credit Party has received any written allegation asserting such a breach. Each Credit Party has filed or caused to be filed all required I-9 Forms and has complied in all respects with any requests for additional information received by any Credit Party from the United States Immigration and Customs Enforcement. Each Credit Party has, for purposes of each employee benefit plan, for tax reporting and withholding purposes and for all other purposes, correctly classified all individuals performing services for such Credit Party as common law employees, leased employees, independent contractors or agents, as applicable.

(b) Schedule 3.24(b) sets forth a complete and accurate list of all employee benefits provided by any Credit Party to its employees, including any benefits programs, compensation plans, employment arrangements, non-monetary incentive programs or other similar benefits.

SECTION 3.25. Bank Accounts. Schedule 3.25 sets forth a complete list as of the Closing Date of each of the deposit or other bank accounts of each Credit Party, including the name of the financial institution at which such account is held, the name of the Credit Party that holds such account, the account number and the purpose of such account.

SECTION 3.26. Disclosure. The factual information (other than the Cash Flow Projections, estimates and information of a general economic or industry nature) furnished by or on behalf of any Credit Party to the Administrative Agent or any Lender, including any information contained in this Credit Agreement, any other Fundamental Document and any Material Agreement, in connection with the transactions contemplated hereby, and all factual information furnished by or on behalf of any Credit Party to the Administrative Agent or any Lender after the date hereof, when taken as a whole at the time when such information was or will be furnished, and on the date hereof, is true and correct in all material respects and does not or will not contain any untrue statement of a material fact made by or on behalf of any Credit Party or omit to state a material fact that was or is, under the circumstances under which made, necessary in order to make the statements contained herein or therein not misleading; provided

that the Cash Flow Projections, estimates and information of a general economic or industry nature were prepared in good faith based upon assumptions believed by the Borrowers to be reasonable at the time made, it being understood that actual results may vary materially therefrom. There is no fact known to any Credit Party that has not been disclosed to the Administrative Agent which could reasonably be expected to have a Material Adverse Effect.

SECTION 3.27. The Orders. On the date of the making of the initial Loan hereunder, the Interim Order has been entered by the Bankruptcy Court and has not been stayed, amended, vacated, reversed or rescinded without the Administrative Agent's consent (acting with the consent of, or at the direction of, the Required Lenders). On the date of the making of any Loan, the Interim Order or the Final Order, as the case may be, shall have been entered by the Bankruptcy Court and shall not have been amended, stayed, vacated or rescinded without the Administrative Agent's consent (acting with the consent of, or at the direction of, the Required Lenders). Upon the Termination Date, the Lenders shall, subject to the provisions of Article 7 and the Orders, be entitled to immediate payment of such Obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

#### **4. CONDITIONS OF LENDING**

SECTION 4.1. Conditions Precedent to Initial Loan. The obligation of each Lender to make its initial Loan is subject to the satisfaction in full of the following conditions precedent:

(a) Corporate Documents. The Administrative Agent shall have received, with copies for each of the Lenders:

- (i) a copy of the articles or certificate of incorporation, certificate of organization or formation or certificate of limited partnership (or equivalent document) of each Credit Party, certified on a recent date (not more than five (5) Business Days prior to the Closing Date) by the Secretary of State or other relevant office of such Person's jurisdiction of incorporation or organization, as the case may be;
- (ii) a certificate of the Secretary of State or other relevant office of the jurisdiction of organization of each Credit Party, dated as of a recent date (not more than five (5) Business Days prior to the Closing Date) as to the good standing of, and payment of taxes by, such Credit Party, which certificate lists (if available) the charter documents on file in the office of such Secretary of State;
- (iii) a certificate dated as of a recent date (not more than five (5) Business Days prior to the Closing Date) as to the good standing of each Credit Party issued by the Secretary of State or other relevant office of each

jurisdiction in which such Credit Party is qualified as a foreign corporation or organization as listed in Schedule 3.1 hereto; and

- (iv) a certificate of an Authorized Officer of each Credit Party, dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the by-laws, articles of organization, operating agreement or partnership agreement (or equivalent document) of such Credit Party, as in effect on the date of such certification; (B) that attached thereto is a true and complete copy of the resolutions adopted by the Governing Body of such Credit Party authorizing the execution, delivery and performance in accordance with their respective terms of the Fundamental Documents executed by such Credit Party, as applicable, and any other documents required or contemplated hereunder or thereunder, the grant of the security interests in the Collateral, and in the case of the Borrowers, the Borrowings hereunder, and that such resolutions have not been amended, rescinded or supplemented and are currently in effect; (C) that the articles or certificate of incorporation, certificate of organization or formation or certificate of limited partnership (or equivalent document) of such Credit Party has not been amended since the date of the last amendment thereto indicated on the certificates of the Secretary of State or other appropriate office furnished pursuant to clause (i) above; (D) as to the incumbency and specimen signature of each Authorized Officer of such Credit Party executing any Fundamental Document (such certificate to contain a certification by another Authorized Officer of such party as to the incumbency and signature of the Authorized Officer signing the certificate referred to in this clause (iv)); and (E) that all copies or originals of documents delivered pursuant to this Section 4.1 are true, correct and complete.

(b) Credit Agreement; Notes. The Administrative Agent shall have received (i) executed counterparts of this Credit Agreement, which, when taken together, bear the signatures of the Administrative Agent, all of the Credit Parties and all of the Lenders, and (ii) the Notes which have been requested by Lenders, executed by the Borrowers.

(c) Interim Order. The Administrative Agent and the Required Lenders shall have received satisfactory evidence of the entry by the Bankruptcy Court of an interim order under section 364 of the Bankruptcy Code in substantially the form of Exhibit K and in form and substance satisfactory to the Administrative Agent (the “Interim Order”) approving the Fundamental Documents and granting the claim status and lien priority described in Section 2.11 which Interim Order (i) shall have been entered upon an application or motion of the Borrowers satisfactory in form and substance to the Administrative Agent, on such prior notice as may in each case be satisfactory to the Administrative Agent, (ii) shall authorize extensions of Loans on an interim basis in an aggregate amount at any one time outstanding not in excess of \$3,500,000

in the aggregate, (iii) shall approve the payment by the Borrowers of fifty percent (50%) of the Up-Front Fees and all of the fees referred to in Section 2.4(b), (iv) shall be in full force and effect, (v) shall provide that the Credit Parties may use any cash collateral in which any lender under the Existing Facilities has an interest in accordance with the Cash Collateral Orders; (vi) shall have been entered not later than 10 days following the Filing Date and (vii) shall not have been vacated, stayed, reversed, modified or amended in any material respect; and such Interim Order shall contain good faith findings with respect to the Lenders and neither the making of such Loans nor the performance by any of the Credit Parties of any of their respective obligations hereunder or under the Fundamental Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

(d) First Day Orders. All of the “first day orders” entered by the Bankruptcy Court at the time of the commencement of the Cases shall be satisfactory in form and substance to the Administrative Agent, and shall reflect the assumption of only such pre-petition contracts as are satisfactory to the Administrative Agent.

(e) Reserved.

(f) Opinions of Counsel. The Administrative Agent shall have received the written opinion of Squire Sanders & Dempsey (US) LLC, counsel to the Credit Parties, dated the Closing Date and addressed to the Administrative Agent and the Lenders, which opinion shall be in form and substance reasonably satisfactory to the Administrative Agent.

(g) Material Pleadings. The Administrative Agent shall have received copies of all Material Pleadings as soon as is reasonably practicable prior to the filing thereof with the Bankruptcy Court.

(h) Insurance. The Credit Parties shall have furnished the Administrative Agent with (i) evidence acceptable to the Administrative Agent that the insurance policies required by Section 5.5 have been obtained and are in full force and effect and (ii) certificates of insurance with respect to all existing insurance coverage which certificates shall name Bayside Gallo Recovery, LLC, as Administrative Agent, as the certificate holder (i.e., as additional insured or loss payee, as appropriate) and shall evidence the Credit Parties’ compliance with Section 5.5 with respect to all insurance coverage existing as of the Closing Date.

(i) Security and Other Documentation. The Administrative Agent shall have received: (i) a fully executed copy of any landlord agreement with respect to any of the properties of the Credit Parties listed on Schedule 3.10; (ii) appropriate UCC-1 financing statements relating to the Collateral; (iii) as requested by the Administrative Agent, a fully executed copy of any IP Security Agreement; (iv) a fully executed copy of any Account Control Agreement; and (v) unless waived by the Administrative Agent, such local law documentation and perfection documentation as may be satisfactory to the Administrative Agent with respect to the Credit Parties.

(j) Payment of Fees. The Administrative Agent shall have received payment of (a) for the ratable benefit of the Lenders, 50% of all Up-Front Fees and (b) all other reasonable fees and expenses then due and payable by the Borrowers to the Administrative Agent and/or the Lenders in connection with the Facility and the Cases.

(k) Searches. The Administrative Agent shall have received updated UCC and other searches satisfactory to it indicating that no other filings, encumbrances or transfers (other than in connection with Permitted Encumbrances) with regard to the Collateral are of record in any jurisdiction in which it shall be necessary for the Administrative Agent to make a UCC filing in order to provide the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) with a perfected security interest in the Collateral.

(l) Cash Management Arrangements. The Borrowers' and Guarantors' cash management arrangements shall be reasonably acceptable to the Administrative Agent and shall have been approved by one or more "cash management" orders of the Bankruptcy Court reasonably acceptable to the Administrative Agent.

(m) Compliance with Laws. The Administrative Agent shall be satisfied that the transactions contemplated hereby will not (i) violate any provision of Applicable Law, or any order of any court or other agency of the United States of America or any state thereof applicable to any of the Credit Parties or any of their respective properties or assets, other than such as could not reasonably be expected to have a materially adverse effect upon the business, assets, properties, operations, financial condition, liabilities (including contingent liabilities) and Material Agreements of the Credit Parties, taken as a whole or (ii) conflict with, or result in a default, breach or right of termination or acceleration under, any Material Agreement to which any Credit Party is a party, other than such as could not reasonably be expected to result in a Material Adverse Effect.

(n) USA Patriot Act. The Administrative Agent shall have received any information required and requested by the Administrative Agent or any Lender under or in connection with the USA Patriot Act.

(o) Business Plan; Budget; Initial Cash Flow Projection. The Administrative Agent shall have received from the Credit Parties such information (financial or otherwise) as may be requested by the Administrative Agent, including: (i) a forecast of the Borrowers' and Guarantors' anticipated cash receipts and disbursements and setting forth the anticipated uses of the Commitments for the period beginning on the Closing Date and ending six (6) months thereafter on a monthly basis in form and substance satisfactory to the Administrative Agent and attached hereto as Exhibit C (as may be updated, supplemented and amended from time to time with the prior written consent of the Administrative Agent and the Required Lenders, the "Budget"), which shall be certified by an Authorized Officer of the Borrowers, and (ii) a detailed eight (8) week cash flow projection satisfactory to the Administrative Agent and its advisors (as



may be updated, supplemented and amended from time to time with the prior written consent of the Administrative Agent and the Required Lenders, the “Initial Cash Flow Projection”).

(p) No Default. No “default” or “event of default” (as such terms are defined in the Existing First Lien Facilities) shall have occurred and be continuing under the Existing First Lien Facilities, without regard to any waiver or cure thereof that is not consented to in writing by the Administrative Agent, in its capacity as a lender under the Existing First Lien Facilities.

SECTION 4.2. Conditions Precedent to Each Loan. The obligations of the Lenders to make each of the Loans (including the initial Loan) are subject to the satisfaction in full of the following conditions precedent:

(a) Borrowing Certificate. The Administrative Agent shall have received a Borrowing Certificate with respect to such Borrowing, duly executed by the Authorized Officer of the Borrowers.

(b) Representations and Warranties. The representations and warranties set forth in Article 3 hereof (as updated from time to time by any amendment of the Schedules attached to this Credit Agreement in accordance with Section 5.1(f)) and in the other Fundamental Documents shall be true and correct in all material respects on and as of the date of each Borrowing with the same effect as if made on and as of such date (except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(c) No Default or Event of Default. On the date of each Borrowing, no Default or Event of Default shall have occurred and be continuing, nor shall any such event occur by reason of the making of such Loan.

(d) No Material Adverse Change. No event shall have occurred (since the later of August 18, 2011, and the date of the annual audited financial statements which were most recently delivered pursuant to Section 5.1(a)) which has had a Material Adverse Effect.

(e) Orders. The Interim Order shall be in full force and effect and shall not have been stayed, reversed, modified or amended in any respect without the prior written consent of the Administrative Agent and the Required Lenders, provided that, if at the time of the making of any Loan, the aggregate principal amount of all Loans then outstanding would exceed the aggregate principal amount of extensions of credit authorized by the Interim Order (any such excess, collectively, the “Additional Credit”), the Administrative Agent shall have received satisfactory evidence of the entry of a final order by the Bankruptcy Court in substantially the form of the Interim Order, with only such modifications thereto as are reasonably satisfactory in form and substance to the Administrative Agent (the “Final Order”). Without limiting the foregoing, all claims of all creditors of each Borrower and each Guarantor shall have been and

shall remain stayed, the exercise by all creditors of creditor rights and remedies shall remain stayed, and all creditors shall remain prohibited from interfering with property or contract rights of each Borrower and each Guarantor. The Final Order, in any event, shall have been entered by the Bankruptcy Court no later than thirty five (35) days after the entry of the Interim Order and, at the time of the extension of any Additional Credit, the Final Order shall be in full force and effect, and shall not have been vacated, stayed, reversed, modified or amended in any respect without the prior written consent of the Administrative Agent and the Required Lenders. If the Interim Order or the Final Order is the subject of an appeal period or a pending appeal, no stay pending appeal has been sought by any creditor or other person in interest with respect to the Interim Order, the Final Order or the making of the Loans or the performance by any Borrower or any Guarantor of any of their respective obligations under any of the Fundamental Documents and such Orders shall contain good faith findings with respect to the Lenders. All other orders issued by the Bankruptcy Court shall be in form and substance reasonably satisfactory to the Administrative Agent.

(f) Payment of Fees and Expenses. The Borrowers shall have paid to the Administrative Agent the then unpaid balance of all accrued and unpaid fees (including, if the Final Order has been entered, the final 50% of the Up-Front Fees) due under and pursuant to this Credit Agreement, the Orders and any fee letter referred to in Section 2.4 and reasonable fees and expenses of counsel to the Administrative Agent as to which invoices have been issued.

(g) Cash Projections. The Borrowers shall have provided, concurrently with the delivery of a written notice of Borrowing, interim cash flow projections for the period through the last Business Day of the following calendar week, which cash flow projections shall be consistent in all respects with the Cash Flow Projections most recently delivered pursuant to Section 5.1(i) and shall demonstrate (with supporting calculations) that the Borrowers' aggregate unrestricted cash as of the last day of such period does not exceed \$1,500,000.

Each request for a Borrowing shall be deemed to be a representation and warranty by the Borrowers on the date of such Borrowing that the conditions specified in this Section 4.2 have been satisfied in full.

## **5. AFFIRMATIVE COVENANTS**

From the date hereof and for so long as the Commitments shall be in effect, any amount shall remain outstanding under any Loan or any other Obligation shall remain unpaid or unsatisfied, each of the Credit Parties agrees that it will:

SECTION 5.1. Financial Statements and Reports. Furnish or cause to be furnished to the Administrative Agent:

(a) Within one hundred twenty (120) days after the end of each fiscal year of AGH, commencing with the fiscal year ending December 31, 2011, the audited consolidated balance sheet of AGH and its Consolidated Subsidiaries as at the end of, and the related

consolidated statements of income, stockholders' equity and cash flows for, such fiscal year, such consolidated statements to be accompanied by an unqualified report and opinion of KPMG LLP or such other independent public accountants of nationally recognized standing as shall be acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards relating to reporting and which report and opinion shall contain no material exceptions or qualifications (other than with respect to the Cases), together with a certificate signed by an Authorized Officer of the Borrowers, to the effect that such financial statements fairly present the financial position of AGH and its Consolidated Subsidiaries as at the dates indicated and the results of their operations for the periods indicated in conformity with GAAP;

(b) Within forty five (45) days after the end of each month (commencing with the month ending August 31, 2011), the unaudited consolidated balance sheet of AGH and its Consolidated Subsidiaries as of the end of, and the related unaudited consolidated statements of income, stockholders' equity and cash flows for, such month, and for the elapsed portion of the fiscal year through the end of such month, in each case setting forth comparative figures for the corresponding month and elapsed portion of the fiscal year of the prior fiscal year and comparable budgeted figures for such month and elapsed portion of the fiscal year as set forth in the most recent budget delivered pursuant to Section 5.1(c), all of which shall be certified by an Authorized Officer of the Borrowers as having been prepared in reasonable detail in accordance with GAAP and fairly presenting in all material respects the financial condition of AGH and its Consolidated Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments (none of which shall be material, either individually or in the aggregate);

(c) No later than the last day of each fiscal year of AGH, commencing with the fiscal year ending December 31, 2011, a budget in form reasonably satisfactory to the Administrative Agent and consistent with the Business Plan (including budgeted statements of income, sources and uses of cash and balance sheets for AGH and its Consolidated Subsidiaries on a consolidated basis) (i) for each of the twelve months of the next fiscal year prepared in detail and (ii) for the fiscal year immediately following the next fiscal year prepared in summary form, in each case prepared in accordance with GAAP and setting forth, with appropriate discussion, the principal assumptions upon which such budget is based. Such budget shall be accompanied by a certificate of an Authorized Officer of the Borrowers to the effect that the budgets and other financial data contained therein are based on reasonable estimates and assumptions, all of which are fair in light of the conditions which existed at the time the budget was made, have been prepared on the basis of the assumptions stated therein, and reflect, as of the time so furnished, the reasonable estimate of the Borrowers of the budgeted results of the operations and other information budgeted therein;

(d) Simultaneously with the delivery of the monthly financial statements referred to in paragraph (b) of this Section 5.1, (i) a certificate of an Authorized Officer of the Borrowers, in form and substance reasonably satisfactory to the Administrative Agent (x) stating

whether or not such Authorized Officer has knowledge of any Event of Default or Default and, if so, specifying each such condition or event, the nature thereof and any action taken or proposed to be taken with respect thereto; and (y) identifying all Subsidiaries existing on the date of such certificate and indicating, as applicable, whether such Subsidiary was formed or acquired since the date of the previous certificate and indicating which Subsidiaries identified on the previous certificate have been sold, liquidated, dissolved or otherwise disposed of in a manner permitted hereunder since the date of such previous certificate, if any; and (ii) a Compliance Certificate completed and signed by an Authorized Officer of the Borrowers;

(e) Promptly upon their becoming publicly available, copies of (i) all registration statements, proxy statements, notices and reports any Credit Party shall file with any securities exchange or with the Securities and Exchange Commission or any successor agency, if any, and (ii) all reports, financial statements, press releases and other information which any Credit Party shall release, send or make available to its common stockholders generally; provided, that any such documents that are filed or furnished with the Securities and Exchange Commission on via EDGAR or any successor electronic document submission program shall be deemed to have been provided to the Administrative Agent when so filed or furnished;

(f) From time to time such information as may be required to keep current each of the Schedules referenced in Section 3.7;

(g) Simultaneously with delivery of financial statements required under Section 5.1(a) above, a report of management discussing the financial condition and results of operations of the Credit Parties, taken as a whole, as well as comparisons against the prior period performance in a form reasonably acceptable to the Administrative Agent;

(h) Copies of all Material Pleadings as soon as is reasonably practicable prior to the filing thereof with the Bankruptcy Court;

(i) (x) Cash flow projections for the Borrowers and Guarantors for the period through and including November 25, 2011, and (y) not later than five (5) Business Days prior to November 25, 2011, and the end of each calendar month occurring thereafter, rolling eight (8) Weekly Period cash flow projections for the Borrowers and Guarantors (such projections in clauses (x) and (y), together with the Initial Cash Flow Projection, collectively, the "Cash Flow Projections"), in each case, in form and substance reasonably satisfactory to the Administrative Agent and its advisors;

(j) No later than 5:00 p.m. (New York City time) on the second (2<sup>nd</sup>) Business Day immediately succeeding the last Business Day of each Weekly Period, an analysis of cash flows for such Weekly Period in the same format as the Cash Flow Projections, which shall be certified as true and complete by an Authorized Officer of the Borrowers and which shall include (w) the actual cash flows for the prior Weekly Period and cumulative cash flows since the Closing Date, (x) a comparison of such Weekly Period and cumulative cash flows against the Cash Flow Projections most recently delivered, (y) a written explanation in

reasonable detail of the variances for each line item between the Weekly Period and cumulative cash flows and the Cash Flow Projections most recently delivered and (z) a comparison of the Credit Parties' performance against the Budget;

(k) Prior to December 31, 2011, the Business Plan of the Borrowers and Guarantors;

(l) Promptly upon request therefor, any information required by the Administrative Agent on behalf of itself or any Lender under or in connection with the USA Patriot Act;

(m) From time to time such additional information regarding the financial condition, operations or business of any Credit Party, any Material Agreement or the Collateral as the Administrative Agent may reasonably request, including management letters issued to a Credit Party by its auditors; and

(n) Any other information or reports delivered at any time to any lender or creditor of any Credit Party (other than trade creditors ) when and as such information or reports are so delivered.

SECTION 5.2. Corporate Existence; Compliance with Laws. Do or cause to be done all things necessary (i) to preserve, renew and keep in full force and effect its legal existence, good standing in the jurisdiction of its organization and foreign qualification (as applicable), except as expressly permitted under Section 6.6, and material rights, licenses, permits and franchises and (ii) to comply with all Applicable Laws. No Credit Party will take any action, or conduct its affairs in a manner, which is likely to result in (x) the separate corporate existence of such Credit Party being ignored or (y) the assets and liabilities of such Credit Party being substantively consolidated with any other Credit Party or any other Person.

SECTION 5.3. Maintenance of Properties. Keep its tangible properties which are material to its business in good repair, working order and condition (ordinary wear and tear excepted) and, from time to time (i) make (or cause to be made) all necessary and proper repairs, renewals, replacements, additions and improvements thereto, and (ii) comply at all times with the applicable provisions of all material leases and other material agreements to which it is a party so as to prevent any loss or forfeiture thereof or thereunder unless the Debtors' compliance therewith is stayed by the Bankruptcy Code or being currently contested in good faith by appropriate proceedings and, in each case, appropriate reserves, if any, have been established in accordance with GAAP.

SECTION 5.4. Notice of Material Events.

(a) Upon any Authorized Officer of any Credit Party obtaining knowledge of (i) any Default or Event of Default or (ii) any event which could reasonably be expected to result in a Material Adverse Effect, promptly (and, in any event, within two (2) Business Days after

such Authorized Officer obtains such knowledge) give written notice thereof to the Administrative Agent specifying the nature and period of existence of any such condition or event, or specifying the notice given or action taken by such Person and the nature of such claimed Event of Default or condition and what action any Credit Party has taken, is taking and proposes to take with respect thereto.

(b) Upon any Authorized Officer of any Credit Party obtaining knowledge of the filing or commencement of, or any threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against any Credit Party which, if adversely determined, could reasonably be expected to result in a judgment in excess of \$50,000, promptly (and, in any event, within two (2) Business Days after such Authorized Officer obtains such knowledge) give written notice to the Administrative Agent specifying the nature of such action, suit or proceeding and what actions the Credit Parties have taken, are taking and propose to take with respect thereto.

(c) Promptly (and, in any event, within two (2) Business Days) upon any Authorized Officer of any Credit Party obtaining knowledge thereof, provide written notice to the Administrative Agent of: (i) any attachment, judgment, lien, levy or order that may be assessed against or threatened against any Credit Party (other than Permitted Encumbrances) which could reasonably be expected to have a Material Adverse Effect, (ii) the occurrence of any default under any Material Agreement, (iii) the creation or formation of any new Subsidiary by any Credit Party or (iv) any labor controversy that has resulted in, or threatens to result in, a strike, boycott, work stoppage, shutdown or other work action or disruption against any Credit Party which could reasonably be expected to have a Material Adverse Effect, in each case, which written notice shall specify the nature of such occurrence and what actions the Credit Parties have taken, are taking and propose to take with respect thereto.

#### SECTION 5.5. Insurance.

(a) Keep its assets which are of an insurable character insured (to the extent and for the time periods consistent with customary industry standards) by financially sound and reputable insurance companies (which are not Affiliates of any Credit Party) against loss or damage by fire, explosion, theft or other hazards which are included under extended coverage of such types and in such amounts, with such deductibles and covering such risks, as are customarily maintained by Persons engaged in the same or similar businesses and owning similar properties in localities where any Credit Party operates and as are otherwise satisfactory to the Administrative Agent.

(b) Maintain with financially sound and reputable insurance companies (which are not Affiliates of any Credit Party), policies of insurance against other hazards and risks and liability to Persons and property of such types and in such amounts, with such deductibles and covering such risks, as are customarily maintained by Persons engaged in the

same or similar businesses and owning similar properties in localities where any Credit Party operates and as are otherwise satisfactory to the Administrative Agent.

(c) Cause the insurers providing all such above-described insurance (excluding worker's compensation insurance) to: (i) provide not less than thirty (30) days' prior written notice to the Administrative Agent of cancellation, termination, non-renewal or lapse or material change of coverage; (ii) name the Administrative Agent for the benefit of the Administrative Agent and the Lenders as a loss payee or additional insured, as applicable; (iii) provide that no act or default of any Credit Party or any other Person shall affect the rights of the Administrative Agent and the Lenders thereunder; and (iv) provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Administrative Agent and the Lenders.

(d) If the Credit Parties shall fail to maintain insurance in accordance with this Section 5.5, or if any Credit Party shall fail to so endorse and deposit all policies or certificates with respect thereto, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance at the Credit Parties' expense to protect the Lenders' interests (which insurance may, but need not, also protect the Credit Parties' interests) in the Credit Parties' properties. The coverage that the Administrative Agent purchases may not pay any claim that any Credit Party makes or any claim that is made against such Credit Party in connection with said property. The applicable Credit Party may later cancel any insurance purchased by the Administrative Agent, but only after providing the Administrative Agent with evidence satisfactory to the Administrative Agent that such Credit Party has obtained insurance as required by this Section 5.5. If the Administrative Agent purchases insurance, the Credit Parties will be responsible for the costs of that insurance, including interest and any other charges that the Administrative Agent may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs incurred by the Administrative Agent or any Lender in obtaining and maintaining such insurance shall be added to the Obligations, which costs may be more than the cost of insurance that the Credit Parties may be able to obtain on their own.

SECTION 5.6. Books and Records, Examination. Maintain or cause to be maintained at all times true and complete books and records of its financial operations in accordance with GAAP and permit any Persons designated by the Administrative Agent or any Lender to visit and inspect the financial records and the properties of the Credit Parties at reasonable times, upon reasonable prior notice to the Borrowers, and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent or any Lender upon reasonable prior notice to the Borrowers to discuss the affairs, finances and condition of any of the Credit Parties with the officers thereof and independent accountants therefor (subject to reasonable requirements of confidentiality, including requirements imposed by law or by contract).

SECTION 5.7. Observance of Material Agreements; Payment of Obligations.

(a) Subject to the Bankruptcy Code and applicable law, timely and duly observe and perform all terms and conditions of all Material Agreements to which a Credit Party is a party and diligently protect and enforce the rights of the Credit Parties under all such Material Agreements in a manner consistent with and subject to the terms and conditions of such Material Agreements as from time to time in effect; provided that the foregoing shall not prevent any Credit Party from managing its vendor payables in a manner consistent with its past practices, notwithstanding the stated payment date for such payables, but in any event in a manner consistent in all respects with the Cash Flow Projections most recently delivered pursuant to Section 5.1(i).

(b) Furnish to the Administrative Agent, concurrently with the delivery of each monthly Compliance Certificate referred to in Section 5.1(d)(ii), a list in the form of Schedule 3.17(a) hereto of all Material Agreements executed during the preceding month and all material amendments to existing Material Agreements which amendments were executed during the preceding month.

(c) Subject to the Orders, timely pay, discharge or otherwise satisfy all of its obligations under any Material Agreement or other agreement, Guaranty Obligations or other liabilities of any nature, together with any costs imposed as a result of any failure to so timely pay, discharge or otherwise satisfy such obligations and liabilities; provided that the foregoing shall not prevent any Credit Party from managing its vendor payables in a manner consistent with its past practices, notwithstanding the stated payment date for such payables, but in any event in a manner consistent in all respects with the Cash Flow Projections most recently delivered pursuant to Section 5.1(i).

SECTION 5.8. Taxes and Charges. Subject to the Bankruptcy Code, duly pay and discharge, or cause to be paid and discharged, before the same shall become in arrears (after giving effect to applicable extensions), all post-petition Taxes, assessments, levies and other governmental charges, imposed upon any Credit Party or its properties, sales and activities, or any part thereof, or upon the income or profits therefrom, as well as all post-petition claims for labor, materials, or supplies which if unpaid might by law become a Lien (other than a Permitted Encumbrance) upon any property of any Credit Party, in each case which arises after the Petition Date; provided, however, that any such Tax, assessment, levy or charge need not be paid if the validity or amount thereof shall currently be contested in good faith by appropriate proceedings and if such Credit Party shall have set aside on its books reasonable reserves (the presentation of which is segregated to the extent required by GAAP) adequate with respect thereto if reserves shall be deemed necessary, and the nonpayment of such contested Tax, assessment, levy or charge is shall not result in a Material Adverse Effect; and provided, further, that, subject to order of the Bankruptcy Court, such Credit Party will pay all such Taxes, assessments, levies or other governmental charges forthwith upon the commencement of proceedings to foreclose any Lien which may have attached as security therefor or post a bond or other security therefor. Each Credit Party will, subject to the Bankruptcy Code and any necessary further order of the



Bankruptcy Court, promptly pay when due, or in conformance with customary trade terms, all other indebtedness incident to its operations.

SECTION 5.9. Liens. Defend the Collateral (including the Pledged Securities) against any and all Liens howsoever arising, other than Permitted Encumbrances, and in any event defend against any attempted foreclosure on Collateral.

SECTION 5.10. Further Assurances; Security Interests.

(a) Upon the reasonable request of the Administrative Agent, duly execute and deliver, or cause to be duly executed and delivered, at the cost and expense of the Credit Parties, such further instruments as may be necessary or desirable in the reasonable judgment of the Administrative Agent to carry out the provisions and purposes of this Credit Agreement and the other Fundamental Documents.

(b) Upon the reasonable request of the Administrative Agent, promptly execute and deliver or cause to be executed and delivered, at the cost and expense of the Credit Parties, such further instruments as may be appropriate in the reasonable judgment of the Administrative Agent, to provide the Administrative Agent for the benefit of the Administrative Agent and the Lenders a first priority perfected Lien (subject only to Liens securing the Existing First Lien Facilities) in the Collateral and any and all documents (including the execution, amendment or supplementation of any financing statement and continuation statement or other statement or any IP Security Agreement) for filing under the provisions of the UCC and the rules and regulations thereunder, or any other Applicable Law, and perform or cause to be performed such other ministerial acts which are reasonably necessary or advisable, from time to time, in order to grant and maintain in favor of the Administrative Agent for the benefit of itself and the Lenders the security interest in the Collateral contemplated hereunder and under the other Fundamental Documents, subject only to Permitted Encumbrances.

SECTION 5.11. ERISA Compliance and Reports. Furnish to the Administrative Agent (a) as soon as possible, and in any event within fifteen (15) days after any Authorized Officer of a Credit Party has knowledge that (i) any Reportable Event with respect to any Plan has occurred, a statement of an Authorized Officer of the Credit Party, setting forth on behalf of such Credit Party details as to such Reportable Event and the action which it proposes to take with respect thereto, together with a copy of the notice, if any, required to be filed of such Reportable Event given to the PBGC, or (ii) an accumulated funding deficiency has been incurred or an application has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard or an extension of any amortization period under Section 412 of the Code with respect to a Plan, a Plan or Multiemployer Plan has been or is proposed to be terminated, reorganized, partitioned or declared insolvent under Title IV of ERISA, proceedings have been instituted to terminate a Plan, a proceeding has been instituted pursuant to Section 515 of ERISA to collect a material delinquent contribution to a Multiemployer Plan, or any such Credit Party or ERISA Affiliate will incur any material liability

(including any contingent or secondary liability) to or on account of the termination of or withdrawal from a Plan or Multiemployer Plan under Sections 4062, 4063, 4201 or 4204 of ERISA, a statement of an executive officer of the Credit Party, setting forth details as to such event and the action the applicable Credit Party proposes to take with respect thereto, promptly upon reasonable request of the Administrative Agent, copies of each annual and other report with respect to each Plan subject to Title IV of ERISA and (c) promptly after receipt thereof, a copy of any notice any Credit Party or ERISA Affiliate may receive from the PBGC relating to the PBGC's intention to terminate any Plan or to appoint a trustee to administer any Plan.

#### SECTION 5.12. Environmental Laws.

(a) Promptly notify the Administrative Agent upon an Authorized Officer of any Credit Party becoming aware of any violation or potential violation or non-compliance with, or liability or potential liability under any Environmental Laws which, when taken together with all other pending violations, could reasonably be expected to have a Material Adverse Effect, and promptly furnish to the Administrative Agent all notices of any nature which any Credit Party may receive from any Governmental Authority or other Person with respect to any violation, or potential violation or non-compliance with, or liability or potential liability under any Environmental Laws which, in any case or when taken together with all such other notices, could reasonably be expected to have a Material Adverse Effect.

(b) Comply with and use reasonable efforts to ensure compliance by all tenants and subtenants with all Environmental Laws, and obtain and comply in all respects with and maintain and use best efforts to ensure that all tenants and subtenants (if applicable) obtain and comply in all respects with and maintain any and all licenses, approvals, registrations or permits required by Environmental Laws, except where failure to do so could not have a Material Adverse Effect.

(c) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under all Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities, except where failure to do so could not have a Material Adverse Effect. Any order or directive whose lawfulness is being contested in good faith by appropriate proceedings shall be considered a lawful order or directive when such proceedings, including any judicial review of such proceedings, have been finally concluded by the issuance of a final non-appealable order; provided, however, that the appropriate Credit Party shall have set aside on its books reasonable reserves (the presentation of which is segregated to the extent required by GAAP) adequate with respect thereto if reserves shall be deemed necessary.

(d) Defend, indemnify and hold harmless the Administrative Agent and the Lenders, and their respective employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any

way related to the violation of or non-compliance by any Credit Party with any Environmental Laws, or any orders, requirements or demands of Governmental Authorities related thereto, including reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, but excluding therefrom all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses arising out of or resulting from (i) the gross negligence or willful acts or willful misconduct of any indemnified party, (ii) any claims, demand, penalties, fines, liabilities, settlements, damages, costs and expenses against an indemnified party by any Credit Party in which (but only to the extent that) such Credit Party is the prevailing party or (iii) any acts or omissions of any indemnified party occurring after any indemnified party is in possession of, or controls the operation of, any property or asset.

(e) Refrain from causing or permitting any of its properties or assets to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance in all material respects with all applicable Environmental Laws, or releasing, discharging, disposing of or permitting or suffering any release or disposal as a result of any intentional act or omission on its part of Hazardous Materials onto any such property or asset in violation of any Environmental Law, in each case, except where the same could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.13. Use of Proceeds. Use the proceeds of the Facility for general working capital purposes of the Debtors (to the extent permitted by the terms of this Credit Agreement) and to pay the fees and expenses of the Debtors incurred in connection with the transactions contemplated by this Credit Agreement, in each case in accordance with the Budget. Notwithstanding the foregoing and subject to the Budget, Orders and “first day” orders, the proceeds of the Loans may not be used to (a) make any payments to or on behalf of the Parent Entity other than to pay the corporate overhead expenses and legal, accounting and other professional expenses of the Parent Entity incurred in the ordinary course of business (regardless of whether prior to or after the Filing Date), (b) make any payment prohibited hereunder, including any payment that would result in a violation of Section 6.16 or (c) make any Pre-Petition Payment that is not expressly permitted pursuant to this Credit Agreement, in each case, without the prior written consent of the Administrative Agent and approval by a Court order reasonably satisfactory to the Administrative Agent, provided that the Borrowers may use proceeds from the Facility to pay for adequate protection payments (if any) expressly approved in the Orders. The proceeds of the Loans and the Carve-Out may not be used in connection with litigating (including discovery proceedings), initiating or prosecuting any claims, causes of action, adversary proceedings or other litigations against the Administrative Agent or the Lenders, including as proscribed by Section 2.11(b). In addition, and notwithstanding the foregoing or anything else to the contrary, the proceeds of the Facility may not be used to pay, either directly or indirectly, any fees, costs or expenses incurred by the Credit Parties, including any financial advisory fees (including any success or similar fee), that are or become payable as a result of the consummation of any sale of all or substantially all of the assets of the Credit Parties under section 363 of the Bankruptcy Code (other than solely in connection with the

Bayside Sale) or as a result of the consummation by the Credit Parties of any Alternative Transaction.

SECTION 5.14. Deposit Accounts.

(a) Maintain the deposit and other accounts identified on Schedule 3.25 and cash management services as are satisfactory to the Administrative Agent.

(b) With respect to all accounts of the Credit Parties identified on Schedule 3.25 as of the Closing Date, within thirty (30) days after the Closing Date to the extent not delivered on the Closing Date, deliver to the Administrative Agent an Account Control Agreement with respect to each such account that complies in all respects with the applicable provisions of the Orders.

(c) Upon the establishment by any Credit Party of any new deposit or other account, or other cash management service, with any financial institution or bank not identified on Schedule 3.25, (x) notify the Administrative Agent in writing not less than ten (10) Business Days prior to the establishment thereof (unless a Credit Party determines in good faith that it is necessary to establish a new deposit or other account, or other cash management service, in less than ten (10) Business Days, in which case, such Credit Party shall notify the Administrative Agent in writing as soon as reasonably practicable upon making such determination) and (y) no later than concurrently with the establishment thereof, enter into, and cause such financial institution or bank at which such new account was established to enter into, an Account Control Agreement with respect to such account that complies in all respects with the applicable provisions of the Orders.

SECTION 5.15. Subsidiaries. No later than concurrently with the acquisition or formation of any new Subsidiary by any Credit Party, cause such Subsidiary to deliver to the Administrative Agent (or, in the case of any certificates representing Equity Interests of such Subsidiary, to a designee of the Administrative Agent, which designee shall include the Existing First Lien Agent in accordance with the Orders): (x) with respect to each such Subsidiary that is not a Foreign Subsidiary, (i) an Instrument of Assumption and Joinder duly executed by such Subsidiary, (ii) an appropriate UCC-1 financing statement for such Subsidiary, (iii) to the extent that one hundred percent (100%) of the issued and outstanding Equity Interests of such Subsidiary have not previously been pledged to the Administrative Agent (for the benefit of itself and the Lenders), a supplement or joinder to this Credit Agreement and the certificates representing one hundred percent (100%) of the issued and outstanding Equity Interests of such Subsidiary together (in the case of Pledged Securities comprising capital stock) with undated stock powers executed in blank, as applicable, or any comparable documents for non-corporate entities, and (iv) Organizational Documents and (y) with respect to each such Subsidiary that is a Foreign Subsidiary, to the extent that not more than sixty five percent (65%) of the issued and outstanding voting Equity Interests of such Subsidiary have not previously been pledged to the Administrative Agent (for the benefit of itself and the Lenders), a supplement or joinder to this

Credit Agreement and the certificates representing sixty five percent (65%) of the issued and outstanding voting Equity Interests of such Subsidiary together (in the case of Pledged Securities comprising capital stock) with undated stock powers executed in blank, as applicable, or any comparable documents for non-corporate entities.

SECTION 5.16. Cash Receipts. In the event any Credit Party receives any payment from any account debtor or obligor, which payment should have been remitted to the Administrative Agent, within two (2) Business Days of its receipt thereof, remit such payment or proceeds to the Administrative Agent or its designee.

SECTION 5.17. Compliance with Cash Flow Projections. Commencing on September 9, 2011, and for each Weekly Period occurring thereafter, cause the Cumulative actual cash flows of the Credit Parties in respect of (with words in quotations referring to line items and headings set forth in the Cash Flow Projections most recently delivered in accordance with Section 5.1(i)):

(a) each of the following categories:

- (1) "Total Receipts" less "Credit Card reserve"
- (2) "Net Cash Flow"

to be not less than 90% of the Cumulative projected cash flows set forth for each category in the Cash Flow Projections most recently delivered pursuant to Section 5.1(i);

(b) each of the following categories:

- (1) "Total Disbursements"
- (2) "Prof. Fees – Debtor"
- (3) "Prof. Fees – Sr. Secured Lender"
- (4) "Prof. Fees – Jr. Secured Lender"
- (5) "Prof. Fees – UCC"

to be not greater than 110% of the Cumulative projected cash flows set forth for each category in the Cash Flow Projections most recently delivered pursuant to Section 5.1(i); and

(c) each of the following categories:

- (1) "Credit Card reserve"
- (2) "1099 CR's", "W-2 CR's" and "Payroll Taxes" (as related to "Court Reporter Expenses")
- (3) "PPN – Court Reporters"
- (4) "1099 CR Catch up"
- (5) "PPN – Cure/Advances"

- (6) “SG&A Payroll”, “Commissions”, “Payroll Taxes”, “Payroll Fees”, “Health Insurance”, “401k”, “Benefits” (in each case, as related to “Payroll & Benefits”)
- (7) “Rent”
- (8) “Depo Summaries & Other Software”
- (9) “Utilities”, “Taxes & Licenses”, “Telecomm”, “Insurance”, “EQ Leases”, “Other”, “Utility Deposit”
- (10) “T&E (P-Card)”
- (11) “Postage & Shipping”
- (12) “CapEx”
- (13) “Cure Costs”
- (14) “Misc. Restructuring Costs”
- (15) “Interest Expense – Senior Lenders”
- (16) “Interest Expense – DIP Lenders”
- (17) “Ordinary course prof. – non bankruptcy”
- (18) “September stub rent”

to be not greater than 115% of Cumulative projected cash flows set forth for each category in the Cash Flow Projections most recently delivered pursuant to Section 5.1(i).

SECTION 5.18. Sale. File, or cause to be filed, on or prior to September 14, 2011, a motion with the Bankruptcy Court seeking approval for a sale of all or substantially all of the assets of the Credit Parties under section 363 of the Bankruptcy Code, which motion shall (a) attach bidding procedures in form and substance acceptable in all respects to the Administrative Agent for such sale that identify the Administrative Agent or an Affiliate thereof as a stalking horse bidder and authorize payment to the Administrative Agent of (i) a break-up fee in an amount equal to 3.75% of the value of the Administrative Agent’s bid, if applicable, and (ii) any fees and expenses incurred by the Administrative Agent or any Affiliate thereof in connection with the preparation of its stalking horse bid and the consummation of the Bayside Sale and (b) be in form and substance acceptable in all respects to the Administrative Agent (such motion, the “Sale Motion”).

## 6. NEGATIVE COVENANTS

From the date hereof and for so long as the Commitments shall be in effect, any amount shall remain outstanding under any Loan or any other Obligation shall remain unpaid or unsatisfied, each of the Credit Parties agrees that it will not:

SECTION 6.1. Limitations on Indebtedness. Incur, create, assume or suffer to exist any preferred Equity Interest or Indebtedness or permit any partnership or joint venture in which any Credit Party is a general partner to incur, create, assume or suffer to exist any Indebtedness other than (in each case, including to the extent constituting Indebtedness, all

premium (if any), interest, fees, expenses, charges and additional or contingent interest on the obligations described):

(a) the Indebtedness represented by the Notes and the other Obligations or otherwise arising pursuant to any Fundamental Document in favor of the Administrative Agent and the Lenders;

(b) Guaranty Obligations permitted pursuant to Section 6.3;

(c) Indebtedness in respect of secured purchase money financing (including Capital Leases) to the extent Liens securing such Indebtedness are permitted by Section 6.2(d), (x) in an amount not to exceed the aggregate outstanding amount of all such Indebtedness as of the Closing Date or (y) with the prior written consent of the Administrative Agent to be granted or withheld in its sole discretion (such consent to be deemed granted if not expressly withheld by the Administrative Agent within seven (7) Business Days of the Administrative Agent's receipt of a written request therefor, provided that such request contains a detailed description of such proposed Indebtedness, including all material terms and conditions thereof);

(d) the Existing Winston Notes, the Existing AKKR Notes and any other existing Indebtedness listed on Schedule 6.1;

(e) Indebtedness owing to the Existing First Lien Lenders under the Existing First Lien Facilities in an aggregate principal amount not to exceed the aggregate principal amount of such Indebtedness as of the Closing Date, provided that such principal amount may be increased following the Closing Date (i) in the face amount of any outstanding letters of credit issued by the Existing First Lien Lenders for the account of the Debtors, and for the benefit of any Person that is not a Debtor or an Affiliate of any Debtor, for which no cash collateral has been provided, (ii) in the amount of any secured bank products obligations consisting of credit card programs (including p-card programs) owing by the Debtors to the Existing First Lien Lenders and (iii) for any amounts due and owing by the Debtors to the Existing First Lien Lenders under any existing Swap Agreement, in each case, in accordance with the provisions of the definitive documentation for the Existing First Lien Facilities as in effect on the Closing Date and subject to the Orders in all respects;

(f) Indebtedness owing to the Existing Purchaser under the Existing Second Lien Facilities, subject to the Orders in all respects;

(g) Indebtedness of any Credit Party to another Credit Party (other than the Parent Entity);

(h) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, bid bonds, appeal bonds, surety bonds, financial assurances and completion guarantees and similar obligations, in each case provided in the ordinary course of

business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business; and

(i) Indebtedness of any Credit Party arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn by such Credit Party in the ordinary course of business against insufficient funds, as well as from netting services and otherwise in connection with deposit accounts, so long as such Indebtedness does not exceed \$25,000 and is repaid within five (5) Business Days.

SECTION 6.2. Limitations on Liens. Incur, create, assume or suffer to exist any Lien on any of its revenues, property or assets, whether now owned or hereafter acquired, except:

(a) the Liens in favor of the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) under this Credit Agreement, the other Fundamental Documents and any other document contemplated hereby or thereby;

(b) existing Liens listed on Schedule 6.2;

(c) the Liens securing the Existing Facilities, in each case, subject to the Orders;

(d) purchase money Liens granted to the vendor or Person financing the acquisition of the asset so acquired if: (x) the Lien is limited to the particular assets acquired and proceeds thereof, (y) the Indebtedness secured by the Lien does not exceed the acquisition cost of the particular assets acquired and (z) the aggregate amount of purchase money Indebtedness secured thereby does not exceed the limitations set forth in Section 6.1(c);

(e) deposits under worker's compensation, unemployment insurance and social security and similar laws or to secure statutory obligations or surety, appeal, performance or other similar bonds (other than completion bonds) or to secure performance as lessee under leases of real or personal property and other obligations of a like nature, in each case incurred in the ordinary course of business;

(f) Liens customarily granted or incurred in the ordinary course of business in favor of common carriers, landlords, warehousemen, mechanics and suppliers of materials and equipment or other service providers which either arise by operation of law or are otherwise on terms and conditions satisfactory to the Administrative Agent;

(g) Liens for taxes, assessments or other governmental charges or levies the validity or amount of which is not yet due or is currently being contested in good faith by appropriate proceedings pursuant to the terms of Section 5.8;



(h) possessory Liens which (i) occur in the ordinary course of business, (ii) secure normal trade debt which is not yet due and payable and (iii) do not secure Indebtedness for borrowed money;

(i) Liens arising by virtue of any statutory or common law provision relating to banker's Liens, rights of setoff or similar rights for usual and customary fees and expenses directly relating to the maintenance of deposit accounts;

(j) easements, rights of way, restrictions, minor defects or irregularities in title and other similar encumbrances on real property which do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Credit Parties;

(k) Liens with respect to operating leases not prohibited under this Credit Agreement and entered into in the ordinary course of business, on commercially reasonable terms and so long as the property secured thereby does not extend beyond such property as is being leased to the Credit Parties thereunder; and

(l) other Liens not specifically listed above in an aggregate amount not to exceed \$50,000 outstanding at any time, provided that such Liens shall not secure Indebtedness for borrowed money.

SECTION 6.3. Limitation on Guaranty Obligations. Incur, create, assume or suffer to exist any Guaranty Obligation (including any obligation as a general partner of a partnership or as a joint venturer of a joint venture in respect of Indebtedness of such partnership or joint venture), either directly or indirectly, except (a) the Guaranty made by the Guarantors pursuant to Article 9; (b) existing Guaranty Obligations listed on Schedule 6.3; (c) Guaranty Obligations under the Existing Facilities, in each case, subject to the Orders; and (d) any Guaranty Obligation by any Credit Party of the obligations of any other Credit Party.

SECTION 6.4. Limitations on Investments. Create, make or incur any Investment after the date hereof, except:

(a) Investments consisting of cash and Cash Equivalents;

(b) Indebtedness permitted under Section 6.1 and Guaranty Obligations permitted under Section 6.3, in each case to the extent constituting Investments;

(c) Investments (including debt obligations) received (i) in connection with the bankruptcy or reorganization of, or disputes with or judgments against, suppliers, customers or other debtors or (ii) in settlement of delinquent obligations arising in the ordinary course of business;

(d) Investments consisting of deposits, prepayments and other credits to suppliers made in the ordinary course of business of the Credit Parties; provided that the aggregate amount of Investments at any one time under this clause (d) shall not exceed \$50,000;

(e) other Investments in an aggregate amount (or value, if not cash) not to exceed \$50,000 at any one time outstanding;

(f) Investments constituting promissory notes or non-cash consideration received from third parties as a portion of the purchase price for an asset disposition consummated prior to the Filing Date so long as any such notes or non-cash consideration are, to the extent received in connection with dispositions of assets that constitute Collateral, pledged to the Administrative Agent as Collateral hereunder;

(g) Investments in any Credit Party (other than the Parent Entity); and

(h) Investments existing on the Filing Date and listed on Schedule 6.4.

SECTION 6.5. Restricted Payments. Pay or declare or enter into any agreement to pay or otherwise become obligated to make any Restricted Payment, other than:

(a) payments by any Credit Party to another Credit Party (other than the Parent Entity);

(b) so long as no Event of Default has occurred and is continuing, distributions to the Parent Entity for the payment in the ordinary course and consistent with past practice of corporate overhead expenses and legal, accounting and other professional fees and expenses of the Parent Entity, in each case incurred in connection with any activity not prohibited by this Credit Agreement, not to exceed \$50,000 in the aggregate; and

(c) any Pre-Petition Payments constituting (i) regularly scheduled interest payments in respect of the Existing Facilities, (ii) letter of credit fees in respect of the Existing First Lien Facilities, (iii) payments in respect of Indebtedness permitted under clauses (ii) and (iii) of Section 6.1(e) and (iv) fees, costs and expenses required to be paid pursuant to a Cash Collateral Order in respect of the Existing First Lien Facilities, in each case, subject to the Orders.

SECTION 6.6. Consolidation, Merger, Recapitalization or Sale of Assets, etc. Other than the Bayside Sale, whether in one transaction or a series of transactions, wind up, liquidate or dissolve its affairs, or enter into any transaction of merger or consolidation, or engage in any recapitalization, or sell or consummate any Disposition of any portion of its property, stock or Equity Interests, except (a) that any Credit Party (other than the Parent Entity) or Subsidiary of any Borrower may with the prior written consent of the Administrative Agent merge with and into, or transfer assets to, another Credit Party; provided that at the time of such merger or transfer and after giving effect thereto no Default or Event of Default shall have

occurred and be continuing; (b) any Disposition of obsolete or worn-out property or assets of any Credit Party that are no longer useful in the conduct of the Credit Parties' business and sales of inventory in the ordinary course of business; and (c) sales, transfers, leases or other Dispositions of assets not otherwise permitted by this Section 6.6 for aggregate gross proceeds (including non cash proceeds) in the aggregate from the date hereof through and including the Maturity Date not exceeding \$50,000.

SECTION 6.7. Receivables. Sell, discount or otherwise dispose of notes, accounts receivable or other obligations owing to any Credit Party except (a) for the purpose of collection in the ordinary course of business or (b) with the prior written consent of the Administrative Agent.

SECTION 6.8. Equity Issuances. Issue any Equity Interests.

SECTION 6.9. Places of Business; Change of Name, Jurisdiction. Change (a) its legal name, (b) the location of its chief executive office or principal place of business, (c) its jurisdiction of organization, (d) its taxpayer identification number or organizational identification number, (e) the location of any office in which it maintains books or records or records and information relating to the Collateral owned by it or any office or facility at which Collateral is located (including the establishment of any such new office or facility) or (f) its fiscal year or any fiscal period occurring during any fiscal year, in each case, without (x) giving the Administrative Agent not less than twenty (20) days' prior written notice (in the form of a certification from an Authorized Officer of such Credit Party) of its intention to effect any such change, clearly describing such change and providing such other information in connection therewith as either agent may request, (y) taking all actions required by the Administrative Agent to maintain the perfection and priority of the Liens granted in favor of the Administrative Agent (for the benefit of itself and the Lenders) in any Collateral, if applicable, and (z) promptly providing the Administrative Agent with certified Organizational Documents of such Credit Party reflecting any of the changes described in the preceding sentence, if applicable.

SECTION 6.10. Transactions with Affiliates. Enter into any transaction with any Affiliate of any Credit Party, whether or not in the ordinary course of business, except: (a) transactions expressly permitted by Sections 6.1, 6.2, 6.3, 6.4 or 6.5, (b) transactions set forth on Schedule 6.10, (c) transactions between or among a Credit Party and a wholly-owned Subsidiary of such Credit Party, (d) transactions between AGH and Hobart West in the ordinary course of business and consistent in all respects with past practices, (e) payments of reasonable fees and indemnities to directors, officers and employees of the Credit Parties and their Subsidiaries in the ordinary course of business and consistent with industry practice (provided that in the case of indemnities, recourse shall first have been made to relevant insurance), or (f) (i) employment agreements entered into by any Credit Party in the ordinary course of business, and (ii) employee compensation, benefit plans or arrangements, any health, disability or similar insurance plans which covers employees.

SECTION 6.11. Business Activities. Engage in any business activities other than activities in which the Credit Parties engaged on December 31, 2010, or any business or business activities incidental or related thereto.

SECTION 6.12. Anti-Terrorism; Anti-Money Laundering.

(a) Knowingly (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 3.11(b), (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that violates, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Cause or permit any of the funds of any Credit Party that are used to repay the Obligations to be derived from any unlawful activity of any Credit Party or any other Person.

SECTION 6.13. Swap Agreements. Enter into any Swap Agreement (other than any existing Swap Agreement in connection with the Existing First Lien Facilities).

SECTION 6.14. Modification of Documents. (a) Make or permit to be made any modification to the terms of (i) any Material Agreement, (ii) any of its Organizational Documents, or (iii) any document or agreement executed in connection with the Existing Facilities, the Existing Winston Notes or the Existing AKKR Notes, in each case, without the prior written consent of the Administrative Agent to be granted or withheld in its sole discretion; provided that, with respect to any modification to the terms of a Material Agreement, the Administrative Agent's consent shall be deemed granted if not expressly withheld by the Administrative Agent within seven (7) Business Days of the Administrative Agent's receipt of a written request therefor, such written request to contain a detailed description of the proposed modification and all material terms and conditions thereof.

(b) Reject or assume any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code without the prior written consent of the Administrative Agent to be granted or withheld in its sole discretion; provided that the Administrative Agent's consent shall be deemed granted if not expressly withheld by the Administrative Agent within seven (7) Business Days of the Administrative Agent's receipt of a written request therefor, such written request to contain a detailed description of the proposed rejection or assumption and all material terms and conditions thereof.

SECTION 6.15. No Negative Pledge; No Burdensome Agreement.

(a) Enter into any agreement (i) prohibiting the creation or assumption of any Lien in favor of the Administrative Agent (for the benefit of itself and the Lenders) or an administrative agent or collateral agent (including any successor to the Administrative Agent) under a potential refinancing of the Facility upon the properties or assets of any Credit Party,

whether now owned or hereafter acquired, or (ii) requiring an obligation to be secured as a result of any Lien being granted to the Administrative Agent (for the benefit of itself and the Lenders), except this Credit Agreement and the other Fundamental Documents, the Existing Facilities and the documents entered into in connection therewith; provided, however, that this provision shall not apply to any agreement executed in connection with secured Indebtedness incurred pursuant to Section 6.1(c) to the extent of such assets and proceeds thereof.

(b) Enter into any contract, agreement or other instrument that contains terms or provisions (financial or otherwise) that are more restrictive on the Credit Parties than the terms and provisions of this Agreement.

SECTION 6.16. Reserved.

SECTION 6.17. Activities of the Parent Entity. Permit:

(a) The Parent Entity to (i) own assets other than the Equity Interests of AGH or (ii) engage in any business activities other than such ownership interest and business activities directly related to those conducted prior to the Filing Date.

(b) The Parent Entity to engage in any business activities which are currently engaged in by the Borrowers or any of their Subsidiaries or which may be engaged in by the Borrowers and their Subsidiaries pursuant to Section 6.11.

SECTION 6.18. Certification of Equity Interests. Permit its Equity Interests to become certificated without simultaneously delivering to the Administrative Agent or its designee (which designee shall include the Existing First Lien Agent in accordance with the Orders) the definitive instruments representing all of its Equity Interests, accompanied by undated stock powers, duly endorsed or executed in blank by the appropriate Pledgor, and such other instruments or documents as the Administrative Agent or its counsel shall reasonably request.

SECTION 6.19. Chapter 11 Claims. Incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is pari passu with or senior to the claims of the Administrative Agent and the Lenders against the Borrowers except as otherwise set forth in Section 2.11 or the superpriority administrative claim in favor of the Existing First Lien Lenders as set forth in the Orders.

## **7. EVENTS OF DEFAULT**

Upon the occurrence of any of the following events (each, an “Event of Default”):

(a) any representation, warranty or certification made by a Credit Party in this Credit Agreement or any other Fundamental Document to which it is a party or in any report, financial statement, certificate or other document furnished to the Administrative Agent or any Lender pursuant to this Credit Agreement or any other Fundamental Document, shall prove to have been false or misleading in any material respect when made or delivered;

(b) any Credit Party shall default in the payment of principal of any of the Loans as and when due and payable hereunder, whether by reason of maturity, mandatory prepayment, acceleration or otherwise;

(c) any Credit Party shall default in the payment of any interest on the Loans, Commitment Fees or other monetary Obligations, as and when due and payable hereunder or under any Fundamental Document, and such default shall continue unremedied for two (2) Business Days;

(d) any Credit Party shall default in the due observance or performance of any covenant, condition or agreement contained in Sections 5.1, 5.2, 5.4, 5.5, 5.6, 5.7, 5.8, 5.13, 5.17 or 5.18 or Article 6 of this Credit Agreement, and such default shall continue unremedied for two (2) Business Days (other than a default under Section 5.5 which shall be not be subject to a grace or cure period);

(e) any Credit Party shall default in the due observance or performance of any other covenant, condition or agreement to be observed or performed pursuant to the terms of this Credit Agreement or any other Fundamental Document, and such default shall continue unremedied for ten (10) days;

(f) any of the Cases shall be dismissed, terminated or converted to a case under Chapter 7 of the Bankruptcy Code or any Borrower or any Guarantor shall file a motion or other pleading seeking the dismissal of any of the Cases under section 1112 of the Bankruptcy Code or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within thirty (30) days after the entry thereof; or an application shall be filed by any Borrower or any Guarantor for the approval of any other superpriority claim or other charge of any kind (other than the Carve-Out) in any of the Cases which is pari passu with or senior to the claims of the Administrative Agent and the Lenders against any Borrower or any Guarantor hereunder, or there shall arise or be granted any such pari passu or senior superpriority claim or other charge of any kind;

(g) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code, as may be extended from time to time, or shall enter any order granting relief to the holder or holders of any security

interest, which permits foreclosure (or the granting of a deed in lieu of foreclosure or the like) or any other enforcement of security interests on any assets of any Borrower or any Guarantors which have a value in excess of \$50,000 in the aggregate, other than those assets that are subject to a security interest granted by any Borrower or any Guarantor in favor of a lessor pursuant to a Capital Lease permitted hereunder and identified on Schedule 7(g);

(h) the Debtors shall take any action directly or indirectly for the purpose of, or that results in, delaying, preventing, frustrating or impeding approval, acceptance, confirmation, consummation or implementation of the Bayside Sale, as the case may be, including encouraging or supporting any non-Debtor party in furtherance of any such action, taking any action to authorize, approve, consummate or enter into an Alternative Transaction or taking any action that is inconsistent with the bidding procedures attached to the Sale Motion;

(i) the Bankruptcy Court shall not have approved the bidding procedures contemplated by the Sale Motion, on or prior to October 5, 2011;

(j) the Debtors shall have withdrawn the Sale Motion or shall have amended, supplemented or otherwise modified the Sale Motion, including any of the exhibits thereto, without the prior written consent of the Administrative Agent;

(k) the Debtors shall not have conducted an auction as set forth in the Sale Motion, as approved by the Bankruptcy Court, on or prior to November 7, 2011;

(l) an order of the Bankruptcy Court in form and substance acceptable to the Administrative Agent approving the Bayside Sale shall not have been entered on or prior to November 10, 2011;

(m) the Sale Date shall not have occurred on or prior to November 23, 2011;

(n) an order of the Bankruptcy Court shall be entered reversing, staying, vacating or (without the written consent of the Administrative Agent) otherwise amending, supplementing or modifying any of the Orders or any order approving the Sale Motion or the Bayside Sale in a manner that is materially adverse to the Lenders as determined by the Administrative Agent;

(o) any material breach by any Credit Party of any of the terms, conditions, covenants or conditions applicable to it under either Order (beyond any applicable cure period, if any);

(p) any Debtor shall bring an action seeking reconsideration of either Order;

(q) any Debtor shall file or submit a motion or application or otherwise seek approval from the Bankruptcy Court to permit, or shall conduct, a sale of any material portion of the Credit Parties' assets (under section 363 of the Bankruptcy Code or otherwise) other than the

Bayside Sale without the prior written consent of the Administrative Agent and each of the Lenders;

(r) any judgment or order in excess of \$50,000 (exclusive of any judgment or order the amounts of which are fully covered by insurance (less any applicable deductible) and as to which the insurer has acknowledged its responsibility to cover such judgment or order) as to any post-petition or post-filing obligation shall be rendered against the Borrowers or any of the Guarantors and the enforcement thereof shall not have been stayed;

(s) any non-monetary judgment or order with respect to a post-petition or post-filing event shall be rendered against any Borrower or any Guarantor which has or could reasonably be expected to have a Material Adverse Effect;

(t) except as permitted by the Orders or as otherwise agreed to by the Administrative Agent, any Borrower or any Guarantor shall make any Pre-Petition Payment other than Pre-Petition Payments which are specifically permitted by Section 6.5 and other Pre-Petition Payments which are authorized by the Bankruptcy Court and which are approved by the Administrative Agent (x) in accordance with “first day” orders reasonably satisfactory to the Administrative Agent (which shall not include any orders regarding the assumption of executory contracts except as may be acceptable to the Administrative Agent in its sole and absolute discretion) and (y) in respect of accrued payroll and related expenses and customary and usual employee benefits as of the Filing Date;

(u) (i) failure by any Credit Party or ERISA Affiliate to make any post-petition contributions required to be made to a Plan subject to Title IV of ERISA or Multiemployer Plan, (ii) any accumulated funding deficiency (within the meaning of Section 4971 of the Code) shall exist with respect to any Plan (whether or not waived), (iii) the present value of all benefits under all Plans subject to Title IV of ERISA (based on those assumptions used to fund such Plans) exceeds, in the aggregate, as of the last annual valuation date applicable thereto, the actuarial value of the assets of such Plans allocable to such benefits, (iv) any Credit Party or ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred withdrawal liability to such Multiemployer Plan, or that a Multiemployer Plan is being terminated, (v) a Reportable Event with respect to a Plan shall have occurred which is reasonably likely to result in a termination of such Plan for purposes of ERISA, (vi) the termination of a Plan, or the filing of a notice of intent to terminate a Plan under section 4041(c) of ERISA, (vii) the institution of proceedings to terminate, or the appointment of a trustee with respect to, a Plan by the PBGC, (viii) any other event or condition which could constitute grounds under section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or (ix) the imposition of a Lien pursuant to section 412 of the Code or section 302 of ERISA as to any Credit Party or ERISA Affiliate; provided that with respect to items (i) through (ix), only if such event or condition could reasonably be expected to result in a Material Adverse Effect;



(v) any of the Fundamental Documents shall be declared null and void or the Fundamental Documents, together with the Orders, shall not give or shall cease to give the Administrative Agent the Liens, rights, powers and privileges purported to be created thereby with respect to any material portion (with materiality determined in the Administrative Agent's sole discretion) of the Collateral in favor of the Administrative Agent for the benefit of the Administrative Agent and the Lenders, superior to and prior to the rights of all third Persons and subject to no other Liens (other than Permitted Encumbrances);

(w) the validity or enforceability of the Guaranty under Article 9 or the Liens granted, to be granted, or purported to be granted, by any of the Fundamental Documents shall be contested by any Person;

(x) any material provision of any Fundamental Document shall, for any reason, cease to be valid and binding on any Borrower or any Guarantor, or any Borrower or any Guarantor shall so assert in any pleading filed in any court;

(y) it shall be determined (whether by the Bankruptcy Court or by any other judicial or administrative forum) that any Borrower or any Guarantor is liable for the payment of claims arising out of any failure to comply (or to have complied) with applicable Environmental Laws and Environmental Permits, the payment of which will have a Material Adverse Effect, and the enforcement thereof shall not have been stayed;

(z) other than for the Carve-Out, the allowance of any claim under section 506(c) of the Bankruptcy Code or otherwise against the Administrative Agent, any Lender or any Collateral;

(aa) the entry of an order in any Case avoiding or requiring the repayment of any portion of any payments made on account of the Facility or the Existing Second Lien Facilities;

(bb) any Credit Party bringing any motion or taking any action in any Case to (i) obtain additional post-petition financing, (ii) grant any Lien (except Permitted Encumbrances), (iii) use cash collateral except as provided in the Cash Collateral Orders or (iv) which is otherwise materially adverse to the Administrative Agent and the Lenders or which is adverse to their rights and remedies in the Collateral; or

(cc) a Change in Control shall occur (other than in connection with the Bayside Sale).

then, and in every such event and at any time thereafter during the continuance of such event, subject to the Orders and without further order of or application to the Bankruptcy Court, the Administrative Agent may, and at the request of the Required Lenders, shall, by notice to the Borrowers (with a copy to counsel for the Official Creditors' Committee if one has been appointed in the Cases and to the United States Trustee for the Southern District of New York),

take one or more of the following actions, at the same or different times (provided that, with respect to the enforcement of Liens or other remedies with respect to the Collateral under clause (iv) below, the Administrative Agent shall provide the parties described above with five (5) days' written notice prior to taking the action contemplated thereby (such period the "Remedies Notice Period"): (i) terminate forthwith the Total Commitments; (ii) declare the Obligations or any portion thereof then outstanding to be forthwith due and payable, whereupon the principal of the Loans together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Borrowers accrued hereunder and under any other Fundamental Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrowers and the Guarantors, anything contained herein or in any other Fundamental Document to the contrary notwithstanding; (iii) set-off amounts in any accounts maintained with the Administrative Agent and apply such amounts to the obligations of the Borrowers and the Guarantors hereunder and in the other Fundamental Documents; provided, that, solely during the Remedies Notice Period, the Borrowers may continue to make monetary disbursements from such accounts solely to pay payroll and other expenses critical to keep the Credit Parties operating so long as such expenses are in accordance with the Cash Flow Projections; and/or (iv) exercise any and all remedies under the Fundamental Documents and under applicable law available to the Administrative Agent or the Lenders, including to proceed and realize upon the Collateral. Any payment received as a result of the exercise of remedies hereunder shall be applied in accordance with Section 8.6.

## **8. GRANT OF SECURITY INTERESTS**

SECTION 8.1. Security Interests. Each of the Borrowers, as security for the due and punctual payment of the Obligations (including interest accruing on and after the filing of any petition in bankruptcy or of reorganization of any Borrower whether or not post-filing interest is allowed in such proceeding), and each of the Guarantors, as security for its obligations under Article 9 hereof, hereby mortgages, pledges, hypothecates, transfers, collaterally assigns and delivers to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) and grants to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) a security interest in all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Credit Party (including under any trade name or derivations thereof), and whether owned or consigned by or to, or leased from or to, such Credit Party, and regardless of where located (all of which will be collectively referred to as the "Collateral"), including:

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Documents;
- (d) all Equipment;

- (e) all Fixtures;
- (f) all General Intangibles;
- (g) all Goods;
- (h) all Instruments;
- (i) all Intellectual Property;
- (j) all Inventory;
- (k) all Investment Property;
- (l) all Pledged Collateral;
- (m) all Commercial Tort Claims
- (n) all cash or Cash Equivalents;
- (o) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;
- (p) all Deposit Accounts and Securities Accounts with any bank or other financial institution;
- (q) and all accessions to, substitutions for and replacements, proceeds, insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing.

Notwithstanding the foregoing, the Collateral shall not include: (i) any General Intangible of any Credit Party (A) that prohibits or requires the consent of any Person other than the Credit Parties and their Affiliates which has not been obtained as a condition to the creation by such Credit Party of a Lien on any right, title or interest in such General Intangible related thereto (provided that the Credit Parties shall have used commercially reasonable efforts to obtain such consent), (B) to the extent that any Applicable Law prohibits the creation of a Lien thereon or (C) to the extent that a Lien granted thereon would cause such Credit Party's rights in or with respect to such General Intangible to be forfeited or to become void, voidable, terminable or revocable, or would cause such Credit Party to have breached, violated or defaulted in respect thereof and the consent of the applicable third party thereto (if any) has not been obtained, but only, with respect to the prohibition in clauses (A), (B) and (C), to the extent, and for as long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Applicable Law, (ii) any Excluded Equity, (iii) any Farm Products or as-

extracted collateral of any Credit Party and (iv) any Excluded Peachtree Assets; provided that “Excluded Assets” shall not include any Proceeds, substitutions or replacements of Excluded Assets (unless such Proceeds, substitutions or replacements would constitute Excluded Assets).

SECTION 8.2. Use of Collateral. So long as no Event of Default shall have occurred and be continuing, and subject to the various provisions of this Credit Agreement and the other Fundamental Documents, a Credit Party may use any of its property constituting Collateral in any lawful manner except as otherwise provided hereunder or thereunder.

SECTION 8.3. Credit Parties to Hold in Trust. Subject to the Orders, upon the occurrence and during the continuance of an Event of Default, each of the Credit Parties will, upon receipt by it of any revenue, income, profits or other sums in which a security interest is granted by this Article 8, payable pursuant to any agreement or otherwise, or of any check, draft, note, trade acceptance or other instrument evidencing an obligation to pay any such sum, hold the sum or instrument in trust for the Administrative Agent (for the benefit of itself and the Lenders), segregate such sum or instrument from their own assets and forthwith, without any notice, demand or other action whatsoever (all notices, demands, or other actions on the part of the Administrative Agent or the Lenders being expressly waived by each Credit Party), endorse, transfer and deliver any such sums or instruments or both, to the Administrative Agent or its designee to be applied to the repayment of the Obligations in accordance with the provisions of Section 8.6 hereof.

SECTION 8.4. Collections, etc. Subject to the Orders, upon the occurrence and during the continuance of an Event of Default (and without further order of the Bankruptcy Court), the Administrative Agent may, in its sole discretion, in its name (on behalf of the Administrative Agent and the Lenders) or in the name of any Credit Party or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable with respect to, any of the Collateral, but shall be under no obligation to do so, or the Administrative Agent may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, any Credit Party. The Administrative Agent will not be required to take any steps to preserve any rights against prior parties to the Collateral. Upon the occurrence and during the continuance of an Event of Default, if any Credit Party fails to make any payment or take any action required hereunder, the Administrative Agent may, subject to the Orders, make such payments and take all such actions as the Administrative Agent reasonably deems necessary to protect the Administrative Agent’s (on behalf of the Administrative Agent and the Lenders) security interests in the Collateral and/or the value thereof, and the Administrative Agent is hereby authorized (without limiting the general nature of the authority hereinabove conferred), subject to the Orders, to pay, purchase, contest or compromise any Liens that in the judgment of the Administrative Agent appear to be equal to, prior to or superior to the security interests of the Administrative Agent (on behalf of the Administrative Agent and the

Lenders) in the Collateral (other than Permitted Encumbrances) and any Liens not expressly permitted by this Credit Agreement.

SECTION 8.5. Possession, Sale of Collateral, etc. Subject to the Orders, upon the occurrence and during the continuance of an Event of Default (and without further order of the Bankruptcy Court), the Administrative Agent and the Lenders may, upon reasonable notice to the applicable Credit Party, enter upon the premises of any Credit Party or wherever the Collateral may be, and take possession of the Collateral, and may demand and receive such possession from any Person who has possession thereof, and the Administrative Agent and the Lenders may take such measures as they deem necessary or proper for the care or protection thereof, including the right to remove all or any portion of the Collateral, and with or without taking such possession may sell or cause to be sold, whenever the Administrative Agent and the Lenders shall decide, in one or more sales or parcels, at such prices as the Administrative Agent and the Lenders may deem appropriate, and for cash or on credit or for future delivery, without assumption of any credit risk, all or any portion of the Collateral, at any broker's board or at public or private sale, without demand of performance but with not less than ten (10) days' prior written notice to the Credit Parties of the time and place of any such public sale or sales (which notice the Credit Parties hereby agree is commercially reasonable) and with such other notices as may be required by Applicable Law and cannot be waived, and none of the Administrative Agent or any of the Lenders shall have any liability should the proceeds resulting from a private sale be less than the proceeds realizable from a public sale, and the Administrative Agent, on behalf of itself, the Lenders or any other Person may be the purchaser of all or any portion of the Collateral so sold and thereafter hold the same absolutely, free (to the fullest extent permitted by Applicable Law) from any claim or right of whatever kind, including any equity of redemption, of any Credit Party, any such demand, notice, claim, right or equity being hereby expressly waived and released. At any sale or sales made pursuant to this Article 8, including any sale of all or substantially all of the assets of the Credit Parties pursuant to section 363 of the Bankruptcy Code, the Administrative Agent, on behalf of itself and the Lenders, may bid for or purchase, free (to the fullest extent permitted by Applicable Law) from any claim or right of whatever kind, including any equity of redemption, of any Credit Party, any such demand, notice, claim, right or equity being hereby expressly waived and released, any part of or all of the Collateral offered for sale, and may make any payment on account thereof by using any claim for moneys then due and payable to the Administrative Agent and Lenders by any Credit Party hereunder as a credit against the purchase price. The Administrative Agent, on behalf of itself and the Lenders, shall in any such sale make no representations or warranties with respect to the Collateral or any part thereof, and none of the Administrative Agent or any of the Lenders shall be chargeable with any of the obligations or liabilities of any Credit Party. Each Credit Party hereby agrees (i) that it will indemnify and hold the Administrative Agent and the Lenders harmless from and against any and all claims with respect to the Collateral asserted before the taking of actual possession or control of the relevant Collateral by the Administrative Agent pursuant to this Article 8, or arising out of any act of, or omission to act on the part of, any Person prior to such taking of actual possession or control by the Administrative Agent (whether asserted before or after such taking of possession or control), or arising out of any act on the part

of any Credit Party or its Affiliates or agents before or after the commencement of such actual possession or control by the Administrative Agent, but excluding therefrom all claims with respect to the Collateral resulting from (x) the gross negligence or willful misconduct of any of the Administrative Agent or the Lenders as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment or (y) any claims with respect to the Collateral asserted against an indemnified party by a Credit Party in which such Credit Party is the prevailing party; and (ii) none of the Administrative Agent or any of the Lenders shall have any liability or obligation to any Credit Party arising out of any such claim except for acts of willful misconduct or gross negligence as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment. Subject to the Orders, in any action hereunder, the Administrative Agent shall be entitled if permitted by Applicable Law to the appointment of a receiver without notice, to take possession of all or any portion of the Collateral and to exercise such powers as the court shall confer upon the receiver. Notwithstanding the foregoing, but subject to the Orders, upon the occurrence and during the continuation of an Event of Default, the Administrative Agent and the Lenders shall be entitled to apply, without prior notice to any of the Credit Parties, any cash or cash items constituting Collateral in the possession or under the control of the Administrative Agent and the Lenders to payment of the Obligations.

SECTION 8.6. Application of Proceeds after Event of Default. Upon the occurrence and during the continuance of an Event of Default (and without further order of the Bankruptcy Court, but subject to any limitations set forth in the Orders), the balances on deposit in any account of any Credit Party that is held at or with a Lender, all other income on the Collateral (including any Pledged Collateral), and all proceeds from any sale of the Collateral pursuant hereto shall be applied first toward payment of the costs and expenses paid or incurred by the Administrative Agent in enforcing this Credit Agreement, in realizing on or protecting any Collateral and in enforcing or collecting any Obligations, including court costs and all fees and expenses of counsel incurred by the Administrative Agent, and then to the payment in full of the Obligations in accordance with Section 12.2 hereof. Any amounts remaining after the indefeasible payment in full in cash of the Obligations shall be remitted to the appropriate Credit Party or as a court of competent jurisdiction may otherwise direct.

SECTION 8.7. Power of Attorney. Upon the occurrence and during the continuance of an Event of Default which is not waived in writing by the Required Lenders, subject to the Orders: (a) each Credit Party does hereby irrevocably make, constitute and appoint the Administrative Agent or any of its officers, representatives or designees its true and lawful attorney-in-fact with full power in the name of the Administrative Agent, such other Person or such Credit Party to receive, open and dispose of all mail addressed to any Credit Party, and to endorse any notes, checks, drafts, money orders or other evidences of payment relating to the Collateral that may come into the possession of the Administrative Agent with full power and right to cause the mail of such Persons to be transferred to the Administrative Agent's own offices or otherwise, and to do any and all other acts necessary or proper to carry out the intent of this Credit Agreement and the grant of the security interests hereunder and under the Fundamental Documents, and each Credit Party hereby ratifies and confirms all that the

Administrative Agent or its substitutes shall properly do by virtue hereof; and (b) each Credit Party does hereby further irrevocably make, constitute and appoint the Administrative Agent or any of its officers, representatives or designees its true and lawful attorney-in-fact in the name of the Administrative Agent or any Credit Party (i) to enforce all of such Credit Party's rights under and pursuant to all agreements with respect to the Collateral, all for the sole benefit of the Administrative Agent for the benefit of the Administrative Agent and the Lenders as contemplated hereby and under the other Fundamental Documents, (ii) to enter into and perform such agreements as may be necessary in order to carry out the terms, covenants and conditions of the Fundamental Documents that are required to be observed or performed by such Credit Party, (iii) to execute such other and further mortgages, pledges and assignments of the Collateral, and related instruments or agreements, as the Administrative Agent may reasonably require for the purpose of perfecting, protecting, maintaining or enforcing the security interests granted to the Administrative Agent for the benefit of the Administrative Agent and the Lenders hereunder and under the other Fundamental Documents, and (iv) to do any and all other things necessary or proper to carry out the intention of this Credit Agreement and the grant of the security interests hereunder and under the other Fundamental Documents. Each of the Credit Parties hereby ratifies and confirms in advance all that the Administrative Agent as such attorney-in-fact or its substitutes shall properly do by virtue of this power of attorney.

SECTION 8.8. Financing Statements, Direct Payments. Each Credit Party hereby authorizes the Administrative Agent to file UCC financing statements and any amendments thereto or continuations thereof, any IP Security Agreement, the Orders and any other appropriate security documents or instruments and to give any notices necessary or desirable to perfect the Liens of the Administrative Agent for the benefit of itself and the Lenders, in the Collateral, in all cases without the signature of any Credit Party or to execute such items as attorney-in-fact for any Credit Party; provided that the Administrative Agent shall provide copies of any such documents or instruments to the Borrowers. Each Credit Party authorizes the Administrative Agent to use the collateral description "all assets" in any such UCC financing statements. Subject to the Orders, each Credit Party further authorizes the Administrative Agent to notify, at the time that any Event of Default shall have occurred and be continuing, any account debtors that all sums payable to such Credit Party relating to the Collateral shall be paid directly to the Administrative Agent.

SECTION 8.9. Further Assurances. Upon the request of the Administrative Agent, each Credit Party hereby agrees to duly and promptly execute and deliver, or cause to be duly executed and delivered, at the cost and expense of the Credit Parties, such further instruments as may be necessary or proper, in the reasonable judgment of the Administrative Agent, to carry out the provisions and purposes of this Article 8 or to perfect and preserve the Liens of the Administrative Agent (for the benefit of itself and the Lenders) hereunder and under the Fundamental Documents in the Collateral or any portion thereof.

SECTION 8.10. Termination and Release. The security interests granted under this Article 8 shall terminate when the Obligations have been fully and indefeasibly paid in cash

and performed and the Commitments shall have terminated. Upon request by the Credit Parties (and at the sole expense of the Credit Parties) after such termination, the Administrative Agent will promptly take all reasonable action and do all things reasonably necessary, including executing UCC termination statements, pledgeholder agreement terminations, termination letters to account debtors and copyright and trademark releases, to terminate the security interest granted to it (for the benefit of the Administrative Agent and the Lenders) hereunder, provided that the Administrative Agent shall only be required to deliver such documents to the Borrowers or applicable Credit Party and shall have no obligation to file or record any such document.

SECTION 8.11. Remedies Not Exclusive. The remedies conferred upon or reserved to the Administrative Agent in this Article 8 are intended to be in addition to, and not in limitation of, any other remedy or remedies available to the Administrative Agent or otherwise set forth in this Credit Agreement or any other Fundamental Document. Without limiting the generality of the foregoing, the Administrative Agent and the Lenders shall have all rights and remedies of a secured creditor under Article 9 of the UCC and under any other Applicable Law.

SECTION 8.12. Continuation and Reinstatement. Each Credit Party further agrees that the security interest granted hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment or any part thereof of any Obligation is rescinded or must otherwise be restored by the Administrative Agent or the Lenders upon the bankruptcy or reorganization of any Credit Party or otherwise.

SECTION 8.13. Waivers; Non-Waiver of Rights and Remedies.

(a) The obligations of each Credit Party hereunder shall not be affected by (i) the failure of the Administrative Agent or the Lenders to assert any claim or demand or to enforce any right or remedy against any Credit Party, any of their Affiliates, any other Credit Party or any other Person under the provisions of this Credit Agreement, any Fundamental Document or any other agreement or otherwise; (ii) any extension or renewal of any provision hereof or thereof; (iii) failure of the Administrative Agent or the Lenders to obtain the consent of the applicable Credit Party with respect to any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of this Credit Agreement, the Fundamental Documents or of any other agreement; (iv) the release, exchange, waiver or foreclosure of any security held by the Administrative Agent for the Obligations or any of them; (v) the failure of the Administrative Agent or the Lenders to exercise any right or remedy against the any Credit Party, any of their Affiliates or any other pledgor or guarantor with respect to the Obligations; or (vi) the release or substitution of any Credit Party or any Guarantor or other guarantor or pledgor with respect to the Obligations.

(b) Each Credit Party waives any right to require that any resort be had by the Administrative Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of the Administrative Agent or any Lender in favor of either of the any Credit Party or to any other Person.



(c) Each Credit Party's obligations under this Article 8 shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations, this Credit Agreement, any other Fundamental Document or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Article 8. The Administrative Agent and the Lenders make no representation or warranty with respect to any such circumstances and have no duty or responsibility whatsoever to any Credit Party in respect to the management and maintenance of the Obligations or any collateral security for the Obligations.

## **9. GUARANTY**

### **SECTION 9.1. Guaranty.**

(a) Each Guarantor unconditionally and irrevocably guarantees to the Administrative Agent and the Lenders the due and punctual payment by, and performance of, the Obligations (including interest accruing on and after the filing of any petition in bankruptcy or of reorganization of the obligor whether or not post filing interest is allowed in such proceeding). Each Guarantor further agrees that the Obligations may be increased, extended or renewed, in whole or in part, without notice or further assent from it (except as may be otherwise required herein), and it will remain bound upon this Guaranty notwithstanding any extension or renewal of any Obligation.

(b) Each Guarantor waives presentation to, demand for payment from and protest to, as the case may be, any Credit Party or any other guarantor of any of the Obligations, and also waives notice of protest for nonpayment, notice of acceleration and notice of intent to accelerate. The obligations of each Guarantor hereunder shall not be affected by (i) the failure of the Administrative Agent or the Lenders to assert any claim or demand or to enforce any right or remedy against the Borrowers or any Guarantor or any other guarantor under the provisions of this Credit Agreement or any other agreement or otherwise; (ii) any extension or renewal of any provision hereof or thereof; (iii) the failure of the Administrative Agent or the Lenders to obtain the consent of any Guarantor with respect to any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of this Credit Agreement, the Notes, any other Fundamental Document or any other agreement; (iv) the release, exchange, waiver or foreclosure of any security held by the Administrative Agent for the Obligations or any of them; (v) the failure of the Administrative Agent or the Lenders to exercise any right or remedy against any other Guarantor or any other guarantor of the Obligations; or (vi) the release or substitution of any Guarantor or any other guarantor of the Obligations.

(c) Each Guarantor further agrees that this Guaranty constitutes a guaranty of performance and of payment when due and not just of collection, and waives any right to require that any resort be had by the Administrative Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of

the Administrative Agent or any Lender in favor of any Borrower, or any Guarantor, or to any other Person.

(d) Each Guarantor hereby expressly assumes all responsibilities to remain informed of the financial condition of the Borrowers, the Guarantors and any other guarantors of the Obligations and any circumstances affecting the Collateral or the Pledged Securities or the ability of the Borrowers to perform under this Credit Agreement and the other Fundamental Documents.

(e) Each Guarantor's obligations under the Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations, the Notes, the Fundamental Documents or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Guaranty. The Administrative Agent and the Lenders make no representation or warranty with respect to any such circumstances and have no duty or responsibility whatsoever to any Guarantor in respect to the management and maintenance of the Obligations or any collateral security for the Obligations.

SECTION 9.2. No Impairment of Guaranty, etc. The obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Administrative Agent or any Lender to assert any claim or demand or to enforce any remedy under this Credit Agreement, any Fundamental Document or any other agreement, by any waiver or modification of any provision hereof or thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law, unless and until the Obligations are paid in full and the Commitments have terminated.

SECTION 9.3. Continuation and Reinstatement, etc.

(a) Each Guarantor further agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the Administrative Agent or the Lenders upon the bankruptcy or reorganization of any Borrower or any Guarantor, or otherwise. In furtherance of the provisions of this Article 9, and not in limitation of any other right which the Administrative Agent or the Lenders may have at law or in equity against any Borrower, any Guarantor or any other Person by virtue hereof, upon failure of the Borrowers to pay any

Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice or otherwise, each Guarantor hereby promises to and will, upon receipt of written demand by the Administrative Agent on behalf of itself and/or the Lenders, forthwith pay or cause to be paid to the Administrative Agent for the benefit of itself and/or the Lenders (as applicable) in cash an amount equal to the unpaid amount of such unpaid Obligations with interest thereon from the due date at a rate of interest equal to the rate specified in Section 2.3(c) hereof, and thereupon the Administrative Agent shall assign such Obligation, together with all security interests, if any, then held by the Administrative Agent in respect of such Obligation, to the Guarantor or Guarantors making such payment; such assignment to be subordinate and junior to the rights of the Administrative Agent on behalf of itself and the Lenders with regard to amounts payable by the Borrowers in connection with the remaining unpaid Obligations and to be pro tanto to the extent to which the Obligation in question was discharged by the Guarantor or Guarantors making such payments.

(b) All rights of each Guarantor against the Borrowers, arising as a result of the payment by such Guarantor of any sums to the Administrative Agent for the benefit of the Administrative Agent and/or the Lenders or directly to the Lenders hereunder by way of right of subrogation or otherwise, shall in all respects be subordinated and junior in right of payment to, and shall not be exercised by such Guarantor until and unless, the prior final payment in full of all the Obligations. If any amount shall be paid to such Guarantor for the account of the Borrowers, such amount shall be held in trust for the benefit of the Administrative Agent, segregated from such Guarantor's own assets, and shall forthwith be paid to the Administrative Agent on behalf of the Administrative Agent and/or the Lenders to be credited and applied to the Obligations, whether matured or unmatured.

SECTION 9.4. Limitation on Guaranteed Amount, etc. Notwithstanding any other provision of this Article 9, the amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations under this Article 9 shall not be subject to avoidance under section 548 of the Bankruptcy Code or to being set aside or annulled under any Applicable Law relating to fraud on creditors. In determining the limitations, if any, on the amount of any Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation or contribution which such Guarantor may have under this Article 9, any other agreement or Applicable Law shall be taken into account.

SECTION 9.5. Payment by Guarantors. Subject to the provisions of Article 7, upon the Obligations becoming due and payable (by acceleration or otherwise), the Lenders shall be entitled to immediate payment of such Obligations by the Guarantors upon written demand by the Administrative Agent, without further application to or order of the Bankruptcy Court.

## **10. PLEDGE**

SECTION 10.1. Pledge. In addition to the security provided in Article 8, each Pledgor, as security for the due and punctual payment of the Obligations (including interest accruing on and after the filing of any petition in bankruptcy or of reorganization of any Pledgor whether or not post-filing interest is allowed in such proceeding) or as security for its obligations under Article 9 hereof, as the case may be, hereby mortgages, pledges, hypothecates, transfers, collaterally assigns and delivers to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) and grants to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) a security interest in all Pledged Collateral now owned or hereafter acquired by it. Each Pledgor shall deliver to the Administrative Agent or its designee the definitive instruments (if any) representing all Pledged Securities, accompanied by undated stock powers (in the case of Pledged Securities comprising capital stock), duly endorsed or executed in blank by the appropriate Pledgor, and such other instruments or documents as the Administrative Agent shall reasonably request (i) on the Initial Date for all Pledged Securities owned by any Pledgor on the Initial Date or (ii) within two (2) Business Days after any Pledged Securities are hereafter acquired by any Pledgor. As of the Closing Date, the Pledged Securities are set forth on Schedule 10.1. The Administrative Agent shall have the right to update Schedule 10.1 to reflect any additions to the Pledged Securities after the date hereof (provided that its failure to do so shall not invalidate any pledge of Pledged Securities).

SECTION 10.2. Registration in Nominee Name; Denominations. The Administrative Agent shall have the right (in its sole and absolute discretion) to hold the certificates representing any Pledged Securities (a) upon the occurrence and continuance of an Event of Default (without any further order of the Bankruptcy Court), in its own name (on behalf of the Administrative Agent and the Lenders) or in the name of its designee, or (b) prior to such time, in the name of the appropriate Pledgor, endorsed or assigned in blank or in favor of the Administrative Agent. The Administrative Agent shall have the right to exchange the certificates representing any of the Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Credit Agreement.

SECTION 10.3. Voting Rights; Dividends; etc.

(a) The appropriate Pledgor shall be entitled to exercise any and all voting and/or consensual rights and powers accruing to an owner of the Pledged Securities being pledged by it hereunder or any part thereof, at all times, except as expressly provided in paragraph (c) below; provided that no vote or other right shall be exercised or action taken or authorized by any Pledgor which would have the effect of impairing the value of the Pledged Collateral or the rights of the Administrative Agent in respect of such Pledged Collateral or which would violate or conflict with the terms of this Credit Agreement or any other Fundamental Document.

(b) All dividends or distributions of any kind whatsoever (other than cash dividends or cash distributions paid while no Event of Default is continuing) received by a Pledgor, whether resulting from a subdivision, combination, or reclassification of the outstanding

capital stock or Equity Interests of the issuer or received in exchange for the Pledged Securities or any part thereof or as a result of any merger, consolidation, acquisition, or other exchange of assets to which the issuer may be a party, or otherwise, shall be and become part of the Pledged Securities pledged hereunder and shall immediately be delivered to the Administrative Agent to be held subject to the terms hereof. All dividends and distributions which are received contrary to the provisions of this paragraph (b) shall be received in trust for the benefit of the Administrative Agent and the Lenders, segregated from such Pledgor's own assets, and shall be delivered to the Administrative Agent immediately upon receipt thereof.

(c) Subject to the Orders, upon the occurrence and during the continuance of an Event of Default, all rights of any Pledgor (i) to exercise the voting and/or consensual rights and powers which it is entitled to exercise pursuant to this Section 10.3, and (ii) to receive and retain cash dividends and cash distributions shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to exercise such voting and/or consensual rights and receive such cash dividends and cash distributions.

**SECTION 10.4. Remedies Upon Default.** If an Event of Default shall have occurred and be continuing, the Administrative Agent, on behalf of itself and the Lenders, may sell the Pledged Securities, or any part thereof, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Administrative Agent shall deem appropriate subject to the terms hereof or as otherwise provided in the UCC. The Administrative Agent shall be authorized at any such sale (if it deems it advisable to do so) to restrict to the full extent permitted by Applicable Law the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Pledged Securities for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale, the Administrative Agent shall have the right to assign, transfer, and deliver to the purchaser or purchasers thereof the Pledged Securities so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Pledgor. The Administrative Agent shall give the Pledgors not less than ten (10) days' prior written notice of any such public or private sale, or sale at any broker's board or on any such securities exchange, or of any other disposition of the Pledged Securities. Such notice, in the case of public sale, shall state the time and place for such sale and, in the case of sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Pledged Securities, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix and shall state in the notice of such sale. At any such sale, the Pledged Securities, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Administrative Agent may (in its sole and absolute discretion) determine. The Administrative Agent shall not be obligated to make any sale of the Pledged Securities if it shall determine not to do so, regardless of the fact that notice of sale of the Pledged Securities may have been given. The Administrative Agent may, without notice or publication, adjourn any public or private sale

or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case the sale of all or any part of the Pledged Securities is made on credit or for future delivery, the Pledged Securities so sold shall be retained by the Administrative Agent until the sale price is paid by the purchaser or purchasers thereof, but the Administrative Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Pledged Securities so sold and, in case of any such failure, such Pledged Securities may be sold again upon like notice. At any sale or sales made pursuant to this Section 10.4, the Administrative Agent (on behalf of itself and/or the Lenders) may bid for or purchase, free from any claim or right of whatever kind, including any equity of redemption, of the Pledgors, any such demand, notice, claim, right or equity being hereby expressly waived and released, any or all of the Pledged Securities offered for sale, and may make any payment on the account thereof by using any claim for moneys then due and payable to the Administrative Agent or any consenting Lender by any Pledgor as a credit against the purchase price; and the Administrative Agent, upon compliance with the terms of sale, may hold, retain and dispose of the Pledged Securities without further accountability therefor to any Pledgor or any third party (other than the Lenders). The Administrative Agent shall in any such sale make no representations or warranties with respect to the Pledged Securities or any part thereof, and shall not be chargeable with any of the obligations or liabilities of the Pledgors with respect thereto. Each Pledgor hereby agrees (i) it will indemnify and hold the Administrative Agent and the Lenders harmless from and against any and all claims with respect to the Pledged Securities asserted before the taking of actual possession or control of the Pledged Securities by the Administrative Agent pursuant to this Credit Agreement, or arising out of any act of, or omission to act on the part of, any Person prior to such taking of actual possession or control by the Administrative Agent (whether asserted before or after such taking of possession or control), or arising out of any act on the part of any Pledgor, its agents or Affiliates before or after the commencement of such actual possession or control by the Administrative Agent but excluding from therefrom all claims with respect to the Pledged Securities resulting from (x) the gross negligence or willful misconduct of any of the Administrative Agent or the Lenders as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment, or (y) any claims with respect to the Pledged Securities asserted against an indemnified party by a Pledgor in which such Pledgor is the prevailing party, and (ii) the Administrative Agent and the Lenders shall have no liability or obligation arising out of any such claim except for acts of willful misconduct or gross negligence as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment. As an alternative to exercising the power of sale herein conferred upon it, the Administrative Agent may proceed by a suit or suits at law or in equity to foreclose upon the Collateral and Pledged Securities under this Credit Agreement and to sell the Pledged Securities, or any portion thereof, pursuant to a judgment or decree of a court or courts having competent jurisdiction. The remedies conferred upon or reserved to the Administrative Agent in this Section 10.4 are intended to be in addition to, and not in limitation of, any other remedy or remedies available to the Administrative Agent or otherwise set forth in this Credit Agreement or any other Fundamental Document. Without limiting the generality of

the foregoing, the Administrative Agent and the Lenders shall have all rights and remedies of a secured creditor under Article 9 of the UCC and under any other Applicable Law.

SECTION 10.5. Securities Act, etc. Each Pledgor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof. Each Pledgor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Pledgor or the issuer of the Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if the applicable Pledgor and the issuer would agree to do so.

SECTION 10.6. Continuation and Reinstatement. Each Pledgor further agrees that its pledge hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment or any part thereof of any Obligation is rescinded or must otherwise be restored by the Administrative Agent or the Lenders upon the bankruptcy or reorganization of any Pledgor or otherwise

SECTION 10.7. Termination. The pledge provided in this Article 10 shall terminate when the Obligations have been fully and indefeasibly paid in cash and performed and the Commitments shall have terminated. Upon request by the Pledgors (and at the sole expense of the Pledgors) after such termination, the Administrative Agent will promptly take all reasonable action and do all things reasonably necessary, including assigning and delivering to the appropriate Pledgor such of the Pledged Securities (if any) as shall not have been sold or otherwise applied by the Administrative Agent pursuant to the terms hereof, together with appropriate instruments of reassignment and release, to terminate the pledge granted to it (for the benefit of the Administrative Agent and the Lenders) hereunder, provided that the Administrative Agent shall only be required to deliver such documents to the applicable Pledgor and shall have no obligation to file or record any such document. Any such reassignment shall be free and clear of all Liens, arising by, under or through the Administrative Agent but shall otherwise be without recourse upon or warranty by the Administrative Agent.

SECTION 10.8. Further Assurances. The Pledgors, at their own expense, will execute and deliver, from time to time, any and all further, or other, instruments, and perform such acts, as the Administrative Agent may reasonably request to effect the purposes of this Article 10 and to secure to the Administrative Agent (for the benefit of the Lenders) the benefits of all rights, authorities, and remedies conferred upon the Administrative Agent by the terms of this Credit Agreement and any other Fundamental Document.

SECTION 10.9. Waivers; Non-Waiver of Rights and Remedies.

(a) The obligations of each Pledgor hereunder shall not be affected by (i) the failure of the Administrative Agent or the Lenders to assert any claim or demand or to enforce any right or remedy against any Pledgor, any of their Affiliates, any other Pledgor or any other Person under the provisions of this Credit Agreement, any Fundamental Document or any other agreement or otherwise; (ii) any extension or renewal of any provision hereof or thereof; (iii) failure of the Administrative Agent or the Lenders to obtain the consent of the applicable Pledgor with respect to any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of this Credit Agreement, the Fundamental Documents or of any other agreement; (iv) the release, exchange, waiver or foreclosure of any security held by the Administrative Agent for the Obligations or any of them; (v) the failure of the Administrative Agent or the Lenders to exercise any right or remedy against the any Pledgor, any of their Affiliates or any other pledgor or guarantor with respect to the Obligations; or (vi) the release or substitution of any Pledgor or any Guarantor or other guarantor or pledgor with respect to the Obligations.

(b) Each Pledgor waives any right to require that any resort be had by the Administrative Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of the Administrative Agent or any Lender in favor of either of the any Pledgor or to any other Person.

(c) Each Pledgor's obligations under this Article 10 shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations, this Credit Agreement, any other Fundamental Document or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Article 10. The Administrative Agent and the Lenders make no representation or warranty with respect to any such circumstances and have no duty or responsibility whatsoever to any Pledgor in respect to the management and maintenance of the Obligations or any collateral security for the Obligations.

#### SECTION 10.10. PROXY; NATURE OF APPOINTMENT; LIMITATION ON DUTIES.

(a) EACH PLEDGOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE ADMINISTRATIVE AGENT AS ITS PROXY AND ATTORNEY-IN-FACT, EXERCISABLE UPON THE OCCURRENCE AND DURING THE CONTINUATION OF AN EVENT OF DEFAULT, WITH RESPECT TO ITS PLEDGED COLLATERAL, INCLUDING THE RIGHT TO VOTE SUCH PLEDGED COLLATERAL, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY SUCH PLEDGED COLLATERAL, THE APPOINTMENT OF THE ADMINISTRATIVE AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT, UPON THE OCCURRENCE AND DURING THE CONTINUATION OF AN EVENT OF DEFAULT, TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH



A HOLDER OF SUCH PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY SUCH PLEDGED COLLATERAL ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF SUCH PLEDGED COLLATERAL OR ANY OFFICER OR AGENT THEREOF), UPON THE OCCURRENCE AND DURING THE CONTINUATION OF AN EVENT OF DEFAULT.

(b) THE APPOINTMENT OF THE ADMINISTRATIVE AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE 10 IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS CREDIT AGREEMENT IS TERMINATED IN ACCORDANCE WITH THE TERMS HEREOF. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NEITHER THE ADMINISTRATIVE AGENT, NOR ANY LENDER, NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; PROVIDED THAT, IN NO EVENT SHALL THEY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

**11. [RESERVED]**

**12. THE ADMINISTRATIVE AGENT AND THE ISSUING BANK**

SECTION 12.1. Administration by the Administrative Agent.

(a) The general administration of the Fundamental Documents and any other documents contemplated by this Credit Agreement or any other Fundamental Document shall be by the Administrative Agent or its designees. Except as otherwise expressly provided herein, each of the Lenders hereby irrevocably authorizes the Administrative Agent, at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Fundamental Documents, the Notes and any other documents contemplated by this Credit Agreement or any other Fundamental Document as are expressly delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto. The Administrative Agent shall have no duties or responsibilities except as set forth in the Fundamental Documents.

(b) The Lenders hereby authorize the Administrative Agent (in its sole discretion):

- (i) in connection with the sale or other disposition of any asset included in the Collateral or the capital stock of any Guarantor, to the extent undertaken in accordance with the terms of this Credit Agreement, to release a Lien granted to it (for the benefit of the Administrative Agent and the Lenders) on such asset or capital stock and/or to release such Guarantor from its obligations hereunder;
- (ii) to determine that the cost to the Borrowers or another Credit Party is disproportionate to the benefit to be realized by the Administrative Agent and the Lenders by perfecting a Lien in a given asset or group of assets included in the Collateral and that the Borrowers or other Credit Party should not be required to perfect such Lien in favor of the Administrative Agent (for the benefit of itself and the Lenders);
- (iii) to appoint subagents to be the holder of record of a Lien to be granted to the Administrative Agent (for the benefit of itself and the Lenders);
- (iv) to enter into and perform its obligations under the other Fundamental Documents; and
- (v) to determine when a Lender is or becomes a Defaulting Lender or is no longer a Defaulting Lender.

SECTION 12.2. Payments. As between the Administrative Agent and the Lenders, any amounts received by the Administrative Agent in connection with the Fundamental Documents, the application of which is not otherwise provided for in Article 2 or Article 8, shall be applied, first, to pay the accrued but unpaid expenses and Commitment Fees in accordance with each Lender's Percentage, second, to pay accrued but unpaid interest on the Loans in accordance with the amount of outstanding Loans owed to each Lender, and third, to pay the principal balance outstanding on the Loans (with amounts payable on the principal balance outstanding on Loans in accordance with the amount of outstanding Loans owed to each Lender) and to pay any other amounts then due under this Credit Agreement and any other Obligations. All amounts to be paid to any Lender by the Administrative Agent shall be credited to that Lender, after collection by the Administrative Agent, in immediately available funds either by wire transfer or deposit in such Lender's correspondent account with the Administrative Agent, or as such Lender and the Administrative Agent shall from time to time agree.

SECTION 12.3. Sharing of Setoffs and Cash Collateral. Each of the Lenders agrees that if it shall, through the exercise of a right of banker's Lien, setoff or counterclaim against any Credit Party (including, but not limited to, a secured claim under Section 506 of Title 11 of the Code or other security or interest arising from, or in lieu of, such secured claim and

received by such Lender under any applicable bankruptcy, insolvency or other similar law) or otherwise, obtain payment in respect of its Loans as a result of which the unpaid portion of its Loans is proportionately less than the unpaid portion of Loans of any of the other Lenders (a) it shall promptly purchase at par (and shall be deemed to have thereupon purchased) from such other Lenders a participation in the Loans of such other Lenders, so that the aggregate unpaid principal amount of each of the Lender's Loans and its participation in Loans of the other Lenders shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loans prior to the obtaining of such payment was to the principal amount of all Loans outstanding prior to the obtaining of such payment, and (b) such other adjustments shall be made from time to time as shall be equitable to ensure that the Lenders share such payment pro rata. If all or any portion of such excess payment is thereafter recovered from the Lender which originally received such excess payment, such purchase (or portion thereof) shall be canceled and the purchase price restored to the extent of such recovery. The Credit Parties expressly consent to the foregoing arrangements and agree that any Lender or Lenders holding (or deemed to be holding) a participation in a Note may exercise any and all rights of banker's Lien, setoff or counterclaim with respect to any and all moneys owing by the Borrowers to such Lender or Lenders as fully as if such Lender or Lenders held a Note and was the original obligee thereon, in the amount of such participation.

SECTION 12.4. Notice to the Lenders. Upon receipt by the Administrative Agent from any of the Credit Parties of any communication calling for an action on the part of the Lenders, or upon notice to the Administrative Agent of any Event of Default, the Administrative Agent will in turn immediately inform the other Lenders in writing (which shall include facsimile communications) of the nature of such communication or of the Event of Default, as the case may be.

SECTION 12.5. Liability of the Administrative Agent.

(a) The Administrative Agent, when acting on behalf of the Lenders, may execute any of its duties under this Credit Agreement or the other Fundamental Documents by or through its officers, agents or employees and neither the Administrative Agent nor its officers, agents or employees shall be liable to the Lenders or any of them for any action taken or omitted to be taken in good faith, nor be responsible to the Lenders or to any of them for the consequences of any oversight or error of judgment, or for any loss, unless the same shall happen through its gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment. The Administrative Agent and its directors, officers, agents, and employees shall in no event be liable to the Lenders or to any of them for any action taken or omitted to be taken by it pursuant to instructions received by it from the Required Lenders or in reliance upon the advice of counsel selected by it with reasonable care. Without limiting the foregoing, neither the Administrative Agent nor any of its directors, officers, employees, or agents shall be responsible to any of the Lenders for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any statement, warranty, or representation in, or for the perfection of any security interest contemplated by, this

Credit Agreement, any other Fundamental Document or any related agreement, document or order, or for freedom of any of the Collateral or any of the Pledged Securities from prior Liens or security interests, or shall be required to ascertain or to make any inquiry concerning the performance or observance by the Borrowers or any other Credit Party of any of the terms, conditions, covenants, or agreements of this Credit Agreement, any other Fundamental Document, or any related agreement or document.

(b) None of the Administrative Agent (in its capacity as agent for the Lenders) or any of its directors, officers, employees or agents shall have any responsibility to the Borrowers or any other Credit Party on account of the failure or delay in performance or breach by any of the Lenders of any of such Lender's obligations under this Credit Agreement, the other Fundamental Documents or any related agreement or document or in connection herewith or therewith. No Lender nor any of its directors, officers, employees or agents shall have any responsibility to the Borrowers or any other Credit Party on account of the failure or delay in performance or breach by any other Lender of such other Lender's obligations under this Credit Agreement, the other Fundamental Documents or any related agreement or document or in connection herewith or therewith.

(c) The Administrative Agent, in its capacity as agent for the Lenders hereunder, shall be entitled to rely on any communication, instrument or document believed by it to be genuine or correct and to have been signed or sent by a Person or Persons believed by it to be the proper Person or Persons, and it shall be entitled to rely on advice of legal counsel, independent public accountants, and other professional advisers and experts selected by it with reasonable care.

SECTION 12.6. Reimbursement and Indemnification. Each of the Lenders agrees (i) to reimburse the Administrative Agent for such Lender's Pro Rata Share of any expenses and fees incurred for the benefit of the Lenders under the Fundamental Documents, including counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, and any other expense incurred in connection with the operations or enforcement thereof not reimbursed by or on behalf of the Borrowers and (ii) to indemnify and hold harmless the Administrative Agent and any of its directors, officers, employees, or agents, on demand, in accordance with such Lender's Percentage, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against, it or any of them in any way relating to or arising out of any of the Fundamental Documents or any related agreement or document, or any action taken or omitted by it or any of them under any Fundamental Documents or any related agreement or document, to the extent not reimbursed by or on behalf of the Borrowers or any Credit Party (except such as shall result from its gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment). To the extent indemnification payments made by the Lenders pursuant to this Section 12.6 are subsequently recovered by the Administrative

Agent from a Credit Party, the Administrative Agent will promptly refund such previously paid indemnity payments to the Lenders.

SECTION 12.7. Rights of Administrative Agent. It is understood and agreed that the Administrative Agent shall have the same duties, rights and powers as a Lender hereunder (including the right to give such instructions) as any of the other Lenders and may exercise such rights and powers, as well as its rights and powers under other agreements and instruments to which it is or may be party, and engage in other transactions with any Credit Party or Affiliate thereof, as though it were not the Administrative Agent of the Lenders under this Credit Agreement and the other Fundamental Documents.

SECTION 12.8. Independent Investigation by Lenders. Each of the Lenders acknowledges that it has decided to enter into this Credit Agreement and the other Fundamental Documents and to make the Loans hereunder based on its own analysis of the transactions contemplated hereby and of the creditworthiness of the Credit Parties and agrees that the Administrative Agent shall not bear any responsibility therefor.

SECTION 12.9. Agreement of Required Lenders. Except as set forth in Section 13.10 hereof, upon any occasion requiring or permitting an approval, consent, waiver, election or other action on the part of the Lenders, action shall be taken by the Administrative Agent for and on behalf of, or for the benefit of, all Lenders upon the direction of the Required Lenders and any such action shall be binding on all Lenders. No amendment, modification, consent or waiver shall be effective except in accordance with the provisions of Section 13.10 hereof.

SECTION 12.10. Notice of Transfer. The Administrative Agent may deem and treat any Lender which is a party to this Credit Agreement as the owner of such Lender's respective portions of the Loans for all purposes, unless and until a written notice of the assignment or transfer thereof executed by any such Lender shall have been received by the Administrative Agent and become effective in accordance with Section 13.3 hereof.

SECTION 12.11. Successor Administrative Agent. The Administrative Agent may resign at any time by giving ten (10) days' prior written notice thereof to the Lenders and the Borrowers, but such resignation shall not become effective until acceptance by a successor agent of its appointment pursuant hereto. Upon any such resignation, the retiring Administrative Agent shall consult with the Borrowers and promptly appoint a successor agent from among the Lenders; provided, that such replacement is reasonably acceptable (as evidenced in writing) to the Required Lenders and the Borrowers; provided, however, that such approval of the Borrowers shall not be required at any time when a Default or Event of Default is continuing. If no successor agent shall have been so appointed by the retiring Administrative Agent and shall have accepted such appointment, within thirty (30) days after the retiring agent's giving of notice of resignation, the Borrowers may appoint a successor agent; provided, that such successor is reasonably acceptable to the Required Lenders (as evidenced in writing), which shall be either a Lender, a "Qualified Institutional Buyer" (as defined in Rule 144A under the Securities Act of

1933) or a commercial bank organized under the laws of the United States of America or of any State thereof and shall have a combined capital and surplus of at least \$250,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor agent, such successor agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Credit Agreement, the other Fundamental Documents and any other credit documentation. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article 12 and Article 13 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Credit Agreement.

### **13. MISCELLANEOUS**

#### **SECTION 13.1. Notices.**

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, portable document format ("pdf"), tagged image file format ("TIFF") or other electronic format sent by electronic mail, as follows:

if to any Credit Party, to:

Alexander Gallo Holdings, LLC  
2700 Centennial Tower  
101 Marietta Street  
Atlanta, GA 30303  
Attention: Alexander Gallo  
Email: [agallo@alexandergalloholdings.com](mailto:agallo@alexandergalloholdings.com)  
Telephone: (877) 495-0777  
Fax No.: (404) 529-9299

Carl Marks Advisory Group LLC  
900 Third Avenue, 33rd Floor  
New York, NY 10022  
Attention: Mark L. Pfefferle  
Telephone: (212) 909-8441  
Email: [mpfefferle@carlmarks.com](mailto:mpfefferle@carlmarks.com)

Gordian Group, LLC  
950 Third Avenue, 17th Floor  
New York, NY 10022  
Attention: Peter S. Kaufmann

Email: psk@gordiangroup.com  
Telephone: (212) 486-3600  
Fax No.: (212) 486-3616

with a copy (which shall not constitute notice) to:

DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020  
Attention: Thomas R. Califano  
Email: thomas.califano@dlapiper.com  
Attention: Jeremy R. Johnson  
Email: jeremy.johnson@dlapiper.com  
Telephone: (212) 335-4540  
Fax No.: (212) 335-4501

if to the Administrative Agent, to:

Bayside Capital, Inc.  
1450 Brickell Avenue, 31st Floor  
Miami, Florida 33131  
Attention: Jackson Craig  
Email: jcraig@higcapital.com  
Attention: Adam Schimel  
Email: aschimel@higcapital.com

with a copy (which shall not constitute notice) to:

Dechert LLP  
1095 Avenue of the Americas  
New York, New York 10036  
Attention: Michael J. Sage  
Email: michael.sage@dechert.com  
Telephone: (212) 698-3503  
Attention: Scott M. Zimmerman  
Telephone: (212) 698-3613  
Fax No.: (212) 698-3599

if to any other Lender, to the address, telephone number, facsimile number or email address set forth on the signature pages hereto.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the

Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrowers may, each in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to all of the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Credit Agreement shall be deemed to have been given on the date of receipt.

SECTION 13.2. Survival of Agreement, Representations and Warranties, etc. All warranties, representations and covenants made by any of the Credit Parties herein, in any other Fundamental Document or in any certificate or other instrument delivered by it or on its behalf in connection with this Credit Agreement or any other Fundamental Document shall be considered to have been relied upon by the Administrative Agent and the Lenders and, except for any terminations, amendments, modifications or waivers thereof in accordance with the terms hereof, shall survive the making of the Loans herein contemplated and the execution and delivery to the Administrative Agent of the Notes regardless of any investigation made by the Administrative Agent or the Lenders or on their behalf and shall continue in full force and effect so long as any Obligation is outstanding and unpaid and so long as the Commitments have not been terminated. All statements in any such certificate or other instrument shall constitute representations and warranties by the Credit Parties hereunder.

SECTION 13.3. Successors and Assigns; Syndications; Loan Sales;

Participations.

(a) Whenever in this Credit Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; provided, however, that neither any Borrower nor any other Credit Party may assign its rights hereunder without the prior written consent of the Administrative Agent and all Lenders, and all covenants, promises and agreements by or on behalf of any of the Credit Parties which are contained in this Credit Agreement shall inure to the benefit of the successors and assigns of the Administrative Agent and the Lenders.

(b) Each of the Lenders may (but only with the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed) assign all or a portion of its interests, rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the same portion of all Loans at the time owing to it and the Notes held by it and its rights); provided, however, that (i) each assignment shall be of a constant, and not a varying, percentage of the assigning Lender's interests, rights and obligations under this Credit Agreement, (ii) each assignment shall be in a minimum Commitment amount



(or at any time after the Termination Date, minimum aggregate amount of Loans) equal to \$1,000,000; provided that such minimum amount shall not apply to assignments by any Lender with a Commitment of less than \$1,000,000 in the aggregate so long as the entirety of its remaining Commitment is being assigned in full, (iii) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register (as defined below), an Assignment and Assumption, together with the assigning Lender's original Note if one has been issued to the Lender pursuant to Section 2.2 and a processing and recordation fee of \$3,500 to be paid to the Administrative Agent by the assigning Lender or the assignee and (iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an "Administrative Questionnaire" in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrowers and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including federal and state securities laws. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Assumption, which effective date shall not (unless otherwise agreed to by the Administrative Agent) be earlier than five (5) Business Days after the date of acceptance and recording by the Administrative Agent, (x) the assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Assumption, have the rights and obligations of a Lender hereunder and under the other Fundamental Documents and shall be bound by the provisions hereof, and (y) the assigning Lender thereunder shall, to the extent provided in such Assignment and Assumption, relinquish its rights and be released from its obligations under this Credit Agreement except that, notwithstanding such assignment, any rights and remedies available to the Borrowers for any breaches by such assigning Lender of its obligations hereunder while a Lender shall be preserved after such assignment and such Lender shall not be relieved of any liability to the Borrowers due to any such breach. In the case of an Assignment and Assumption covering all or the remaining portion of the assigning Lender's rights and obligations under this Credit Agreement, such assigning Lender shall cease to be a party hereto.

(c) Any assignment to (i) any Affiliate of the assigning Lender, (ii) a Person, or Affiliate of a Person, that manages a Lender (a "Related Fund"), or (iii) any other Lender hereunder, shall not be subject to the requirement of Section 13.3(b)(ii) that the amount of the Commitment (or Loans if applicable) of the assigning Lender subject to each assignment be in a minimum principal amount of \$1,000,000, and any such assignment to any Affiliate of the assigning Lender shall not release the assigning Lender of its remaining obligations hereunder, if any. Notwithstanding any provision herein otherwise requiring the consent of the Administrative Agent, each Lender may at any time make an assignment of its interests, rights and obligations under this Credit Agreement without the consent of the Administrative Agent in the case of assignments of its interests, rights and obligations under the Facility to any Eligible Assignee that is a Related Fund of an existing Lender.

(d) By executing and delivering an Assignment and Assumption, the assigning Lender thereunder and the assignee thereunder confirm to and agree with each other

and the other parties hereto as follows: (i) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned thereby and that such interest is free and clear of any adverse claim, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Credit Agreement or any other Fundamental Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Fundamental Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) such assignor Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Credit Party or the performance or observance by any Credit Party of any of their obligations under the Fundamental Documents or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Sections 5.1(a) and 5.1(b) (if such financial statements shall have theretofore been delivered) and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (iv) such assignee agrees that it will, independently and without reliance upon the assigning Lender, the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Credit Agreement or any other Fundamental Document; (v) such assignee appoints and authorizes the Administrative Agent to take such action as the agent on its behalf and to exercise such powers under this Credit Agreement as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto; and (vi) such assignee agrees that it will be bound by the provisions of this Credit Agreement and will perform in accordance with their terms all of the obligations which by the terms of this Credit Agreement are required to be performed by it as a Lender.

(e) The Administrative Agent (acting for this purpose on behalf of the Borrowers) shall maintain at its address at which notices are to be given to it pursuant to Section 13.1 a copy of each Assignment and Assumption and a register for the recordation of the names and addresses of the Lenders and the Commitments of, and principal amount and stated interest of the Loans owing to, each Lender from time to time (the "Register"). The entries in the Register shall be conclusive, in the absence of manifest error, and the Credit Parties, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of the Fundamental Documents. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register. The Register shall be available for inspection by any Credit Party or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(f) Subject to the foregoing, upon its receipt of an Assignment and Assumption executed by an assigning Lender and an assignee together with the assigning Lender's original Notes, if applicable, and the processing and recordation fee, the Administrative Agent shall, if such Assignment and Assumption has been completed and is in the form of

Exhibit G, (i) accept such Assignment and Assumption and (ii) record the information contained therein in the Register. Within five (5) Business Days after receipt of the notice and upon the request of the assignee, the Borrowers, at their own expense, shall execute and deliver to the Administrative Agent, in exchange for the surrendered Note (if any), a new Note payable to such assignee in an amount equal to the Commitment assumed by it pursuant to such Assignment and Assumption and if the assigning Lender has retained a Commitment hereunder and so requests, a new Note payable to the assigning Lender in an amount equal to the Commitment retained by it hereunder. Any such new Notes shall be in an aggregate principal amount equal to the aggregate principal amount of the surrendered Note, if any, and shall otherwise be in form and substance reasonably satisfactory to such assignee. In addition the Credit Parties will promptly, at their own expense, execute such amendments to the Fundamental Documents to which each is a party and such additional documents, and take such other actions as the Administrative Agent or the assignee Lender may reasonably request in order to give such assignee Lender the full benefit of the Liens contemplated by the Fundamental Documents.

(g) Each of the Lenders may, without the consent of any of the Credit Parties, the Administrative Agent or the other Lenders, sell participations to one or more banks or other entities in all or a portion of its rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the Loans owing to it and the Note, if any, held by it); provided, however, that (i) such Lender's obligations under this Credit Agreement shall remain unchanged, (ii) such participant shall not be granted any voting rights or any right to control the vote of such Lender under this Credit Agreement, except with respect to proposed reductions in interest rates or fees, extensions of final maturity or scheduled amortization of any Loan, releases of all or substantially all the Collateral and fees (in each case, only as applicable to such participant), (iii) any such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iv) the participating banks or other entities shall be entitled to the cost protection provisions contained in Section 2.9 (subject to the last sentence of this Section 13.3(g)) and Section 13.8, but a participant shall not be entitled to receive pursuant to such provisions an amount larger than its share of the amount to which the Lender granting such participation would have been entitled to receive, and (v) the Credit Parties, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's and its participants' rights and obligations under this Credit Agreement. No holder of a participating interest shall be entitled to the benefits of Section 2.9 unless the Borrowers are notified of the participation sold to such holder and such holder agrees, for the benefit of the Borrowers, to comply with Section 2.9 as though it were a Lender.

(h) A Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 13.3, disclose to the assignee or participant or proposed assignee or participant, any information relating to any Credit Party furnished to the Administrative Agent or such Lender by or on behalf of the Borrowers or another Credit Party (provided that such proposed assignee or participant agrees to hold such information confidential in accordance with Section 13.18).

(i) Any assignment pursuant to paragraph (b) or (c) of this Section 13.3 shall constitute an amendment of the Schedule of Commitments as of the effective date of such assignment without any other further action required.

(j) The Credit Parties consent that any Lender may at any time and from time to time pledge or otherwise grant a security interest in any Loan or in any Note evidencing the Loans (or any part thereof) to (i) any Federal Reserve Bank or (ii) in the case of any Lender that is not a commercial bank, savings and loan association or savings bank, to any holders of obligations owed, or securities issued, by such Lender including to any trustee for, or any other representative of, such holders; and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or grant of security interest under this Section 13.3(j) shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**SECTION 13.4. Expenses; Documentary Taxes.** Whether or not the transactions hereby contemplated shall be consummated, the Borrowers agree to pay (i) all expenses incurred by the Administrative Agent in connection with, or arising out of, the performance of due diligence, the syndication of the credit facility contemplated hereby, the negotiation, preparation, execution, delivery, waiver or modification and administration of this Credit Agreement and any other documentation contemplated hereby, the making of the Loans, the Collateral, the Pledged Securities or any Fundamental Document, including the costs and internally allocated charges of audit or field examinations of the Administrative Agent in connection with the administration of this Credit Agreement and the fees and disbursements of counsel for the Administrative Agent (and any agents or advisors retained by any such counsel) and the fees and expenses of any other advisor retained by the Administrative Agent or its counsel (it being understood that reasonable efforts will be made to minimize unnecessary duplication of services), and (ii) all expenses incurred by the Administrative Agent or the Lenders in the enforcement or protection (as distinguished from administration) and preservation of rights under the Fundamental Documents (including by way of a refinancing or restructuring of the Facility) of the rights and remedies of the Lenders in connection with this Credit Agreement, the Notes or the other Fundamental Documents, or as a result of any transaction, action or non-action arising from any of the foregoing, including the fees and disbursements of counsel for the Administrative Agent or the Lenders. Such payments shall be made on the date this Credit Agreement is executed by the Borrowers and thereafter on demand. Any invoices prepared or provided by the Administrative Agent or any Lender for purposes of this Agreement or any other Fundamental Document shall be in summary form and shall not be required to include time entries for individual attorneys or consultants or specific expense items. Notwithstanding any provision to the contrary, the Borrowers' obligations under this Section 13.4 shall not be duplicative of any amounts paid by Borrowers under any other provision of this Credit Agreement or agreed by the Borrowers and the Administrative Agent for expenses accrued prior to the Closing Date. The obligations of the Borrowers under this Section shall survive the termination of this Credit Agreement and the indefeasible payment in full of the Obligations.

SECTION 13.5. Indemnity. The Credit Parties agree (a) to indemnify and hold harmless the Administrative Agent and the Lenders, their affiliates and their respective directors, officers, employees, controlling persons, advisors and agents (each an "Indemnified Party") (to the full extent permitted by Applicable Law) from and against any and all demands, losses, claims, damages, liabilities or related out-of-pocket expenses (including liabilities for penalties and fees, disbursements and other charges of counsel) incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding (whether or not any Lender or the Administrative Agent is a party thereto) related to the entering into and/or performance of any Fundamental Document or the use of the proceeds of any Loans hereunder or the consummation of the transaction contemplated in any Fundamental Document or the exercise of remedies thereunder (but excluding any such losses, liabilities, claims, damages or expenses of an Indemnified Party to the extent incurred by reason of the gross negligence or willful misconduct of such Indemnified Party as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment). If any proceeding, including any governmental investigation, shall be instituted involving any Indemnified Party, in respect of which indemnity may be sought against the Credit Parties, such Indemnified Party shall promptly notify the Borrowers in writing. The foregoing indemnity agreement includes any costs incurred by an Indemnified Party in connection with any action or proceeding in connection with which any officer or employee of the Administrative Agent or the Lenders is called as a witness or deponent, including, but not limited to, the fees and disbursements of counsel to the Administrative Agent and any costs incurred by the Administrative Agent or the Lenders in appearing as a witness or in otherwise complying with legal process served upon them. The obligations of the Borrowers under this Section shall survive the termination of this Credit Agreement and the indefeasible payment in full of the Obligations and shall inure to the benefit of any Lender and its associated Indemnified Parties notwithstanding the assignment by such Lender of all of its Loans and Commitments hereunder.

If a Credit Party shall fail to do any act or thing which it has covenanted to do hereunder or under a Fundamental Document which failure would cause a Default or Event of Default to occur hereunder, or any representation or warranty of a Credit Party shall be breached, the Administrative Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach and there shall be added to the Obligations hereunder the cost or expense incurred by the Administrative Agent in so doing, and any and all amounts expended by the Administrative Agent in taking any such action shall be repayable to it upon its demand therefor and shall bear interest at a rate per annum of 2% in excess of the rate then in effect for the Loans from the date advanced to the date of repayment.

SECTION 13.6. CHOICE OF LAW. THIS CREDIT AGREEMENT AND THE FUNDAMENTAL DOCUMENTS SHALL IN ALL RESPECTS BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WHICH ARE APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED WHOLLY WITHIN SUCH STATE AND, IN THE CASE OF PROVISIONS RELATING TO

INTEREST RATES, ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

SECTION 13.7. WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH CREDIT PARTY HEREBY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS CREDIT AGREEMENT, THE SUBJECT MATTER HEREOF, ANY OTHER FUNDAMENTAL DOCUMENT OR THE SUBJECT MATTER THEREOF, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE. EACH CREDIT PARTY ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THE PROVISIONS OF THIS SECTION 13.7 CONSTITUTE A MATERIAL INDUCEMENT UPON WHICH SUCH OTHER PARTIES HAVE RELIED, ARE RELYING AND WILL RELY IN ENTERING INTO THIS CREDIT AGREEMENT AND ANY OTHER FUNDAMENTAL DOCUMENT. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 13.7 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF ANY CREDIT PARTY TO THE WAIVER OF ITS RIGHTS TO TRIAL BY JURY.

SECTION 13.8. WAIVER WITH RESPECT TO DAMAGES. EACH CREDIT PARTY ACKNOWLEDGES THAT NEITHER THE ADMINISTRATIVE AGENT NOR ANY LENDER HAS ANY FIDUCIARY RELATIONSHIP WITH, OR FIDUCIARY DUTY TO, ANY CREDIT PARTY ARISING OUT OF OR IN CONNECTION WITH THIS CREDIT AGREEMENT OR ANY OTHER FUNDAMENTAL DOCUMENT AND THE RELATIONSHIP BETWEEN THE ADMINISTRATIVE AGENT AND THE LENDERS, ON THE ONE HAND, AND THE CREDIT PARTIES, ON THE OTHER HAND, IN CONNECTION THEREWITH IS SOLELY THAT OF DEBTOR AND CREDITOR. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NO CREDIT PARTY SHALL ASSERT, AND EACH CREDIT PARTY HEREBY WAIVES, ANY CLAIMS AGAINST THE ADMINISTRATIVE AGENT AND THE LENDERS ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS CREDIT AGREEMENT, ANY FUNDAMENTAL DOCUMENT, ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 13.9. No Waiver. No failure on the part of the Administrative Agent or any Lender to exercise, and no delay in exercising, any right, power or remedy hereunder, under the Notes, the Orders or any other Fundamental Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any

other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

SECTION 13.10. Amendments, etc.

(a) No modification, amendment or waiver of any provision of this Credit Agreement or any Fundamental Document (except to the extent expressly contemplated herein or therein) and no consent to any departure by a Credit Party herefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders and the Administrative Agent, and acknowledged and agreed to by the Borrowers and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that (A) no such modification, amendment, waiver or consent shall, without the written consent of all Lenders, (i) amend or modify any provision of this Credit Agreement which provides for the unanimous consent or approval of the Lenders, (ii) release any portion of the Collateral with a fair market value in excess of \$100,000 or any portion of the Pledged Securities (except as explicitly contemplated herein) or release any Guarantor from its obligations hereunder (except as contemplated herein), (iii) subordinate the Obligations hereunder to other Indebtedness or subordinate the security interests of the Administrative Agent in any portion of the Collateral with a fair market value in excess of \$100,000, except as permitted by Section 12.1, (iv) amend the definition of “Required Lenders” to decrease the percentages of Lenders referred to therein, (v) amend or modify the superpriority claim status of the Lenders contemplated by Section 2.11 in any material respect or (vi) amend or modify this Section 13.10(a), (B) no such modification, amendment, waiver or consent shall (i) increase the Commitment of any Lender or (ii) alter the final scheduled maturity or principal amount of any Loan, or decrease the rate of interest payable thereon (including default interest), or decrease the rate at which the Commitment Fees accrue, or delay the fixed scheduled maturity of any payment required to be made under this Credit Agreement, in each case, without the written consent of each Lender so affected, (C) no such modification, amendment, waiver or consent shall amend Sections 2.1 or 2.2 hereof without the written consent of the Administrative Agent and (D) no such modification, amendment, waiver or consent shall amend or modify the provisions of Section 2.14 or the definition of “Defaulting Lender” without the prior written consent of the Administrative Agent and all Lenders. No such amendment or modification may adversely affect the rights and obligations of the Administrative Agent hereunder without its prior written consent. No notice to or demand on any of the Credit Parties shall entitle such Credit Party to any other or further notice or demand in the same, similar or other circumstances. Each holder of a Note shall be bound by any amendment, modification, waiver or consent authorized as provided herein, whether or not such Note shall have been marked to indicate such amendment, modification, waiver or consent and any consent by any holder of such Note shall bind any Person subsequently acquiring such Note, whether or not such Note is so marked.

(b) If any Lender (i) requests compensation under Section 2.9 or (ii) becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort and upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without

recourse (in accordance with and subject to the restrictions contained in Section 13.3), all of its interests, rights and obligations under this Credit Agreement to another Lender or an Eligible Assignee which shall assume such obligations and which accepts such assignment; provided that (a) the Borrowers shall have received the prior written consent of the Administrative Agent in its sole and absolute discretion, (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts then payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.9, such assignment will result in a reduction in such compensation thereafter. No Lender shall be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

SECTION 13.11. Severability. Any provision of this Credit Agreement or any other Fundamental Document which is invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating the remaining provisions hereof, and any such invalidity, illegality or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 13.12. SERVICE OF PROCESS; SUBMISSION TO JURISDICTION. EACH CREDIT PARTY (EACH, A “SUBMITTING PARTY”) HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND TO THE SUPREME COURT OF THE STATE OF NEW YORK AND TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF OR BASED UPON THIS CREDIT AGREEMENT, THE SUBJECT MATTER HEREOF, ANY OTHER FUNDAMENTAL DOCUMENT AND THE SUBJECT MATTER THEREOF. EACH SUBMITTING PARTY TO THE EXTENT PERMITTED BY APPLICABLE LAW (A) HEREBY WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN THE ABOVE-NAMED COURTS, ANY CLAIM THAT IT IS NOT SUBJECT PERSONALLY TO THE JURISDICTION OF SUCH COURTS, THAT ITS PROPERTY IS EXEMPT OR IMMUNE FROM ATTACHMENT OR EXECUTION, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER OR THAT THIS CREDIT AGREEMENT, THE SUBJECT MATTER HEREOF, THE OTHER FUNDAMENTAL DOCUMENTS OR THE SUBJECT MATTER THEREOF (AS APPLICABLE) MAY NOT BE ENFORCED IN OR BY SUCH COURT, (B) HEREBY WAIVES THE RIGHT TO REMOVE ANY SUCH ACTION, SUIT OR PROCEEDING INSTITUTED BY THE ADMINISTRATIVE AGENT OR A LENDER IN



STATE COURT TO FEDERAL COURT, AND (C) HEREBY WAIVES THE RIGHT TO ASSERT IN ANY SUCH ACTION, SUIT OR PROCEEDING ANY OFFSETS OR COUNTERCLAIMS EXCEPT COUNTERCLAIMS THAT ARE COMPULSORY OR OTHERWISE ARISE FROM THE SAME SUBJECT MATTER. EACH SUBMITTING PARTY HEREBY CONSENTS TO SERVICE OF PROCESS BY MAIL AT THE ADDRESS TO WHICH NOTICES ARE TO BE GIVEN TO IT PURSUANT TO SECTION 13.1 HEREOF. EACH SUBMITTING PARTY AGREES THAT ITS SUBMISSION TO JURISDICTION AND CONSENT TO SERVICE OF PROCESS BY MAIL IS MADE FOR THE EXPRESS BENEFIT OF EACH OF THE OTHER SUBMITTING PARTIES. FINAL JUDGMENT AGAINST ANY SUBMITTING PARTY IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE, AND MAY BE ENFORCED IN ANY OTHER JURISDICTION (X) BY SUIT, ACTION OR PROCEEDING ON THE JUDGMENT, A CERTIFIED OR TRUE COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND OF THE AMOUNT OF INDEBTEDNESS OR LIABILITY OF THE SUBMITTING PARTY THEREIN DESCRIBED, OR (Y) IN ANY OTHER MANNER PROVIDED BY OR PURSUANT TO THE LAWS OF SUCH OTHER JURISDICTION; PROVIDED, HOWEVER, THAT THE ADMINISTRATIVE AGENT OR A LENDER MAY AT ITS OPTION BRING SUIT, OR INSTITUTE OTHER JUDICIAL PROCEEDINGS AGAINST A SUBMITTING PARTY OR ANY OF ITS ASSETS IN ANY STATE OR FEDERAL COURT OF THE UNITED STATES OF AMERICA OR OF ANY COUNTRY OR PLACE WHERE THE SUBMITTING PARTY OR SUCH ASSETS MAY BE FOUND.

SECTION 13.13. Headings. Section headings used herein and the Table of Contents are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Credit Agreement.

SECTION 13.14. Execution in Counterparts. This Credit Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Credit Agreement by electronic transmission shall be equally effective as delivery of a manually executed counterpart of this Credit Agreement. Any party delivering an executed counterpart of this Credit Agreement by electronic transmission shall also deliver a manually executed counterpart of this Credit Agreement, but failure to do so shall not affect the validity, enforceability or binding effect of this Credit Agreement, and the parties hereby waive any right they may have to object to such treatment.

SECTION 13.15. Subordination of Intercompany Indebtedness, Receivables and Advances.

(a) Each Credit Party hereby agrees that any intercompany Indebtedness or other intercompany receivables or intercompany advances of any other Credit Party, directly or indirectly, in favor of such Credit Party of whatever nature at any time outstanding shall be completely subordinate in right of payment to the prior indefeasible payment in full in cash of

the Obligations, and that, upon the occurrence of an Event of Default, no payment on any such Indebtedness, receivable or advance shall be made without the prior written consent of the Administrative Agent.

(b) In the event that any payment on any such Indebtedness shall be received by such Credit Party other than as permitted by Section 13.15(a) prior to the indefeasible payment in full in cash of all Obligations and termination of the Commitments, such Credit Party shall receive such payments and hold the same in trust for, segregate the same from its own assets and shall immediately pay such amounts over to, the Administrative Agent on behalf of itself and the Lenders.

SECTION 13.16. USA Patriot Act. Each Lender hereby notifies the Borrowers that, pursuant to the requirements of the USA Patriot Act or similar foreign statutory requirements, it is required to obtain, verify and record information that identifies the Borrowers, which information includes, among other things the names and addresses of the Borrowers, certified copies of a current passport or driving license of the directors of the Borrowers, certified copies of utility bills of the Borrowers, local authority tax bill or building account statement for the main directors of the Borrowers, copies of resolutions authorizing the Borrowers to open accounts and details of principal directors, signatories and shareholders of the Borrowers and other information that will allow such Lender to identify the Borrowers in accordance with the USA Patriot Act or such similar foreign statutory requirements.

SECTION 13.17. Entire Agreement. This Credit Agreement (including the Exhibits and Schedules hereto) represents the entire agreement of the parties with regard to the subject matter hereof and the terms of any letters and other documentation entered into between any of the parties hereto (other than fee letters) prior to the execution of this Credit Agreement which relate to Loans to be made hereunder shall be replaced by the terms of this Credit Agreement.

SECTION 13.18. Confidentiality.

(a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to 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 confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by Applicable Laws or by any subpoena or similar legal process, (d) to any other party to this Credit Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Credit Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Credit Agreement, or (ii) any actual or prospective

counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) with the consent of the Borrowers, or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than a Credit Party. For the purposes of this Section, “Information” means all information received from any Credit Party relating to any Credit Party or its business, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by such Credit Party; provided that, in the case of information received from a Credit Party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. This Section 13.18 shall replace in its entirety any confidentiality agreements entered into by the Borrowers and the Credit Parties with the Administrative Agent and the Lenders hereto prior to the Closing Date.

(b) Each Lender acknowledges that Information furnished to it pursuant to this Credit Agreement may include material non-public Information concerning the Borrowers and its 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 Law, including federal and state securities laws.

SECTION 13.19. Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by any Credit Party or the transfer to the Lenders of any property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors’ rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (collectively, a “Voidable Transfer”), and if the Lenders are required to repay or restore, in whole or in part, any such Voidable Transfer, or elect to do so upon the reasonable advice of their counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lenders are required or elect to repay or restore, and as to all costs, expenses, and attorneys fees of the Lenders, the Obligations shall automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

SECTION 13.20. Interpretation. This Credit Agreement and the other Fundamental Documents are the result of negotiations among the Administrative Agent, the Lenders, the Borrowers and the other Credit Parties hereto and thereto, have been reviewed (or have had the opportunity to be reviewed) by counsel to all such parties and are the products of all parties. Accordingly, this Credit Agreement and the other Fundamental Documents shall not be construed more strictly against the Lenders merely because of the Lenders’ involvement in their preparation.

SECTION 13.21. Effectiveness. This Credit Agreement shall become effective on the date on which all of the parties have signed a copy hereof (whether the same or different copies) and shall have delivered the same to the Administrative Agent. For purposes of determining compliance with the conditions precedent specified in Section 4.1, each Lender that has signed this Credit Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required herein to be consented to or approved by or acceptable or satisfactory to such Lender.

[Signature Pages Follow]

## **EXHIBIT B**

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**DEBTOR-IN-POSSESSION CREDIT, SECURITY, PLEDGE  
AND GUARANTY AGREEMENT**

Dated as of September 22, 2011

among

**ALEXANDER GALLO HOLDINGS, LLC**

a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code

and

**THE HOBART WEST GROUP, INC.**

a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code

as Borrowers,

**THE GUARANTORS REFERRED TO HEREIN**

**THE LENDERS REFERRED TO HEREIN**

and

**BAYSIDE GALLO RECOVERY, LLC,**

as Administrative Agent

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**DEBTOR IN POSSESSION CREDIT, SECURITY, PLEDGE AND GUARANTY AGREEMENT**, dated as of September 22, 2011 (as amended, supplemented or otherwise modified, renewed or replaced from time to time, this “Credit Agreement”) among (i) **ALEXANDER GALLO HOLDINGS, LLC**, a Georgia limited liability company (“AGH”), and **THE HOBART WEST GROUP, INC.**, a Delaware corporation (“Hobart West”), as Borrowers, each of which is a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (such cases, together, the “Borrowers’ Cases”), (ii) the **GUARANTORS** referred to herein, each of which (other than the Parent Entity) is a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (such cases, the “Guarantors’ Cases”, and together with the Borrowers’ Cases, the “Cases”), (iii) the **LENDERS** referred to herein and (iv) **BAYSIDE GALLO RECOVERY, LLC**, as Administrative Agent.

### INTRODUCTORY STATEMENT

Terms not otherwise defined above or in this Introductory Statement are as defined in Article 1 hereof or as defined elsewhere herein.

On September 7, 2011, the Borrowers and each of the Guarantors (other than the Parent Entity) filed voluntary petitions with the Bankruptcy Court under Chapter 11 of the Bankruptcy Code initiating the Cases and have continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code.

Prior to the Filing Date, (a) various financial institutions provided financings (the “Existing First Lien Facilities”) to AGH pursuant to that certain Credit Agreement, dated as of November 30, 2007, as amended, restated, supplemented or otherwise modified from time to time, among AGH, the lenders party thereto (the “Existing First Lien Lenders”) and Wells Fargo Bank, National Association, as administrative agent (in such capacity, the “Existing First Lien Agent”), (b) various financial institutions provided additional financings (the “Existing Second Lien Facilities” and, together with the Existing First Lien Facilities, the “Existing Facilities”) to AGH pursuant to that certain Second Amended and Restated Note Purchase Agreement, dated as of November 30, 2007, as amended, supplemented, modified, restated or replaced from time to time, among AGH, the guarantors identified therein and Grace Bay Holdings II, LLC (“Existing Purchaser”), (c) various financial institutions provided additional financings (the “Existing Winston Notes”) to AGH pursuant to that certain Contribution and Subscription Agreement, dated as of September 22, 2008, as amended, restated, supplemented or otherwise modified from time to time, among AGH, Winston Noteholders, LLC, Harvest Equity Partners, LLC and the other parties thereto from time to time and (d) various financial institutions provide additional financings (the “Existing AKKR Notes”) to AGH pursuant to that certain Note Purchase Agreement, dated as of September 22, 2008, as amended, restated, supplemented or otherwise modified from time to time, among AGH and Gallo Holdings, LLC.

The Borrowers have requested that the Lenders provide a senior subordinated secured revolving credit facility in an aggregate principal amount of up to \$20,000,000 as set

forth herein, all of the Borrowers' obligations under which will be guaranteed by the Guarantors (the "Facility").

The proceeds of the Loans will be used for general working capital purposes of the Debtors and to pay the fees and expenses of the Debtors incurred in connection with the Cases and the transactions contemplated by this Credit Agreement, in each case in accordance with the Budget and Section 5.13 of this Credit Agreement.

To provide assurance for the repayment of the Loans and the other Obligations of the Borrowers hereunder, the Borrowers will, among other things, provide or cause to be provided to the Administrative Agent, for the benefit of itself and the Lenders, the following (in each case subject to the applicable Order and the security interest priorities set forth therein and as more fully described herein):

- (i) a security interest in the Collateral from each of the Credit Parties pursuant to Article 8;
- (ii) a guaranty of the Obligations by each of the Guarantors pursuant to Article 9; and
- (iii) a pledge by each of the Pledgors of the Pledged Securities owned by it pursuant to Article 10.

Subject to the terms and conditions set forth herein, the Administrative Agent is willing to act as agent for the Lenders and each Lender is willing to make Loans to the Borrowers, each as provided herein, in an aggregate principal amount at any one time outstanding not in excess of its Commitment hereunder.

Accordingly, the parties hereto hereby agree as follows:

## **1. DEFINITIONS**

SECTION 1.1. Definitions. For the purposes hereof unless the context otherwise requires, all Section references herein shall be deemed to correspond with Sections herein, the following terms shall have the meanings indicated, all accounting terms not otherwise defined herein shall have the respective meanings accorded to them under GAAP and all terms defined in the UCC and not otherwise defined herein shall have the respective meanings accorded to them therein and if defined in more than one article of the UCC, shall have the meaning set forth in Article 9 thereof. Unless the context otherwise requires, any of the following terms may be used in the singular or the plural, depending on the reference:

"Account Control Agreement" shall mean an account control agreement in form and substance reasonably satisfactory to the Administrative Agent.



“Additional Credit” shall have the meaning given to such term in Section 4.2(e).

“Administrative Agent” shall mean Bayside Gallo Recovery, LLC, in its capacity as agent for the Lenders hereunder, and together with its Affiliates, or such successor Administrative Agent as may be appointed pursuant to Section 12.11 hereof.

“Affiliate” shall mean any Person, which, directly or indirectly, is in control of, is controlled by, or is under common control with, another Person. For purposes of this definition, (w) a Person shall be deemed to be “controlled by” another Person if such latter Person possesses, directly or indirectly, power either to direct or cause the direction of the management and policies of such controlled Person whether by contract or otherwise; (x) the term “Affiliate” shall include any Person that possesses, directly or indirectly, the power to vote five percent (5%) or more of the Equity Interests having ordinary voting power for the election of the Governing Body of such Person; and (y) none of the Administrative Agent, any Lender or any of their respective Affiliates shall be considered an Affiliate of any Credit Party.

“AGH” shall have the meaning given to such term in the initial paragraph of this Credit Agreement.

“Alternative Transaction” shall mean (a) any sale of all or substantially all of the assets of the Credit Parties pursuant to section 363 of the Bankruptcy Code or otherwise or (b) any financing, restructuring, plan of reorganization, plan of liquidation or other similar restructuring arrangement, in each case, other than the Bayside Sale.

“Applicable Law” shall mean all provisions of statutes, rules, regulations and orders of the United States of America, any state thereof or municipality therein or of any foreign governmental body or of any regulatory agency applicable to the Person in question, and all orders and decrees of all courts and arbitrators in proceedings or actions in which the Person in question is a party.

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

“Assignment and Assumption” shall mean an agreement substantially in the form of Exhibit G hereto, executed by the assignor, assignee and other parties as contemplated thereby.

“Authorized Officer” shall mean, with respect to any Person, any one of its Chairman, Chief Executive Officer, President, Chief Financial Officer (or Executive Vice President, Finance if no Chief Financial Officer is then utilized), Chief Restructuring Officer,

Chief Operating Officer, Executive Vice President of Finance or Senior Vice President of Finance.

“Bankruptcy Code” shall mean the Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, as codified at 11 U.S.C. § 101 et seq.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of New York or any other United States federal court having jurisdiction over the Cases.

~~“Baseline Cash Flow Projections” shall mean the Initial Cash Flow Projections and each Cash Flow Projections that are delivered pursuant to Section 5.1(i) the fourth week after delivery of the prior Baseline Cash Flow Projections.~~

“Bayside Sale” shall mean a sale of all or substantially all of the assets of the Credit Parties pursuant to section 363 of the Bankruptcy Code to the Administrative Agent or an Affiliate thereof as a stalking horse bidder as set forth in the Sale Motion.

“Board” shall mean the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” or “Borrowers” shall mean AGH and Hobart West, individually or collectively as the context requires.

“Borrowing” shall mean an advance of a Loan by the Lenders in accordance with Article 2.

“Borrowing Certificate” shall mean a borrowing certificate, substantially in the form of Exhibit E hereto, to be delivered by the Borrowers to the Administrative Agent in connection with each Borrowing.

“Budget” shall have the meaning given to such term in Section 4.1(o).

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks are required or permitted to close in the State of New York.

“Business Plan” shall mean the business plan for the Credit Parties, to be delivered to the Administrative Agent prior to December 31, 2011, in form and substance satisfactory to the Administrative Agent in its sole discretion, and containing forecasted financial statements consisting of balance sheets, cash flow statements and income statements, with supporting detail and underlying assumptions, together with management commentary on such assumptions, all covering an eighteen (18) month period commencing with the date of the entry of the Interim Order, as may be updated, supplemented or amended from time to time with the consent of the Administrative Agent.

“Capital Expenditures” shall mean, with respect to any Person for any period, the aggregate of all expenditures (whether paid in cash or accrued as a liability) by such Person during that period which, in accordance with GAAP, are required to be included in “additions to property, plant or equipment” or similar items included in cash flows (including Capital Leases).

“Capital Lease”, as applied to any Person, shall mean any lease of any property (whether real, personal or mixed) by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

“Carve-Out” shall have the meaning set forth in the applicable Order.

“Cases” shall have the meaning set forth in the initial paragraph of this Credit Agreement.

“Cash Collateral Orders” shall mean the orders of the Bankruptcy Court (a) authorizing the use of cash collateral in which the lenders under the Existing Facilities have an interest and (b) granting adequate protection to such lenders, which orders shall be in form and substance satisfactory to the Administrative Agent.

“Cash Equivalents” shall mean: (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof; (b) investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s; (c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$1,000,000,000 or that it is a Lender; (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; (e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P or Aaa by Moody’s, and (iii) have portfolio assets of at least \$1,000,000,000; and (f) direct obligations of any State of the United States of America (or by any subdivision thereof to the extent such obligations are backed by the full faith and credit of such State), in each case, (i) maturing within one year from the date of acquisition thereof, and (ii) rated AAA by S&P or Aaa by Moody’s.

“Cash Flow ~~Projection~~Projections” shall have the meaning set forth in Section 5.1(i) hereof.

“Change in Control” shall mean: (i) a majority of the members of the Governing Body of the Borrowers are not Continuing Directors, (ii) Alexander Gallo shall at any time cease to own and control, directly or indirectly, at least one hundred percent (100%) of the issued and outstanding Equity Interests of the Parent Entity, (iii) the Parent Entity shall at any time cease to (x) own and control, directly or indirectly, at least one hundred percent (100%) of the issued and outstanding Equity Interests of AGH on a fully-diluted basis, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2) or (y) have and exercise the right, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2), to directly elect a majority of the members of the Governing Body of AGH; (iv) AGH shall at any time cease to (x) own and control, directly or indirectly, at least fifty nine and fifty two hundredths percent (59.52%) of the issued and outstanding common Equity Interests of Hobart West on a fully-diluted basis, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2) or (y) have and exercise the right, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2), to directly elect a majority of the members of the Governing Body of Hobart West; or (v) other than AGH solely with respect to its ownership of Hobart West and of Alexander Gallo Management, LLC, the Borrowers shall collectively at any time cease to own and control, directly or indirectly, one hundred percent (100%) of the issued and outstanding Equity Interests of each of their respective Subsidiaries, free and clear of all Liens (other than Permitted Encumbrances of the type described in clause (a) or clause (c) of Section 6.2).

“Change in Law” shall mean (a) the adoption of any law, rule or regulation after the date of this Credit Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Credit Agreement or (c) compliance by any Lender with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Credit Agreement.

“Closing Date” shall mean the date on which each of the conditions precedent to the initial extension of credit under this Credit Agreement set forth in Section 4.1 hereof have been satisfied in full.

“Code” shall mean the Internal Revenue Code of 1986 and the rules and regulations issued thereunder, as now and hereafter in effect, as codified at 26 U.S.C. § 1 et seq. or any successor provision thereto.

“Collateral” shall have the meaning set forth in Section 8.1.

“Commitment” shall mean the commitment of each Lender to make Loans from the Initial Date applicable to such Lender through the Termination Date up to an amount at any one time outstanding not in excess of the amount set forth (i) opposite its name under the column entitled “Commitment” in the Schedule of Commitments or (ii) in any applicable Assignment

and Assumption(s) to which it may be a party, as the case may be, as such amount may be reduced from time to time in accordance with the terms of this Credit Agreement.

“Commitment Fees” shall have the meaning given to such term in Section 2.4(a) hereof.

“Compliance Certificate” shall mean a certificate substantially in the form of Exhibit J hereto, which shall reflect compliance by the Credit Parties with the covenants set forth in Section 5.17 for the relevant period covered thereby and which shall be supported by such detail as shall be reasonably acceptable to the Administrative Agent.

“Consolidated Subsidiaries” shall mean all Subsidiaries of a Person which are required or permitted to be consolidated with such Person for financial reporting purposes in accordance with GAAP.

“Continuing Director” shall mean, as of any date of determination, each member of the Governing Body of each Borrower who (a) was a member of such Governing Body on the Filing Date, or (b) was endorsed for election or elected to such Governing Body with the approval of a majority of the Continuing Directors who were members of such Governing Body at the time of such nomination or election.

“Controlled Foreign Subsidiary” shall mean a Subsidiary that is a “controlled foreign corporation” as defined in Section 957(a) of the Code or any successor provision thereto.

“Copyright Security Agreement” shall mean a Copyright Security Agreement, in form and substance satisfactory to the Administrative Agent, as the same may be amended, supplemented or otherwise modified, renewed or replaced from time to time.

“Copyrights” shall mean all copyrights now existing or hereafter created, including all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Copyright 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, including any and all renewals thereof.

“Credit Parties” shall mean the Borrowers and each of the Guarantors.

“Cumulative” shall mean, with respect to any specific Weekly Period, cumulative from the first day of the first full Weekly Period occurring during the calendar month in which such specific Weekly Period begins.

“Debtors” shall mean the Borrowers, any of the Guarantors and any other Affiliate of the Borrowers which is a debtor and debtor-in-possession under any of the Cases.

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

“Defaulting Lender” shall mean any Lender that (a) has failed to perform any of its funding obligations hereunder within three (3) Business Days of the date required to be performed by it hereunder, (b) has become the subject of a proceeding under the Bankruptcy Code or any similar debtor relief laws or (c) has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

“Disposition” shall mean any transaction, or series of related transactions, pursuant to which any Credit Party sells, assigns, transfers or otherwise disposes of any property or assets (whether now owned or hereafter acquired), but excluding obsolete equipment and inventory in the ordinary course of business, to any Person (other than a Credit Party or any Subsidiary of any Credit Party), in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person.

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

“Eligible Assignee” shall mean (i) a commercial bank organized under the laws of the United States of America, or any State thereof, and, in the case of assignments under the Facility, having total assets in excess of \$250,000,000, (ii) a savings and loan association or savings bank organized under the laws of the United States of America, or any State thereof, and, in the case of assignments under the Facility, having a net worth of at least \$100,000,000, calculated in accordance with GAAP, (iii) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development (“OECD”), or a political subdivision of any such country, and having total assets in excess of \$250,000,000; provided, that such bank is acting through a branch, subsidiary or agency located in the country in which it is organized or another country which is also a member of the OECD, (iv) the central bank of any country which is a member of the OECD, (v) a financial institution, insurance company or fund which regularly engages in making, purchasing or otherwise investing in commercial loans, in the case of assignments under the Facility, having total assets in excess of \$250,000,000, (vi) a “Qualified Institutional Buyer”, as defined in Rule 144A under the Securities Act of 1933, (vii) an Approved Fund or (viii) any other Person consented to by the Borrowers (which consent shall not be unreasonably withheld or delayed and which consent shall not be required if an Event of Default shall have occurred and be continuing) and the Administrative Agent.

“Environmental Laws” shall mean any and all applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Governmental Authority regulating, relating to, or imposing liability or standards of conduct

concerning, any Hazardous Material or environmental protection, occupational health and safety, as now or at any time hereafter in effect, including the Clean Water Act also known as the Federal Water Pollution Control Act (“FWPCA”), 33 U.S.C. § 1251 et seq., the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. §§ 136 et seq., the Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. §§ 1201 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), Public Law 99-499, 100 Stat. 1613, the Emergency Planning and Community Right to Know Act (“EPCRA”), 42 U.S.C. § 11001 et seq., the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq., the Occupational Safety and Health Act as amended (“OSHA”), 29 U.S.C. § 655 and § 657 (only to the extent related to workplace exposure to Hazardous Materials), together, in each case, with any amendment thereto, and the regulations adopted and the publications promulgated thereunder and all substitutions thereof.

“Environmental Permit” shall mean any federal, state, local, provincial, or foreign permits, licenses, approvals, consents or authorizations required or issued by any Governmental Authority under or in connection with any Environmental Law.

“Equity Interests” shall mean shares of the capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any Person or any warrants, options or other rights to acquire such interests.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as heretofore and hereafter amended, as codified at 29 U.S.C. § 1001 et seq. and the regulations promulgated thereunder.

“ERISA Affiliate” shall mean each Person (as defined in Section 3(9) of ERISA) which is treated as a single employer with any Credit Party under Section 414(b), (c), (m) or (o) of the Code.

“Event of Default” shall have the meaning given to such term in Article 7 hereof.

“Excess Availability” shall mean, as of any date of determination, (a) the Total Commitments as of such date minus (b) the aggregate principal amount of all outstanding Loans as of such date minus (c) the amount of any Reserve in effect as of such date.

“Excluded Assets” shall have the meaning given to such term in Section 8.1.

“Excluded Equity” shall mean any voting Equity Interests in excess of sixty five percent (65%) of the outstanding voting Equity Interests of any Foreign Subsidiary of any Pledgor.



“Excluded Taxes” shall mean, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrowers hereunder, (a) income or franchise Taxes imposed on (or measured by) its net income by the United States of America (or any subdivision thereof or therein), or by the jurisdiction under the laws of which such recipient is organized or in which its principal office (or other fixed place of business) is located or, in the case of any Lender, in which its applicable Lending Office is located (or any subdivision thereof or therein), (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction described in clause (a) above, (c) in the case of a Foreign Lender, any U.S. federal withholding Tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Credit Agreement (or designates a new Lending Office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to Section 2.9(a), and (d) any withholding tax that is attributable to such Lender’s failure to comply with Section 2.9(e).

“Existing AKKR Notes” shall have the meaning given to such term in the Introductory Statement.

“Existing Facilities” shall have the meaning given to such term in the Introductory Statement.

“Existing First Lien Agent” shall have the meaning given to such term in the Introductory Statement.

“Existing First Lien Facilities” shall have the meaning given to such term in the Introductory Statement.

“Existing First Lien Lenders” shall have the meaning given to such term in the Introductory Statement.

“Existing Purchaser” shall have the meaning given to such term in the Introductory Statement.

“Excluded Peachtree Assets” shall mean any assets or property of the Parent Entity, whether now owned or hereafter acquired, other than (i) one hundred percent (100%) of the Equity Interests in AGH and (ii) any other properties or assets that are used or useful in the business of the Credit Parties.

“Existing Second Lien Facilities” shall have the meaning given to such term in the Introductory Statement.

“Existing Winston Notes” shall have the meaning given to such term in the Introductory Statement.



“Facility” shall have the meaning given to such term in the Introductory Statement.

“FASB” shall mean the Financial Accounting Standards Board.

“Filing Date” shall mean September 7, 2011.

“Final Order” shall have the meaning given such term in Section 4.2(e).

“Foreign Lender” shall mean any Lender that is not a United States person, within the meaning of Section 7701(a)(30) of the Code.

“Foreign Subsidiary” shall mean any Subsidiary that is incorporated or organized under the laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“Fundamental Documents” shall mean this Credit Agreement, the Notes, any IP Security Agreement, the Account Control Agreements, the Instruments of Assumption and Joinder, UCC financing statements and any other ancillary documents, instruments or certificates which are required to be or are otherwise executed by any Credit Party and delivered to the Administrative Agent in connection with this Credit Agreement or any of the documents listed above.

“GAAP” shall mean generally accepted accounting principles in the United States of America in effect, from time to time consistently applied (except for accounting changes in response to FASB releases, or other authoritative pronouncements).

“Governing Body” shall mean, as to any Person, the board of directors, board of managers, board of representatives, board of advisors or any similar governing or advisory body of such Person.

“Governmental Authority” shall mean any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or any court, in each case whether of the United States of America or any foreign jurisdiction.

“Guarantors” shall mean the Parent Entity, any entity that executes this Credit Agreement as a “Guarantor” and any and all other direct and indirect Subsidiaries of the Borrowers, whether now existing or hereafter acquired or created.

“Guaranty” shall mean the guaranty of the Obligations by the Guarantors pursuant to Article 9.

“Guaranty Obligations” shall mean, as to any Person, (a) any obligation of such Person as a result of such Person being a general partner or joint venturer of any other Person,

unless the underlying obligation is expressly made non-recourse as to such general partner or joint venturer, and (b) any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (i) to purchase, repurchase or otherwise acquire any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds or other support (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (iv) arising under any Swap Agreement, or (v) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term “Guaranty Obligations” shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guaranty Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guaranty Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“Hazardous Materials” shall mean any flammable materials, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or similar materials defined in any Environmental Law.

“Hobart West” shall have the meaning given to such term in the initial paragraph of this Credit Agreement.

“Indebtedness” shall mean, as to any Person, without duplication, (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services, (ii) the maximum amount available to be drawn or paid under all letters of credit, bankers’ acceptances, bank guaranties, surety and appeal bonds and similar obligations issued for the account of such Person and all unpaid drawings and unreimbursed payments in respect of such letters of credit, bankers’ acceptances, bank guaranties, surety and appeal bonds and similar obligations, (iii) all indebtedness of others of the types described in this definition secured by any Lien on, or payable out of the proceeds of any property owned by such Person, whether or not such indebtedness has been assumed by such Person (provided that, if such Person has not assumed or otherwise become liable in respect of such indebtedness, such indebtedness shall be deemed to be in an amount equal to the fair market value of the property to which such Lien relates), (iv) all obligations of such Person in respect of Capital Leases, (v) all obligations of such Person to pay a specified purchase price for goods or services, whether or not delivered or accepted, i.e., take-or-pay and similar obligations, (vi) all Guaranty Obligations of such Person, (vii) all obligations under any Swap Agreement, (viii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are

customarily made or accrued, (ix) all obligations of such Person under a conditional sale or other title retention agreement relating to property purchased by such Person (other than customary reservations under agreements with suppliers entered into in the ordinary course of business) and (x) all Equity Interests issued by such Person and which by the terms thereof could be (at the request of the holders thereof or otherwise) subject to mandatory sinking fund payments, redemption or other acceleration. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner or any unincorporated joint venture in which such Person is a joint venturer) to the extent such Person is directly liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, Indebtedness shall not include trade payables, accrued expenses and deferred tax and other credits incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes and Other Taxes.

"Initial Cash Flow Projection" shall have the meaning set forth in Section 4.1(o).

"Initial Date" shall mean (i) in the case of the Administrative Agent, the date hereof, (ii) in the case of each Lender which is an original party to this Credit Agreement, the date hereof and (iii) in the case of any other Lender, the effective date of the Assignment and Assumption pursuant to which it became a Lender.

"Instrument of Assumption and Joinder" shall mean an Instrument of Assumption and Joinder in form and substance reasonably satisfactory to the Administrative Agent.

"Intellectual Property" shall mean all rights in and to intellectual or industrial property, arising in any jurisdiction, whether registered or unregistered, whether owned or held under license, including (a) Copyrights, (b) Patents, (c) Trademarks and (d) all other "intellectual property" (as defined in the UCC)

"Interest Deficit" shall have the meaning given to such term in Section 2.10(a) hereof.

"Interest Payment Date" shall mean the last Business Day of each month (commencing with the last Business Day of September 2011).

"Interim Order" shall have the meaning given such term in Section 4.1(c) hereof.

"Investment" shall mean any stock, evidence of indebtedness or other securities of any Person, any loan, advance, contribution of capital, extension of credit or commitment therefor (including any Guaranty Obligations of loans made to others, but excluding current trade and customer accounts receivable arising in the ordinary course of business and payable in

accordance with customary trading terms in the ordinary course of business), or any purchase of any security of another Person. The amount of each Investment will be determined at the time such Investment is made and without giving effect to subsequent changes in value.

“IP Security Agreement” shall mean that certain Intellectual Property Security Agreement, dated as of the date hereof, by and between the AGH, the other Credit Parties party thereto and the Administrative Agent.

“Lender” and “Lenders” shall mean financial institutions whose names appear on the Schedule of Commitments, or an assignee of a Lender pursuant to Section 13.3 hereof, and their respective successors.

“Lending Office” shall mean, with respect to any of the Lenders, the branch or branches (or affiliate or affiliates) from which such Lender’s Loans are made or maintained and for the account of which all payments of principal of, and interest on, such Lender’s Loans are made, as notified to the Administrative Agent from time to time.

“Lien” shall mean any mortgage, copyright mortgage, pledge, security interest, encumbrance, lien or charge of any kind whatsoever (including any conditional sale or other title retention agreement, any agreement to grant a security interest at a future date, any lease in the nature of security, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction).

“Loans” shall have the meaning given such term in Section 2.1(a) hereof.

“Margin Stock” shall be as defined in Regulation U of the Board.

“Material Adverse Effect” shall mean any change or effect that individually or in the aggregate (a) has had or could reasonably be expected to have a materially adverse effect on the business, assets, operations, properties, condition (financial or otherwise), liabilities (including contingent liabilities), prospects or Material Agreements of the Borrowers, individually, or the Credit Parties, taken as a whole (provided that the rejection of an executory contract by any Credit Party with the prior written consent of the Administrative Agent shall not, in and of itself, be deemed to constitute or give rise to a Material Adverse Effect), (b) materially impairs the legal right, power or authority of any Borrower or any other Credit Party to perform its respective obligations under the Fundamental Documents to which it is a party, or (c) materially impairs the validity or enforceability of, or materially impairs the rights, remedies or benefits available to the Administrative Agent for the benefit of itself and the Lenders under, the Fundamental Documents; provided, however, the events leading up to the filing of the Cases that have been disclosed in writing (including electronic communication) to the Lenders prior to the Initial Date and the act and effects caused directly by the filing of the Cases shall not, in and of itself, be deemed to constitute or give rise to a Material Adverse Effect.

“Material Agreement” shall mean any agreement, contract, license or lease of any Credit Party (a) involving monetary liabilities or obligations in excess of \$50,000 per annum, (b) the failure to maintain or comply with which could reasonably be expected to have a Material Adverse Effect or (c) that is material to the business operations of the Credit Parties.

“Material Pleadings” shall mean all material pleadings, motions, applications, judicial information, financial information, reports or other documents filed by or on behalf of any Borrower or any Guarantor with the Bankruptcy Court in the Cases, or distributed by or on behalf of any Borrower or any Guarantor to any official committee appointed in the Cases.

“Maturity Date” shall mean March 22, 2012.

“Moody’s” shall mean Moody’s Investors Service, Inc.

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

“Net Proceeds” shall mean one hundred percent (100%) of the aggregate cash proceeds received by any of the Credit Parties (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment or otherwise, but only as and when received) from any Disposition by any Credit Party or the issuance of Indebtedness by any Credit Party, net of (i) reasonable attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, required debt payments and required payments of other obligations relating to the applicable asset (other than with respect to any subordinated debt), other customary and reasonable expenses and brokerage, consultant and other customary and reasonable fees actually incurred in connection therewith and (ii) Taxes paid or payable as a result thereof.

“Note” shall have the meaning given to such term in Section 2.2(a) hereof.

“Obligations” shall mean the obligation of the Borrowers to make due and punctual payment of principal of and interest on the Loans, the Commitment Fees, costs, expenses, fees and premiums, including any costs and disbursements of counsel or consultants, and all other monetary obligations of the Borrowers to the Administrative Agent or any Lender under this Credit Agreement, the Notes, any other Fundamental Document or any fee letter in respect of the Facility, whenever arising, whether due or to become due, matured or unmatured, liquidated or unliquidated, contingent or non-contingent, and all covenants and duties regarding such amounts, of any kind or nature, present or future.

“Orders” shall mean the Interim Order and the Final Order, as applicable.

“Organizational Documents” shall mean (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive

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

“Other Taxes” shall mean any and all present or future stamp, court, documentary, intangible, recording, or filing or similar Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Credit Agreement.

“Parent Entity” shall mean Peachtree Holdings, Inc., an Illinois corporation.

“Patent Security Agreement” shall mean a Patent Security Agreement, in form and substance satisfactory to the Administrative Agent, as the same may be amended, supplemented or otherwise modified, renewed or replaced from time to time.

“Patents” shall mean (a) all letters patent (of the United States or any other country, now existing or hereafter arising, and all improvement patents, reissues, reexaminations, patents of additions, renewals and extensions thereof, and (b) all applications for letters patent of the United States or any other country, now existing or hereafter arising, and all provisionals, divisions, continuations and continuations-in-part and substitutes thereof.

“PBGC” shall mean the Pension Benefit Guaranty Corporation or any successor thereto.

“Percentage” shall mean with respect to any Lender, the percentage of the Total Commitment represented by such Lender’s Commitment; provided, that in the case of Section 2.14 hereof, when a Defaulting Lender shall exist, the term “Percentage” shall mean the percentage of the Total Commitments (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Permitted Encumbrances” shall mean Liens permitted under Section 6.2 hereof.

“Person” shall mean any natural person, corporation, division of a corporation, limited liability company, partnership, trust, joint venture, association, company, estate, unincorporated organization or government or any agency or political subdivision thereof.

“Plan” shall mean an employee benefit plan within the meaning of Section 3(3) of ERISA, other than a Multiemployer Plan, maintained or contributed to by any Credit Party, or any ERISA Affiliate, or any other plan covered by Title IV of ERISA that covers employees of the Credit Parties.

“Pledged Collateral” shall mean the Pledged Securities and any proceeds (as defined in Section 9-102(64) of the UCC) including cash proceeds (as defined in Section 9-102(9) of the UCC) of the Pledged Securities.

“Pledged Securities” shall mean all Equity Interests, other than Excluded Equity, owned by any Credit Party in any other Person, whether or not evidenced by a certificate.

“Pledgors” shall mean those Credit Parties that own any of the Pledged Securities.

“Prepayment Event” shall mean the occurrence of any of the following events which have a value in excess of \$50,000 in the aggregate: (a) any Disposition by any Credit Party; (b) any issuance of any Indebtedness by any Credit Party; (c) receipt by any Credit Party of any amount that is comprised of indemnity payments, litigation proceeds or settlement proceeds in lieu of litigation (but excluding the amount of reasonable legal fees incurred in connection therewith); (d) (i) any theft, loss, physical destruction or damage of any property of any Credit Party, (ii) any pending or threatened institution of any proceedings for the condemnation or seizure of any property of any Credit Party or for the exercise of any right of eminent domain with respect thereto or (iii) any actual condemnation, seizure, taking or any other similar event with respect to any property of any Credit Party, or confiscation of such property or the requisition of the use of such property; or (e) any Equity Issuance by any Credit Party; provided that the foregoing shall not operate as, or be deemed to constitute, the consent of the Administrative Agent or any Lender to any transaction or action to the extent that such transaction or action giving rise to any prepayment is not otherwise permitted by the terms of this Credit Agreement.

“Pre-Petition Payment” shall mean a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition or pre-filing Indebtedness or trade payables or other pre-petition or pre-filing claims against the Borrowers or any Guarantor or any of their Affiliates.

“Pro Rata Share” shall mean with respect to any Obligation or other amount, each Lender’s pro rata share of such Obligation or other amount determined in accordance with such Lender’s Percentage.

“Regulation D” shall mean Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.



“Reportable Event” shall mean any reportable event as defined in Section 4043(c) of ERISA, other than a reportable event as to which provision for 30-day notice to the PBGC has been waived under applicable regulations.

“Required Lenders” shall mean, as of any date of determination, Lenders holding in the aggregate more than fifty percent (50%) of the Total Commitments on such date or, if the Total Commitments have terminated, Lenders holding in the aggregate more than fifty percent (50%) of the outstanding principal balance of the Loans on such date.

“Reserve” shall mean a reserve established in the reasonable credit judgment of the Administrative Agent pursuant to the Orders, including a reserve in the amount of the Carve-Out.

“Restricted Payment” shall mean (i) any direct or indirect distribution, cash dividend or other payment by any Credit Party on account of shares of any Equity Interest in any Credit Party, (ii) any direct or indirect redemption or other acquisition, re-acquisition or retirement by a Credit Party of any Equity Interests in any Credit Party or any Subsidiary thereof, now or hereafter outstanding, (iii) any direct or indirect payment made by any Credit Party to retire, or obtain the surrender of, any outstanding warrants, puts or options or other rights to purchase or otherwise acquire any Equity Interest in any Credit Party or any Subsidiary thereof, now or hereafter outstanding, (iv) any direct or indirect payment, prepayment or redemption by any Credit Party with respect to any unsecured Indebtedness or subordinated Indebtedness, (v) any direct or indirect payment by any Credit Party under any Synthetic Purchase Agreement, (vi) any direct or indirect payment by any Credit Party to (A) any shareholder of the Parent Entity arising out of any shareholder litigation or any settlement thereof, or (B) any officer or director of any Debtor or its Affiliates under any indemnity or similar reimbursement obligations to the extent not otherwise permitted by Section 6.10; and (vii) any other direct or indirect payment to or for the benefit of the Parent Entity.

“S&P” shall mean Standard & Poor’s Ratings Group.

“Sale Date” shall mean the date on which the Credit Parties consummate or substantially consummate a sale of all or substantially all of their assets under section 363 of the Bankruptcy Code or otherwise.

“Sale Motion” shall have the meaning given to such term in Section 5.18.

“Schedule of Commitments” shall mean, with respect to all Loans, the schedule of Commitments of the Lenders set forth on Schedule 1 hereto, as the same may be amended from time to time by operation of Assignments and Assumptions in accordance with Section 13.3 hereof (as determined by the Administrative Agent) or in connection with an amendment to this Credit Agreement that is executed in accordance with Section 13.10 hereof.



“SEC” shall mean the U.S. Securities and Exchange Commission and any successor agency.

“Subsidiary” shall mean with respect to any Person, any corporation, association, joint venture, partnership or other business entity (whether now existing or hereafter organized) of which at least a majority of the voting stock or other ownership interests having ordinary voting power for the election of directors (or the equivalent) is, at the time as of which any determination is being made, owned or controlled by such Person or one or more subsidiaries of such Person or by such Person and one or more subsidiaries of such Person.

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

“Synthetic Purchase Agreement” shall mean any Swap Agreement or similar agreement or combination of agreements pursuant to which any Credit Party is or may become obligated to make (i) any payment in connection with a purchase by any third party from a Person other than a Credit Party of any Equity Interest in any Credit Party or any subordinated Indebtedness, or (ii) any payment (other than on account of a permitted purchase by it of any Equity Interest in any Credit Party or any subordinated Indebtedness) the amount of which is determined by reference to the price or value at any time of any Equity Interest in any Credit Party or any subordinated Indebtedness.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” shall mean the earliest to occur of (a) the Maturity Date, (b) the Sale Date, (c) a conversion of the Cases to one or more cases under Chapter 7 of the Bankruptcy Code, (d) the date on which the Obligations are declared immediately due and payable in accordance with Article 7 and (e) the appointment of a trustee or an examiner with expanded powers in the Cases.

“Total Commitments” shall mean, at any time, the aggregate amount of the Commitments then in effect of all of the Lenders, as such aggregate amount shall be decreased from time to time in accordance with the terms of this Credit Agreement (including pursuant to Section 2.5 hereof).

“Trademark Security Agreement” shall mean a Trademark Security Agreement, in form and substance satisfactory to the Administrative Agent, as the same may be amended, supplemented or otherwise modified, renewed or replaced from time to time.

“Trademarks” shall mean all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, elements of package or trade dress of goods or services, logos and other source or business identifiers, together with 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, and all renewals thereof.

“UCC” shall mean the Uniform Commercial Code as in effect in the State of New York on the date of execution of this Credit Agreement (as such Uniform Commercial Code is amended from time to time).

“Unrestricted Cash” shall mean cash and Cash Equivalents of the Borrowers and the Guarantors which (i) are not the subject of any Lien or other arrangement with any creditor to have a claim satisfied out of such cash or Cash Equivalent prior to the general creditors of the owner of the asset (other than any right of set-off or recoupment) and (ii) if not in the form of cash, may be converted to cash within five (5) days.

“Up-Front Fees” shall mean up-front fees payable to the Administrative Agent for the benefit of the Lenders as a condition to the Closing Date in consideration for the Lenders’ extension of their respective Commitments, one-half of which are payable upon entry of the Interim Order and the remainder of which are payable upon entry of the Final Order, in an amount equal to \$600,000.

“USA Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act) (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

**“Weekly Period” shall mean any period of seven (7) calendar days beginning on Saturday and ending on the immediately following Friday.**

#### SECTION 1.2. Other Interpretive Provisions.

(a) Unless otherwise specified therein, all terms defined in this Credit Agreement shall have the defined meanings set forth herein when used in the Fundamental Documents or any certificate or other document made or delivered pursuant hereto.

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

(c) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Credit Agreement shall refer to this Credit Agreement as a whole and not to any particular provision of this Credit Agreement.

(d) Section, subsection, Schedule and Exhibit references contained in this Credit Agreement shall refer to such Section or subsection of this Credit Agreement or such Schedule or Exhibit to this Credit Agreement, as applicable, unless otherwise specified.

(e) The words “include”, “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.

(f) The words “writing”, “written” and comparable terms shall refer to printing, typing, computer disk, e-mail and other means of reproducing words in a visible form.

(g) References to any agreement or contract are to such agreement or contract as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of such Person.

## **2. THE LOANS**

### **SECTION 2.1. Revolving Credit Loans.**

(a) Each Lender, severally and not jointly, agrees, upon the terms and subject to the conditions hereof, to make loans (the “Loans”) to the Borrowers, on any Business Day and from time to time on or after the Closing Date to but excluding the Termination Date, each in an aggregate principal amount which, when added to the aggregate principal amount of all Loans then outstanding to the Borrowers from such Lender, does not exceed such Lender’s Commitment.

(b) Subject to the terms and conditions of this Credit Agreement, the Borrowers may borrow, repay and re-borrow amounts constituting the Total Commitments.

(c) Notwithstanding anything to the contrary in this Section 2.1, a Lender shall not be obligated to make any additional Loans if, as a result thereof, the aggregate principal amount of all Loans then outstanding plus the amount of any Reserve then in effect exceeds the Total Commitments then in effect.

(d) Each Loan requested hereunder on any date shall be made by each Lender in accordance with its respective Percentage.

(e) The Borrowers shall give the Administrative Agent prior written, facsimile or telephonic (promptly confirmed in writing) notice of each Borrowing hereunder. Such notice (i) shall be irrevocable, (ii) shall specify the amount of the requested Loan, (iii) shall contain a certification as to the information required by Section 4.2(g), including any necessary supporting calculations or documentation, and (iv) to be effective, must be received by the Administrative Agent not later than 5:00 p.m. (New York City time) on the second Business Day of each calendar week for a Borrowing to be made not earlier than 12:00 p.m. (New York City time) on the first Business Day of the following calendar week.

(f) The Administrative Agent shall promptly notify each Lender of its Percentage of each Borrowing and the date of such Borrowing. On the borrowing date specified in such notice, each Lender shall make its Percentage of the Borrowing available to the Administrative Agent by wire transfer of immediately available funds to the account of the Administrative Agent specified on Schedule 2 or otherwise as specified by the Administrative Agent in writing from time to time, in each case, no later than 12:00 p.m. (New York City time).

(g) Each Borrowing shall be in a principal amount of \$1,000,000 and integral multiples of \$1,000,000 in excess thereof (or such lesser amount as shall equal the Excess Availability as of the requested date of Borrowing).

(h) The Administrative Agent shall disburse the proceeds of Loans by depositing them directly to the account specified to the Administrative Agent by the Borrowers in writing.

## SECTION 2.2. Notes; Repayment.

(a) Any Lender may request that the Loans made by such Lender hereunder be evidenced by a promissory note (each a “Note”) in the face amount of such Lender’s Commitment, payable to such Lender, duly executed on behalf of the Borrowers and dated as of the date hereof. The outstanding principal balance of each Loan, whether or not evidenced by a Note, shall be payable in full on the Termination Date, subject to mandatory prepayments as provided in Section 2.7 hereof and acceleration as provided in Article 7 hereof and, notwithstanding anything to the contrary contained in this Agreement, any remaining Obligations under the Facility shall be paid in full in cash on the Termination Date.

(b) Each of the Loans shall bear interest on the outstanding principal balance thereof as set forth in Section 2.3 hereof. Each Lender and the Administrative Agent on its behalf is hereby authorized, but not obligated, by the Borrowers to enter the amount of each Loan and the amount of each payment or prepayment of principal or interest thereon in the appropriate spaces on the reverse of or on an attachment to its Note, if any; provided, however, that the failure of any Lender or the Administrative Agent to set forth such Loans, principal payments or other information shall not in any manner affect the obligations of the Borrowers to repay such Loans.

### SECTION 2.3. Interest on Loans.

(a) Subject to paragraph (c) below, interest on the outstanding principal amount of the Loans shall accrue from the date on which such Loan is advanced until repaid in full at a rate per annum equal to ten percent (10%). Interest shall accrue and be computed on the basis of the actual number of days elapsed over a year of 365/366 days, as the case may be.

(b) Accrued but unpaid interest on the outstanding principal amount of the Loans shall be payable in cash in arrears on each Interest Payment Date, on the Termination Date and on the day of any prepayment made hereunder.

(c) Upon the occurrence and during the continuance of any Event of Default, and after the Termination Date, interest on the outstanding Obligations shall accrue at a rate per annum equal to (i) the interest rate then in effect plus (ii) two percent (2%) and shall be payable (after as well as before entry of judgment thereon to the extent permitted by Applicable Law) in cash.

(d) Anything in this Credit Agreement or any Note to the contrary notwithstanding, the interest rate on the Loans shall in no event be in excess of the maximum rate permitted by Applicable Law.

### SECTION 2.4. Commitment Fees and Other Fees.

(a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender on the last Business Day of each month (commencing with the last Business Day of September 2011) prior to the Termination Date and on the Termination Date, an aggregate fee (the "Commitment Fees") of one percent (1.00%) per annum, computed on the basis of the actual number of days elapsed over a year of 365/366 days, as the case may be, on the average daily amount by which such Lender's Commitment, as such Commitment may be reduced in accordance with the provisions of this Credit Agreement, exceeds the sum of the outstanding principal balance of such Lender's Loans during the applicable period of measurement. The Commitment Fees shall begin to accrue on the Closing Date.

(b) The Borrowers agree to pay to the Administrative Agent on the Closing Date any and all other fees that are then due and payable by it to the Administrative Agent pursuant to the Credit Agreement or any other Fundamental Document, including any fee letter in respect of the Facility.

(c) The Borrowers agree to pay to the Administrative Agent on the Termination Date, a fee of \$500,000.

### SECTION 2.5. Optional Termination or Reduction of Commitments.

(a) Upon at least three (3) Business Days' prior written, facsimile or telephonic notice (provided, that such telephonic notice is immediately followed by written or facsimile confirmation) to the Administrative Agent, the Borrowers may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Total Commitments. In the case of a partial reduction, each such reduction of the Total Commitments shall be in a aggregate principal amount of \$1,000,000 and integral multiples of \$1,000,000 in excess thereof; provided, however, that the Total Commitments may not be reduced to an amount less than the sum of (i) the aggregate outstanding principal amount of the Loans as of the date of such reduction plus (ii) the amount of any Reserve then in effect, unless the Borrowers make a prepayment pursuant to Section 2.7(c). Any partial reduction of the Total Commitments shall be made among the Lenders pro rata in accordance with their respective Percentages.

(b) Simultaneously with each such termination or reduction of the Total Commitments, the Borrowers shall pay to the Administrative Agent for the benefit of each Lender all accrued and unpaid Commitment Fees on the amount of the Commitments so terminated or reduced through the date of such termination or reduction.

#### SECTION 2.6. Reserved.

#### SECTION 2.7. Mandatory Prepayment of Loans.

(a) If at any time the sum of (i) the aggregate principal amount of outstanding Loans plus (ii) the amount of any Reserve then in effect exceeds the Total Commitments, the Borrowers shall immediately eliminate such excess by repaying Loans outstanding in an amount at least equal to such excess amount.

(b) Subject in all respects to any limitations set forth in the Orders, including any subordination provisions contained therein, the Borrowers shall prepay the Loans in an amount equal to 100% of the Net Proceeds received by any Credit Party from any Prepayment Event within two (2) Business Days of receipt; provided that, in the event that any Credit Party vacates any premises occupied by it on the Closing Date and, in connection therewith, enters into one or more Dispositions of equipment and furniture located at the vacated premises, subject to not less than ten (10) days' prior written notice from such Credit Party to the Administrative Agent of its intention to enter into any such Disposition and to reinvest the Net Proceeds thereof in accordance herewith, such Credit Party may apply the Net Proceeds of any such Disposition toward the reinvestment by such Credit Party in equipment and furniture of a similar nature to be located at any alternate premises to be occupied by such Credit Party thereafter, in which case, no prepayment shall be required under this Section 2.7(b); provided further that (i) any reinvestment of Net Proceeds as set forth in the preceding proviso shall be consummated within ninety (90) days of the applicable Disposition, (ii) until such reinvestment is consummated, 100% of such Net Proceeds shall be held on deposit in an account of such Credit Party that is subject to an Account Control Agreement in accordance with Section 5.14 and (iii) the aggregate

amount of Net Proceeds of Dispositions that may be reinvested in accordance with this Section 2.7(b) shall not exceed \$1,000,000 during the term of this Agreement.

(c) To the extent required pursuant to Section 2.5, concurrent with any applicable termination and/or optional reduction of the Total Commitment pursuant to Section 2.5, the Borrowers shall prepay the Loans in an aggregate amount at least equal to the amount by which the sum of (i) the aggregate outstanding principal amount of the Loans plus (ii) the amount of any Reserve then in effect exceeds the Total Commitments, in each case, after giving effect to such termination or reduction.

(d) All prepayments under this Section 2.7 shall be accompanied by accrued but unpaid interest on the principal amount being prepaid to but not including the date of prepayment.

#### SECTION 2.8. Manner of Payments.

(a) All payments of principal, interest and other amounts due hereunder by the Borrowers shall be made to the Lenders pro rata in accordance with their respective Percentages. All payments by the Borrowers hereunder and under the Notes shall be made in Dollars in immediately available funds to the account of the Administrative Agent specified on Schedule 2 or otherwise as specified by the Administrative Agent in writing from time to time, in each case, no later than 1:00 p.m. (New York City time) on the date on which such payment is due.

(b) Except as otherwise specifically provided in this Article 2, should any payment or prepayment of principal of or interest on the Loans, or any other amount due hereunder, become due and payable on a day other than a Business Day, the due date of such payment or prepayment shall be extended to the next succeeding Business Day and, in the case of a payment or prepayment of principal, interest shall be payable thereon at the rate herein specified during such extension.

#### SECTION 2.9. Taxes.

(a) Any and all payments by or on account of any obligation of the Borrowers hereunder shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto, excluding Excluded Taxes. If the Borrowers shall be required by Applicable Law to deduct any Indemnified Taxes or Other Taxes from or in respect of any sum payable under this Credit Agreement or any Fundamental Document, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.9) the Administrative Agent or Lenders (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions, (iii) the Borrowers shall pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law,



and (iv) the Borrowers shall furnish to the Administrative Agent and Lenders the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, the Borrowers shall pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Borrowers shall indemnify the Administrative Agent and each Lender, within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrowers hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.9) whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority and including any penalties, interest and reasonable expenses arising therefrom or with respect thereto. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable (but in any event within ten (10) Business Days) after any payment of Indemnified Taxes or Other Taxes by the Borrowers to a Governmental Authority, the Borrowers shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Credit Agreement may deliver to the Borrowers (with a copy to the Administrative Agent), on or prior to the Initial Date with respect to such Lender (and from time to time thereafter at the time or times prescribed by Applicable Law or upon the request of the Borrowers or the Administrative Agent), such properly completed and duly executed documentation prescribed by Applicable Law or reasonably requested by the Borrowers as will permit such payments to be made without withholding or at a reduced rate of withholding; provided that such Foreign Lender has received written notice from the Borrowers advising it of the availability of such exemption or reduction and supplying all applicable documentation. Without limiting the generality of the foregoing, any Foreign Lender shall deliver to the Borrowers and the Administrative Agent on or prior to the Initial Date with respect to such Lender (and promptly from time to time thereafter upon the expiration, obsolescence or invalidity of any form previously delivered, if any form previously delivered becomes inaccurate or upon the request of the Borrowers or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), two copies of whichever of the following is applicable:



- (i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;
- (ii) duly completed copies of Internal Revenue Service Form W-8ECI;
- (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN;
- (iv) duly completed copies of Internal Revenue Service Form W-8IMY together with the additional documentation that must be transmitted with Form W-8IMY, including the appropriate forms described in Sections 2.9(e)(i), (ii) and (iii); or
- (v) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrowers to determine the withholding or deduction required to be made.

(f) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which the Borrowers have paid additional amounts pursuant to this Section 2.9, it shall pay over such refund to the Borrowers (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrowers under this Section 2.9 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrowers, upon the request of the Administrative Agent or such Lender, agree to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.9 shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrowers or any other Person.

(g) Each Lender shall severally indemnify the Administrative Agent for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrowers

have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrowers to do so) and (ii) any Excluded Taxes, in each case attributable to such Lender, that are paid or payable by the Administrative Agent in connection with this Credit Agreement or any Fundamental Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Excluded Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.9(g) shall be paid within ten (10) days after the Administrative Agent delivers to the applicable Lender a certificate stating the amount of Taxes or Excluded Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

#### SECTION 2.10. Interest Adjustments.

(a) If the provisions of this Credit Agreement or any Note would at any time require payment by the Borrowers to a Lender of any amount of interest in excess of the maximum amount then permitted by Applicable Law, the interest payments to that Lender shall be reduced to the extent necessary so that such Lender shall not receive interest in excess of such maximum amount. If, as a result of the foregoing, a Lender shall receive interest payments hereunder or under a Note in an amount less than the amount otherwise provided hereunder, such deficit (the “Interest Deficit”) will, to the fullest extent permitted by Applicable Law, continue to accrue until the termination of this Credit Agreement and the indefeasible payment in full in cash of the Obligations. Interest otherwise payable to a Lender hereunder and under a Note for any subsequent period shall be increased by the maximum amount of the Interest Deficit that may be so added without causing such Lender to receive interest in excess of the maximum amount then permitted by Applicable Law.

(b) The amount of any Interest Deficit shall be treated as a prepayment penalty and shall, to the fullest extent permitted by Applicable Law, be paid in full at the time of any optional termination in full of the Commitments pursuant to Section 2.5.

#### SECTION 2.11. Priority and Liens.

(a) Subject to the Orders, the Credit Parties hereby covenant, represent and warrant that, upon entry of the Interim Order (and the Final Order, when applicable) by the Bankruptcy Court, the Obligations of the Credit Parties, shall at all times, pursuant to:

- (i) Section 364(c)(1) of the Bankruptcy Code, constitute joint and several allowed superpriority administrative expense claims in the Cases having priority over all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code;

- (ii) Section 364(c)(2) of the Bankruptcy Code, be secured by a perfected first priority Lien on all pre-petition and post-petition property of the Credit Parties and their respective estates that as of the Filing Date was not subject to valid, perfected and non-avoidable Liens as set forth in paragraph 9(a)(ii) of the Interim Order and the analogous section of the Final Order, with such Lien extending to any proceeds of avoidance actions to the extent set forth in such paragraphs in the Orders; and
- (iii) Section 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior Lien upon all pre-petition and post-petition property of the Credit Parties and their respective estates (other than the property described in clause (ii) of this Section 2.11 as to which the Liens in favor of the Administrative Agent with respect to such property shall be as described in such clause) that is subject to (x) any Liens securing the Existing First Lien Facilities, (y) the Carve-Out or (z) valid, perfected and unavoidable Liens in existence on the Filing Date, in each case, junior to such Liens;

Each of the Liens granted in favor of the Administrative Agent pursuant to the preceding clauses (ii) and (iii) shall at all times be, for the avoidance of doubt, valid, binding, continuing, enforceable and fully-perfected; provided that the Liens and claims granted to the Administrative Agent in the preceding clauses (i) to (iii) shall be subject to the payment in full in cash of the Carve-Out.

(b) Subject to the Orders, no portion of the Carve-Out or any of the proceeds of the Loans may be used to litigate (including discovery), object to, contest or challenge in any manner or raise any defenses to the debt or collateral position of the Administrative Agent and/or any of the Lenders under the Facility, whether by challenging the validity, extent, amount, perfection, priority or enforceability of the indebtedness under the Facility or the validity, perfection or priority of any mortgage, security interest or lien with respect thereto or any other rights or interests or replacement liens with respect thereto or any other rights or interests of the Administrative Agent and/or any of the Lenders, or by seeking to subordinate or recharacterize the Facility or to disallow or avoid any claim, mortgage, security interest, lien, or replacement lien or by asserting any claims or causes of action, including any actions under Chapter 5 of the Bankruptcy Code, against the Administrative Agent, any of the Lenders, or any of their respective officers, directors, agents or employees.

(c) Upon the Closing Date, and on behalf of itself and its estate, and for so long as any Obligations shall be outstanding, each Credit Party hereby irrevocably waives any right, pursuant to sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations (other than as expressly set forth in the applicable Order).

(d) In the event of any inconsistency between the provisions of this Credit Agreement on the one hand and the Interim Order or the Final Order described below on the other hand, as applicable, the provisions of the Interim Order or the Final Order, as applicable, shall govern.

SECTION 2.12. Payment of Obligations. Subject to Article 7, upon the maturity (whether by acceleration, upon the Termination Date, or otherwise) of any of the Obligations of the Credit Parties, the Lenders shall be entitled to immediate indefeasible payment in full in cash of such Obligations and the right to enforce remedies with respect to the Collateral without further application to or order of the Bankruptcy Court.

SECTION 2.13. Reserved.

SECTION 2.14. Defaulting Lenders. Notwithstanding any provision of this Credit Agreement to the contrary, if any Lender becomes a Defaulting Lender, the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) Commitment Fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.4 hereof.

(b) The Commitment of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or modification pursuant to Section 13.10(a) hereof); provided that any amendment, waiver or modification which by the terms of Section 13.10(a) requires the consent of all Lenders or each affected Lender which affects such Defaulting Lender or all Defaulting Lenders differently than other affected Lenders shall require the consent of such Defaulting Lender.

(c) So long as no Event of Default has occurred and is continuing, any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 12.2 but excluding payments to the Defaulting Lender pursuant to Section 13.10(b) hereof) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by the Administrative Agent (i) first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; (ii) second, if so determined by the Administrative Agent, to be held as cash collateral for future funding obligations of that Defaulting Lender; (iii) third, as the Borrowers may request, to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required hereunder, as determined by the Administrative Agent; (iv) fourth, if so determined by the Administrative Agent and the Borrowers, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans hereunder; (v) fifth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that

Defaulting Lender as a result of that Defaulting Lender's breach of its obligations hereunder; (vi) sixth, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations hereunder; and (vii) seventh, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its Pro Rata Share and (y) such Loans were made at a time when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders pro rata in accordance with their respective Percentages prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.14(c) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(d) So long as an Event of Default has occurred and is continuing, all amounts which would otherwise be payable to the Defaulting Lender shall, in lieu of being distributed to such Defaulting Lender, be applied to satisfy in full the Obligations owing to the Administrative Agent and the Lenders (other than the Defaulting Lender) in accordance with the other provisions of this Credit Agreement.

(e) If the Administrative Agent determines that a Defaulting Lender has adequately remedied all matters that caused such Lender to become a Defaulting Lender, then on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Percentage.

(f) Neither the provisions of this Section 2.14 nor the provisions of any other Section of this Credit Agreement relating to a Defaulting Lender are intended by the parties hereto to be liquidated damages. Subject to the limitations contained in Section 13.8 hereof regarding special, indirect, consequential and punitive damages, each of the Administrative Agent, each non-Defaulting Lender and each Credit Party hereby reserves its respective rights to proceed against such Defaulting Lender for any damages incurred as a result of it becoming a Defaulting Lender hereunder.

### **3. REPRESENTATIONS AND WARRANTIES OF THE CREDIT PARTIES**

In order to induce the Administrative Agent and the Lenders to enter into this Credit Agreement and make the Loans provided for herein, the Credit Parties, jointly and severally, make the following representations and warranties to, and agreements with, the Administrative Agent and the Lenders, all of which shall survive the execution and delivery of this Credit Agreement, the issuance of the Notes and the making of the Loans.

#### **SECTION 3.1. Existence and Power.**

(a) Each Credit Party is a corporation, limited liability company or limited partnership (w) duly incorporated or otherwise organized, (x) validly existing, (y) in good standing under the laws of its jurisdiction of organization and (z) duly qualified and in good standing as a foreign entity in all jurisdictions where the nature of its properties or business so requires. A list of such jurisdictions as of the date hereof is attached hereto as Schedule 3.1.

(b) Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), each Credit Party has the power and authority (i) to own its respective properties and carry on its respective business as now being conducted, (ii) to execute and deliver the Fundamental Documents to which it is a party and perform its obligations thereunder, and (iii) to grant to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, a security interest in the Collateral as contemplated by Article 8; and, in the case of each Pledgor, to grant in favor of the Administrative Agent a security interest in the Pledged Securities as contemplated by Article 10; and, in the case of the Guarantors, to guaranty the Obligations as contemplated by Article 9.

SECTION 3.2. Authority and No Violation. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the execution, delivery and performance of this Credit Agreement and the other Fundamental Documents to which it is a party by each Credit Party, the grant to the Administrative Agent for the benefit of the Administrative Agent and the Lenders of the security interest in the Collateral and the Pledged Securities as contemplated by the Fundamental Documents by each Credit Party and, in the case of the Borrowers, the Borrowings hereunder and the execution, delivery and performance of the Notes and, in the case of each Guarantor, the guaranty of the Obligations as contemplated in Article 9, (a) have been duly authorized by all necessary corporate action (or similar action) on the part of each Credit Party and (b) will not (i) constitute a violation of any provision of Applicable Law or any order of any Governmental Authority applicable to such Credit Party, or any of its properties or assets, (ii) violate any provision of the Organizational Documents of such Credit Party, (iii) violate any provision of any Material Agreement to which such Credit Party is a party or by which such Credit Party or any of its properties or assets are bound, (iv) be in conflict with, result in a breach of, constitute (with due notice or lapse of time or both) a default under, or terminate or accelerate (or give rise to any right to terminate or accelerate) any obligations under any Material Agreement, or (v) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever (other than Permitted Encumbrances) upon any of the properties or assets of any Credit Party other than pursuant to this Credit Agreement or the other Fundamental Documents.

SECTION 3.3. Governmental Approval. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), all material authorizations, approvals, registrations or filings from or with any Governmental Authority required for the execution, delivery and performance by any Credit Party of this Credit Agreement and the other Fundamental Documents to which it is a party, and the execution and delivery by the Borrowers of the Notes, have been duly obtained or made, and are in full force and effect, and if any further



material authorizations, approvals, registrations or filings should hereafter become necessary, the Credit Parties shall obtain or make all such authorizations, approvals, registrations or filings.

SECTION 3.4. Binding Agreements. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), this Credit Agreement and the other Fundamental Documents when executed will constitute the legal, valid and binding obligations of each Credit Party that is a party thereto, enforceable against each Credit Party in accordance with their respective terms and the Orders, subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 3.5. Financial Statements; Undisclosed Liabilities; Projections.

(a) The (i) audited consolidated balance sheet of AGH and its Consolidated Subsidiaries as at December 31, 2010, and related audited consolidated statements of income, stockholders' equity and cash flows for the fiscal year then ended and (ii) the unaudited consolidated balance sheet of AGH and its Consolidated Subsidiaries as at March 31, 2011, and June 30, 2011, and, in each case, together with the related statements of income, stockholders' equity and cash flows and for the fiscal quarter then ended (collectively, the "Current Financial Statements") have, in each case, been prepared in accordance with GAAP in effect as of such date consistently applied, except as set forth on Schedule 3.5(a) or as otherwise indicated in the notes, if any, to such financial statements and subject in the case of unaudited financial statements to changes resulting from year-end audit adjustments, none of which shall be material. All of such financial statements fairly present the financial position and the results of operations of AGH and its Consolidated Subsidiaries on a consolidated basis at the dates or for the periods indicated, subject, in the case of the unaudited financial statements, to year-end audit adjustments (none of which shall be material, either individually or in the aggregate).

(b) Except as disclosed on Schedule 3.5(b), no Credit Party has any material Guaranty Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or forward or long-term commitments, including any Swap Agreement, that are not reflected in the most recent financial statements referred to in this paragraph.

(c) Each Credit Party maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with reasonable procedures established therefor, (ii) transactions are recorded as necessary to permit preparation of accurate and complete financial statements and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with reasonable policies established therefor and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

SECTION 3.6. No Material Adverse Change; No Default. There has occurred no event or circumstance that could reasonably be expected to have a Material Adverse Effect (a)

from August 18, 2011, or (b) from the Filing Date. No Default or Event of Default has occurred and is continuing.

SECTION 3.7. Capitalization, Subsidiaries, Fictitious Names, Places of Business.

(a) Schedule 3.7(a) is a correct and complete list as of the date hereof, of the capital structure of each Credit Party including, as to each, (i) the name of such Credit Party, (ii) the jurisdiction in which such Credit Party was incorporated or organized and (iii) its authorized capitalization, the number of Equity Interests outstanding, the ownership of its Equity Interests and whether or not its Equity Interests are certificated. Each Credit Party's taxpayer identification number and organizational identification number is listed on Schedule 3.7(a).

(b) Except as set forth on Schedule 3.7(b), no Credit Party owns any voting stock, Equity Interest or other beneficial interest, either directly or indirectly, in any Person other than Equity Interests reflected on Schedule 3.7(a). As of the Closing Date, no Credit Party has a direct or indirect Subsidiary other than as listed on Schedule 3.7(b).

(c) Except as disclosed on Schedule 3.7(c), no Credit Party has done business, is doing business or intends to do business by or under any fictitious name, trade name or other name that is not its full corporate name. Schedule 3.7(c) also sets forth a list of any jurisdiction of organization or legal name of any Credit Party for the five (5) years preceding the Closing Date (or, if applicable, such shorter period since the formation of such Credit Party).

(d) Schedule 3.7(d) hereto lists (a) the chief executive office of each Credit Party as of the date hereof, and (b) each location where any Credit Party keeps (or intends to keep) the material records concerning the business operations of such Credit Party or the Collateral or keeps (or intends to keep) any material goods included in the Collateral as of the date hereof.

SECTION 3.8. Intellectual Property. Each of the Credit Parties owns or has the right to use, and has obtained assignments of all leases, licenses and other rights of whatever nature with respect to, all Intellectual Property necessary for the present conduct of its business. To the knowledge of each Credit Party, (a) the conduct and operations of its business do not infringe, misappropriate, dilute, violate or otherwise impair any Intellectual Property owned by any other Person, and (b) no other Person has contested any right, title or interest of any Credit Party in, or relating to, any Intellectual Property, other than, in each case, as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Credit Party has received a written notice in the past six (6) years alleging that Intellectual Property owned by a Credit Party infringes, misappropriates or otherwise conflicts with any Intellectual Property owned by any other Person. Schedule 3.8 sets forth a true, correct and complete list of all Intellectual Property owned by any Credit Party.

SECTION 3.9. Insurance. Schedule 3.9 sets forth a true, correct and complete listing of all insurance policies maintained by the Credit Parties as of the Closing Date, with the



amounts insured (and any deductibles) set forth therein. Each Credit Party maintains, with financially sound and reputable insurance companies (which are not Affiliates of any Credit Party), policies of insurance (including liability insurance and casualty insurance) with respect to its properties and business of such types and in such amounts, with such deductibles and covering such risks, as are customarily maintained by Persons engaged in the same or similar businesses and owning similar properties in localities where any Credit Party operates.

#### SECTION 3.10. Title to Properties.

(a) The Credit Parties have good title to each of the properties and assets reflected in the most recent financial statements referred to in Section 3.5 or delivered pursuant to Section 5.1(a) hereof and all such properties and assets are free and clear of Liens, except Permitted Encumbrances, in each case, except for defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purpose.

(b) All property owned or leased by the Credit Parties as of the Closing Date, and the nature of the applicable Credit Party's interest therein, is set forth on Schedule 3.10, including the common address and primary use of such property, and each Credit Party has delivered to the Administrative Agent true and complete copies of any leases or sub-leases to which it is a party with respect to such property. All permits or licenses required to have been obtained to enable any property owned or leased by the Credit Parties to be lawfully occupied and used for all of the purposes for which such property is currently occupied and used have been obtained and are in full force and effect.

(c) All properties and assets that are used or useful in the business of the Credit Parties as of the date hereof are owned beneficially and of record by a Credit Party.

#### SECTION 3.11. Anti-Terrorism.

(a) None of the Credit Parties is in violation of any Applicable Law relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "Executive Order"), and the USA Patriot Act.

(b) No Credit Party is any of the following:

- (i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

- (iii) a person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
- (iv) a person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or
- (v) a person that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (“OFAC”) at its official website or any replacement website or other replacement official publication of such list.

(c) None of the Credit Parties (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of a person described in Section 3.11(b), (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

SECTION 3.12. Litigation. Except as set forth on Schedule 3.12 and except for the filing of the Cases, there are no actions, suits or other proceedings at law or in equity by or before any arbitrator, arbitration panel or Governmental Authority (including matters relating to environmental liability) or any threatened action, suit or other proceeding against or affecting any Credit Party or of any of their respective properties or rights in any material respect. No Credit Party is in default with respect to any order, writ, injunction, decree, rule or regulation of any Governmental Authority binding upon such Person.

SECTION 3.13. Federal Reserve Regulations. None of the Credit Parties is engaged principally or as one of its important activities in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans will be used, directly or indirectly, whether immediately, incidentally or ultimately (i) to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock, or (ii) for any other purpose, in each case, violative of or inconsistent with any of the provisions of any regulation of the Board, including Regulations T, U and X thereto.

SECTION 3.14. Investment Company Act. None of the Credit Parties is, or will during the term of this Credit Agreement be, (i) an “investment company”, within the meaning of the Investment Company Act of 1940, as amended or (ii) a “holding company” under the Public Utility Holding Company Act of 1935, as amended.

SECTION 3.15. Taxes. Each Credit Party has filed or caused to be filed all federal, state, local and foreign tax returns which are required to be filed with any Governmental Authority, except as set forth on Schedule 3.15, which such tax returns are true, complete and correct in all respects, and has paid or has caused to be paid all Taxes (whether or not shown on

any such tax returns or on any assessment received by it in writing), to the extent that such Taxes have become due, except as permitted by Section 5.8 hereof or as set forth on Schedule 3.15. No Credit Party knows of any additional assessments or any reasonable basis therefor. The charges, accruals and reserves on the books of each Credit Party in respect of Taxes or other governmental charges are accurate and adequate. Each Credit Party has paid or has caused to be paid, or has made adequate reserves for, all payroll Taxes which are required to be paid by it and has withheld the proper and accurate amounts from amounts paid or payable to its respective employees, in each case, for all periods in full and complete compliance with all Applicable Law.

SECTION 3.16. Compliance with ERISA. Except as disclosed on Schedule 3.16, which disclosed items could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect: (a) each of the Credit Parties' Plans, each of which has been maintained and operated in all material respects in accordance with all Applicable Laws, including ERISA and the Code, and each Plan intended to qualify under section 401(a) of the Code satisfies the requirements of such section; (b) no Reportable Event has occurred in the last five years as to any Plan, and the present value of all benefits under all Plans subject to Title IV of ERISA (based on those assumptions used to fund such Plans) did not, in the aggregate, as of the last annual valuation date (if any) applicable thereto, exceed the actuarial value of the assets of such Plans allocable to such benefits; (c) no liability has been, and no circumstances exist pursuant to which any material liability is reasonably likely to be, imposed upon any Credit Party or ERISA Affiliate (i) under sections 4971 through 4980E of the Code, sections 502(i) or 502(l) of ERISA, or Title IV of ERISA with respect to any Plan or Multiemployer Plan, (ii) for the failure to fulfill any obligation to contribute to any Multiemployer Plan, or (iii) with respect to any Plan that provides post-retirement welfare coverage (other than as required pursuant to Section 4980B of the Code); and (d) neither any Credit Party nor any ERISA Affiliate has received any notification that any Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA, and no Multiemployer Plan is reasonably expected to be in reorganization or to be terminated.

SECTION 3.17. Agreements.

(a) Schedule 3.17(a) is a true and complete listing of all Material Agreements.

(b) Other than defaults in existence as of the Filing Date which are scheduled on Schedule 3.17(b) hereof or defaults caused by the filing of the Cases (but not any ancillary effects resulting therefrom), no Credit Party is in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any Material Agreement.

(c) None of the Credit Parties is a party to any Material Agreement or subject to any restriction under its Organizational Documents which, individually or in the aggregate, (a) imposes any restriction on the ability of any of the Credit Parties to grant a Lien to the

Administrative Agent pursuant to Article 8 or (b) could otherwise reasonably be expected to have a Material Adverse Effect.

SECTION 3.18. Security Interest. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the provisions of Article 8 will, together with the Orders, create and grant to the Administrative Agent for the benefit of the Administrative Agent and the Lenders valid and perfected first lien security interests in the Collateral, including in the Pledged Securities, subject only to Liens securing the Existing First Lien Facilities and the Carve-Out.

SECTION 3.19. Environmental Liabilities.

(a) Except as set forth on Schedule 3.19, no Credit Party has used, stored, treated, transported, manufactured, refined, handled, produced or disposed of any Hazardous Materials on, under, at, from or in any way affecting, any of its properties or assets owned or leased by a Credit Party, in any manner which at the time of the action in question materially violated any Environmental Law governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and to the best of each Credit Party's knowledge, no prior owner of such property or asset or any tenant, subtenant, prior tenant or prior subtenant thereof has used Hazardous Materials on or affecting such property or asset, or otherwise, in any manner which at the time of the action in question materially violated any Environmental Law governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(b) To the best of each Credit Party's knowledge (i) no Credit Party has any obligations or liabilities, known or unknown, matured or not matured, absolute or contingent, assessed or unassessed, which could reasonably be expected to have a Material Adverse Effect, and (ii) no claims have been made against any of the Credit Parties in the past five years and no presently outstanding citations or notices have been issued against any of the Credit Parties, which in either case could reasonably be expected to have a Material Adverse Effect and which in either case have been or are imposed by reason of or based upon any provision of any Environmental Law, including any such obligations or liabilities relating to or arising out of or attributable, in whole or in part, to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of any Hazardous Materials by any Credit Party, or any of its employees, agents, representatives or predecessors in interest in connection with or in any way arising from or relating to any of the Credit Parties or any of their respective owned or leased properties, or relating to or arising from or attributable, in whole or in part, to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of any such substance, by any other Person at or on or under any of the real properties owned or used by any of the Credit Parties or any other location where such obligations or liabilities could reasonably be expected to have a Material Adverse Effect.

SECTION 3.20. Pledged Securities.

(a) All of the Pledged Securities are duly authorized, validly issued, fully paid and non-assessable, and are owned and held by the Pledgors, free and clear of any Liens, other than those created pursuant to this Credit Agreement and other Permitted Encumbrances, and there are no restrictions on the transfer of the Pledged Securities other than as a result of this Credit Agreement or applicable securities laws and the regulations promulgated thereunder. The Pledged Securities are owned by the Persons specified on Schedule 3.7(a) and Schedule 3.7(b).

(b) Except as set forth on Schedule 3.7(a) and Schedule 3.7(b), there are no outstanding rights, warrants, options, conversion or similar rights currently outstanding with respect to, and no agreements to purchase or otherwise acquire, any shares of the capital stock or other Equity Interests of any issuer of any of the Pledged Securities; and there are no securities or obligations of any kind convertible into any shares of the capital stock or other Equity Interests of any issuer of any of the Pledged Securities.

(c) Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the provisions of Article 10 create in favor of the Administrative Agent (on behalf of itself and the Lenders) a valid, binding and enforceable security interest in and, subject to the Orders, first priority Lien upon, all right, title and interest of the Pledgors in the Pledged Securities and constitutes a fully perfected first priority security interest in and Lien upon all right, title and interest of the Pledgors in such Pledged Securities, in each case, subject only to Liens securing the Existing First Lien Facilities and the Carve-Out, provided that the definitive instruments (if any) representing all Pledged Securities shall have been delivered to the Administrative Agent or its designee, which shall include the Existing First Lien Agent (and the Administrative Agent or such designee has taken possession or control of such Pledged Securities) together (in the case of Pledged Securities comprising capital stock) with appropriate undated stock powers (or any comparable document for non-corporate entities to the extent certificated) endorsed or executed in blank by the appropriate Pledgor as required under Article 10.

SECTION 3.21. Compliance with Laws. Each Credit Party is in compliance with all Applicable Laws in respect of its business or properties, except for such noncompliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Borrowings hereunder, the intended use of the proceeds of the Loans as described in the preamble hereto and as contemplated by Section 5.13 hereof and any other transactions contemplated hereby will comply with all Applicable Laws except for such noncompliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 3.22. Use of Proceeds. The proceeds of the Loans will be used by the Borrowers in accordance with Section 5.13.

SECTION 3.23. No Fraud. No Credit Party has entered or is entering into the arrangements contemplated hereby and by the other Fundamental Documents, or intends to make

any transfer or incur any obligations hereunder or thereunder, with actual intent to hinder, delay or defraud either present or future creditors.

SECTION 3.24. Employment and Labor Practices; Employee Benefits.

(a) No Credit Party is engaged in any unfair labor practice. There is (i) no unfair labor practice charge or complaint pending against any Credit Party or, to the knowledge of any Credit Party, threatened against any of them, before the National Labor Relations Board or any other Governmental Authority, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement so pending against any Credit Party or, to the knowledge of any Credit Party, threatened against any of them, (ii) no strike, labor dispute, slowdown, lockout or work stoppage pending against any Credit Party or, to the knowledge of any Credit Party, threatened against any Credit Party, (iii) no union representation question that exists with respect to the employees of any Credit Party, and to the knowledge of any Credit Party, no union organization campaign in progress with respect to any of the employees of any Credit Party, (iv) no employment claims (including wage and hour, equal employment opportunity, occupational safety and health or immigration) pending before any Governmental Authority, or, to the knowledge of any Credit Party, threatened against any Credit Party and (v) within the past three (3) years, no government investigation relating to labor or employment practices (including wage and hour, equal employment opportunity, occupational safety and health or immigration) of any Credit Party. Except as set forth on Schedule 3.24(a), each Credit Party is and has been since January 1, 2008, in compliance with all Applicable Laws relating to labor or labor relations and employment practices, terms and conditions, and no Credit Party is liable for any arrearage or any other costs or penalties for failure to comply with any such laws. The activities of the employees of each Credit Party with respect to the business of such Credit Party do not conflict with or constitute a breach of the terms of any contract under which such employee is bound, and no Credit Party has received any written allegation asserting such a breach. Each Credit Party has filed or caused to be filed all required I-9 Forms and has complied in all respects with any requests for additional information received by any Credit Party from the United States Immigration and Customs Enforcement. Each Credit Party has, for purposes of each employee benefit plan, for tax reporting and withholding purposes and for all other purposes, correctly classified all individuals performing services for such Credit Party as common law employees, leased employees, independent contractors or agents, as applicable.

(b) Schedule 3.24(b) sets forth a complete and accurate list of all employee benefits provided by any Credit Party to its employees, including any benefits programs, compensation plans, employment arrangements, non-monetary incentive programs or other similar benefits.

SECTION 3.25. Bank Accounts. Schedule 3.25 sets forth a complete list as of the Closing Date of each of the deposit or other bank accounts of each Credit Party, including the name of the financial institution at which such account is held, the name of the Credit Party that holds such account, the account number and the purpose of such account.



SECTION 3.26. Disclosure. The factual information (other than the Cash Flow Projections, estimates and information of a general economic or industry nature) furnished by or on behalf of any Credit Party to the Administrative Agent or any Lender, including any information contained in this Credit Agreement, any other Fundamental Document and any Material Agreement, in connection with the transactions contemplated hereby, and all factual information furnished by or on behalf of any Credit Party to the Administrative Agent or any Lender after the date hereof, when taken as a whole at the time when such information was or will be furnished, and on the date hereof, is true and correct in all material respects and does not or will not contain any untrue statement of a material fact made by or on behalf of any Credit Party or omit to state a material fact that was or is, under the circumstances under which made, necessary in order to make the statements contained herein or therein not misleading; provided that the Cash Flow Projections, estimates and information of a general economic or industry nature were prepared in good faith based upon assumptions believed by the Borrowers to be reasonable at the time made, it being understood that actual results may vary materially therefrom. There is no fact known to any Credit Party that has not been disclosed to the Administrative Agent which could reasonably be expected to have a Material Adverse Effect.

SECTION 3.27. The Orders. On the date of the making of the initial Loan hereunder, the Interim Order has been entered by the Bankruptcy Court and has not been stayed, amended, vacated, reversed or rescinded without the Administrative Agent's consent (acting with the consent of, or at the direction of, the Required Lenders). On the date of the making of any Loan, the Interim Order or the Final Order, as the case may be, shall have been entered by the Bankruptcy Court and shall not have been amended, stayed, vacated or rescinded without the Administrative Agent's consent (acting with the consent of, or at the direction of, the Required Lenders). Upon the Termination Date, the Lenders shall, subject to the provisions of Article 7 and the Orders, be entitled to immediate payment of such Obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

#### **4. CONDITIONS OF LENDING**

SECTION 4.1. Conditions Precedent to Initial Loan. The obligation of each Lender to make its initial Loan is subject to the satisfaction in full of the following conditions precedent:

(a) Corporate Documents. The Administrative Agent shall have received, with copies for each of the Lenders:

- (i) a copy of the articles or certificate of incorporation, certificate of organization or formation or certificate of limited partnership (or equivalent document) of each Credit Party, certified on a recent date (not more than five (5) Business Days prior to the Closing Date) by the

Secretary of State or other relevant office of such Person's jurisdiction of incorporation or organization, as the case may be;

- (ii) a certificate of the Secretary of State or other relevant office of the jurisdiction of organization of each Credit Party, dated as of a recent date (not more than five (5) Business Days prior to the Closing Date) as to the good standing of, and payment of taxes by, such Credit Party, which certificate lists (if available) the charter documents on file in the office of such Secretary of State;
- (iii) a certificate dated as of a recent date (not more than five (5) Business Days prior to the Closing Date) as to the good standing of each Credit Party issued by the Secretary of State or other relevant office of each jurisdiction in which such Credit Party is qualified as a foreign corporation or organization as listed in Schedule 3.1 hereto; and
- (iv) a certificate of an Authorized Officer of each Credit Party, dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the by-laws, articles of organization, operating agreement or partnership agreement (or equivalent document) of such Credit Party, as in effect on the date of such certification; (B) that attached thereto is a true and complete copy of the resolutions adopted by the Governing Body of such Credit Party authorizing the execution, delivery and performance in accordance with their respective terms of the Fundamental Documents executed by such Credit Party, as applicable, and any other documents required or contemplated hereunder or thereunder, the grant of the security interests in the Collateral, and in the case of the Borrowers, the Borrowings hereunder, and that such resolutions have not been amended, rescinded or supplemented and are currently in effect; (C) that the articles or certificate of incorporation, certificate of organization or formation or certificate of limited partnership (or equivalent document) of such Credit Party has not been amended since the date of the last amendment thereto indicated on the certificates of the Secretary of State or other appropriate office furnished pursuant to clause (i) above; (D) as to the incumbency and specimen signature of each Authorized Officer of such Credit Party executing any Fundamental Document (such certificate to contain a certification by another Authorized Officer of such party as to the incumbency and signature of the Authorized Officer signing the certificate referred to in this clause (iv)); and (E) that all copies or originals of documents delivered pursuant to this Section 4.1 are true, correct and complete.



(b) Credit Agreement; Notes. The Administrative Agent shall have received (i) executed counterparts of this Credit Agreement, which, when taken together, bear the signatures of the Administrative Agent, all of the Credit Parties and all of the Lenders, and (ii) the Notes which have been requested by Lenders, executed by the Borrowers.

(c) Interim Order. The Administrative Agent and the Required Lenders shall have received satisfactory evidence of the entry by the Bankruptcy Court of an interim order under section 364 of the Bankruptcy Code in substantially the form of Exhibit K and in form and substance satisfactory to the Administrative Agent (the “Interim Order”) approving the Fundamental Documents and granting the claim status and lien priority described in Section 2.11 which Interim Order (i) shall have been entered upon an application or motion of the Borrowers satisfactory in form and substance to the Administrative Agent, on such prior notice as may in each case be satisfactory to the Administrative Agent, (ii) shall authorize extensions of Loans on an interim basis in an aggregate amount at any one time outstanding not in excess of \$3,500,000 in the aggregate, (iii) shall approve the payment by the Borrowers of fifty percent (50%) of the Up-Front Fees and all of the fees referred to in Section 2.4(b), (iv) shall be in full force and effect, (v) shall provide that the Credit Parties may use any cash collateral in which any lender under the Existing Facilities has an interest in accordance with the Cash Collateral Orders; (vi) shall have been entered not later than 10 days following the Filing Date and (vii) shall not have been vacated, stayed, reversed, modified or amended in any material respect; and such Interim Order shall contain good faith findings with respect to the Lenders and neither the making of such Loans nor the performance by any of the Credit Parties of any of their respective obligations hereunder or under the Fundamental Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

(d) First Day Orders. All of the “first day orders” entered by the Bankruptcy Court at the time of the commencement of the Cases shall be satisfactory in form and substance to the Administrative Agent, and shall reflect the assumption of only such pre-petition contracts as are satisfactory to the Administrative Agent.

(e) Reserved.

(f) Opinions of Counsel. The Administrative Agent shall have received the written opinion of Squire Sanders & Dempsey (US) LLC, counsel to the Credit Parties, dated the Closing Date and addressed to the Administrative Agent and the Lenders, which opinion shall be in form and substance reasonably satisfactory to the Administrative Agent.

(g) Material Pleadings. The Administrative Agent shall have received copies of all Material Pleadings as soon as is reasonably practicable prior to the filing thereof with the Bankruptcy Court.

(h) Insurance. The Credit Parties shall have furnished the Administrative Agent with (i) evidence acceptable to the Administrative Agent that the insurance policies required by Section 5.5 have been obtained and are in full force and effect and (ii) certificates of

insurance with respect to all existing insurance coverage which certificates shall name Bayside Gallo Recovery, LLC, as Administrative Agent, as the certificate holder (i.e., as additional insured or loss payee, as appropriate) and shall evidence the Credit Parties' compliance with Section 5.5 with respect to all insurance coverage existing as of the Closing Date.

(i) Security and Other Documentation. The Administrative Agent shall have received: (i) a fully executed copy of any landlord agreement with respect to any of the properties of the Credit Parties listed on Schedule 3.10; (ii) appropriate UCC-1 financing statements relating to the Collateral; (iii) as requested by the Administrative Agent, a fully executed copy of any IP Security Agreement; (iv) a fully executed copy of any Account Control Agreement; and (v) unless waived by the Administrative Agent, such local law documentation and perfection documentation as may be satisfactory to the Administrative Agent with respect to the Credit Parties.

(j) Payment of Fees. The Administrative Agent shall have received payment of (a) for the ratable benefit of the Lenders, 50% of all Up-Front Fees and (b) all other reasonable fees and expenses then due and payable by the Borrowers to the Administrative Agent and/or the Lenders in connection with the Facility and the Cases.

(k) Searches. The Administrative Agent shall have received updated UCC and other searches satisfactory to it indicating that no other filings, encumbrances or transfers (other than in connection with Permitted Encumbrances) with regard to the Collateral are of record in any jurisdiction in which it shall be necessary for the Administrative Agent to make a UCC filing in order to provide the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) with a perfected security interest in the Collateral.

(l) Cash Management Arrangements. The Borrowers' and Guarantors' cash management arrangements shall be reasonably acceptable to the Administrative Agent and shall have been approved by one or more "cash management" orders of the Bankruptcy Court reasonably acceptable to the Administrative Agent.

(m) Compliance with Laws. The Administrative Agent shall be satisfied that the transactions contemplated hereby will not (i) violate any provision of Applicable Law, or any order of any court or other agency of the United States of America or any state thereof applicable to any of the Credit Parties or any of their respective properties or assets, other than such as could not reasonably be expected to have a materially adverse effect upon the business, assets, properties, operations, financial condition, liabilities (including contingent liabilities) and Material Agreements of the Credit Parties, taken as a whole or (ii) conflict with, or result in a default, breach or right of termination or acceleration under, any Material Agreement to which any Credit Party is a party, other than such as could not reasonably be expected to result in a Material Adverse Effect.

(n) USA Patriot Act. The Administrative Agent shall have received any information required and requested by the Administrative Agent or any Lender under or in connection with the USA Patriot Act.

(o) Business Plan; Budget; Initial Cash Flow Projection. The Administrative Agent shall have received from the Credit Parties such information (financial or otherwise) as may be requested by the Administrative Agent, including: (i) a forecast of the Borrowers' and Guarantors' anticipated cash receipts and disbursements and setting forth the anticipated uses of the Commitments for the period beginning on the Closing Date and ending six (6) months thereafter on a monthly basis in form and substance satisfactory to the Administrative Agent and attached hereto as Exhibit C (as may be updated, supplemented and amended from time to time with the prior written consent of the Administrative Agent and the Required Lenders, the "Budget"), which shall be certified by an Authorized Officer of the Borrowers, and (ii) a detailed eight (8) week cash flow projection satisfactory to the Administrative Agent and its advisors (as may be updated, supplemented and amended from time to time with the prior written consent of the Administrative Agent and the Required Lenders, the "Initial Cash Flow Projection").

(p) No Default. No "default" or "event of default" (as such terms are defined in the Existing First Lien Facilities) shall have occurred and be continuing under the Existing First Lien Facilities, without regard to any waiver or cure thereof that is not consented to in writing by the Administrative Agent, in its capacity as a lender under the Existing First Lien Facilities.

SECTION 4.2. Conditions Precedent to Each Loan. The obligations of the Lenders to make each of the Loans (including the initial Loan) are subject to the satisfaction in full of the following conditions precedent:

(a) Borrowing Certificate. The Administrative Agent shall have received a Borrowing Certificate with respect to such Borrowing, duly executed by the Authorized Officer of the Borrowers.

(b) Representations and Warranties. The representations and warranties set forth in Article 3 hereof (as updated from time to time by any amendment of the Schedules attached to this Credit Agreement in accordance with Section 5.1(f)) and in the other Fundamental Documents shall be true and correct in all material respects on and as of the date of each Borrowing with the same effect as if made on and as of such date (except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(c) No Default or Event of Default. On the date of each Borrowing, no Default or Event of Default shall have occurred and be continuing, nor shall any such event occur by reason of the making of such Loan.

(d) No Material Adverse Change. No event shall have occurred (since the later of August 18, 2011, and the date of the annual audited financial statements which were most recently delivered pursuant to Section 5.1(a)) which has had a Material Adverse Effect.

(e) Orders. The Interim Order shall be in full force and effect and shall not have been stayed, reversed, modified or amended in any respect without the prior written consent of the Administrative Agent and the Required Lenders, provided that, if at the time of the making of any Loan, the aggregate principal amount of all Loans then outstanding would exceed the aggregate principal amount of extensions of credit authorized by the Interim Order (any such excess, collectively, the “Additional Credit”), the Administrative Agent shall have received satisfactory evidence of the entry of a final order by the Bankruptcy Court in substantially the form of the Interim Order, with only such modifications thereto as are reasonably satisfactory in form and substance to the Administrative Agent (the “Final Order”). Without limiting the foregoing, all claims of all creditors of each Borrower and each Guarantor shall have been and shall remain stayed, the exercise by all creditors of creditor rights and remedies shall remain stayed, and all creditors shall remain prohibited from interfering with property or contract rights of each Borrower and each Guarantor. The Final Order, in any event, shall have been entered by the Bankruptcy Court no later than thirty five (35) days after the entry of the Interim Order and, at the time of the extension of any Additional Credit, the Final Order shall be in full force and effect, and shall not have been vacated, stayed, reversed, modified or amended in any respect without the prior written consent of the Administrative Agent and the Required Lenders. If the Interim Order or the Final Order is the subject of an appeal period or a pending appeal, no stay pending appeal has been sought by any creditor or other person in interest with respect to the Interim Order, the Final Order or the making of the Loans or the performance by any Borrower or any Guarantor of any of their respective obligations under any of the Fundamental Documents and such Orders shall contain good faith findings with respect to the Lenders. All other orders issued by the Bankruptcy Court shall be in form and substance reasonably satisfactory to the Administrative Agent.

(f) Payment of Fees and Expenses. The Borrowers shall have paid to the Administrative Agent the then unpaid balance of all accrued and unpaid fees (including, if the Final Order has been entered, the final 50% of the Up-Front Fees) due under and pursuant to this Credit Agreement, the Orders and any fee letter referred to in Section 2.4 and reasonable fees and expenses of counsel to the Administrative Agent as to which invoices have been issued.

(g) Cash Projections. The Borrowers shall have provided, concurrently with the delivery of a written notice of Borrowing, interim cash flow projections for the period through the last Business Day of the following calendar week, which cash flow projections shall be consistent in all respects with the Cash Flow Projections most recently delivered pursuant to Section 5.1(i) and shall demonstrate (with supporting calculations) that the Borrowers’ aggregate unrestricted cash as of the last day of such period does not exceed \$1,500,000.

Each request for a Borrowing shall be deemed to be a representation and warranty by the Borrowers on the date of such Borrowing that the conditions specified in this Section 4.2 have been satisfied in full.

## **5. AFFIRMATIVE COVENANTS**

From the date hereof and for so long as the Commitments shall be in effect, any amount shall remain outstanding under any Loan or any other Obligation shall remain unpaid or unsatisfied, each of the Credit Parties agrees that it will:

SECTION 5.1. Financial Statements and Reports. Furnish or cause to be furnished to the Administrative Agent:

(a) Within one hundred twenty (120) days after the end of each fiscal year of AGH, commencing with the fiscal year ending December 31, 2011, the audited consolidated balance sheet of AGH and its Consolidated Subsidiaries as at the end of, and the related consolidated statements of income, stockholders' equity and cash flows for, such fiscal year, such consolidated statements to be accompanied by an unqualified report and opinion of KPMG LLP or such other independent public accountants of nationally recognized standing as shall be acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards relating to reporting and which report and opinion shall contain no material exceptions or qualifications (other than with respect to the Cases), together with a certificate signed by an Authorized Officer of the Borrowers, to the effect that such financial statements fairly present the financial position of AGH and its Consolidated Subsidiaries as at the dates indicated and the results of their operations for the periods indicated in conformity with GAAP;

(b) Within forty five (45) days after the end of each month (commencing with the month ending August 31, 2011), the unaudited consolidated balance sheet of AGH and its Consolidated Subsidiaries as of the end of, and the related unaudited consolidated statements of income, stockholders' equity and cash flows for, such month, and for the elapsed portion of the fiscal year through the end of such month, in each case setting forth comparative figures for the corresponding month and elapsed portion of the fiscal year of the prior fiscal year and comparable budgeted figures for such month and elapsed portion of the fiscal year as set forth in the most recent budget delivered pursuant to Section 5.1(c), all of which shall be certified by an Authorized Officer of the Borrowers as having been prepared in reasonable detail in accordance with GAAP and fairly presenting in all material respects the financial condition of AGH and its Consolidated Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments (none of which shall be material, either individually or in the aggregate);

(c) No later than the last day of each fiscal year of AGH, commencing with the fiscal year ending December 31, 2011, a budget in form reasonably satisfactory to the Administrative Agent and consistent with the Business Plan (including budgeted statements of

income, sources and uses of cash and balance sheets for AGH and its Consolidated Subsidiaries on a consolidated basis) (i) for each of the twelve months of the next fiscal year prepared in detail and (ii) for the fiscal year immediately following the next fiscal year prepared in summary form, in each case prepared in accordance with GAAP and setting forth, with appropriate discussion, the principal assumptions upon which such budget is based. Such budget shall be accompanied by a certificate of an Authorized Officer of the Borrowers to the effect that the budgets and other financial data contained therein are based on reasonable estimates and assumptions, all of which are fair in light of the conditions which existed at the time the budget was made, have been prepared on the basis of the assumptions stated therein, and reflect, as of the time so furnished, the reasonable estimate of the Borrowers of the budgeted results of the operations and other information budgeted therein;

(d) Simultaneously with the delivery of the monthly financial statements referred to in paragraph (b) of this Section 5.1, (i) a certificate of an Authorized Officer of the Borrowers, in form and substance reasonably satisfactory to the Administrative Agent (x) stating whether or not such Authorized Officer has knowledge of any Event of Default or Default and, if so, specifying each such condition or event, the nature thereof and any action taken or proposed to be taken with respect thereto; and (y) identifying all Subsidiaries existing on the date of such certificate and indicating, as applicable, whether such Subsidiary was formed or acquired since the date of the previous certificate and indicating which Subsidiaries identified on the previous certificate have been sold, liquidated, dissolved or otherwise disposed of in a manner permitted hereunder since the date of such previous certificate, if any; and (ii) a Compliance Certificate completed and signed by an Authorized Officer of the Borrowers;

(e) Promptly upon their becoming publicly available, copies of (i) all registration statements, proxy statements, notices and reports any Credit Party shall file with any securities exchange or with the Securities and Exchange Commission or any successor agency, if any, and (ii) all reports, financial statements, press releases and other information which any Credit Party shall release, send or make available to its common stockholders generally; provided, that any such documents that are filed or furnished with the Securities and Exchange Commission on via EDGAR or any successor electronic document submission program shall be deemed to have been provided to the Administrative Agent when so filed or furnished;

(f) From time to time such information as may be required to keep current each of the Schedules referenced in Section 3.7;

(g) Simultaneously with delivery of financial statements required under Section 5.1(a) above, a report of management discussing the financial condition and results of operations of the Credit Parties, taken as a whole, as well as comparisons against the prior period performance in a form reasonably acceptable to the Administrative Agent;

(h) Copies of all Material Pleadings as soon as is reasonably practicable prior to the filing thereof with the Bankruptcy Court;



(i) ~~No~~(x) Cash flow projections for the Borrowers and Guarantors for the period through and including November 25, 2011, and (y) not later than five (5) Business Days prior to November 25, 2011, and the end of each calendar month occurring thereafter, rolling eight (8) ~~week~~Weekly Period cash flow projections for the Borrowers and Guarantors (such projections in clauses (x) and (y), together with the Initial Cash Flow Projection, collectively, the “Cash Flow Projections”), in each case, in form and substance reasonably satisfactory to the Administrative Agent and its advisors;

(j) No later than 5:00 p.m. (New York City time) on the second (2<sup>nd</sup>) Business Day immediately succeeding the last Business Day of each ~~week~~Weekly Period, an analysis of ~~weekly~~-cash flows for such Weekly Period in the same format as the Cash Flow Projections, which shall be certified as true and complete by an Authorized Officer of the Borrowers and which shall include (w) the actual cash flows for the prior ~~week~~Weekly Period and cumulative cash flows since the Closing Date, (x) a comparison of ~~the weekly~~such Weekly Period and cumulative cash flows against the Cash Flow Projections most recently delivered, (y) a written explanation in reasonable detail of the variances for each line item between the ~~weekly~~Weekly Period and cumulative cash flows and the Cash Flow Projections most recently delivered and (z) a comparison of the Credit Parties' performance against the Budget;

(k) Prior to December 31, 2011, the Business Plan of the Borrowers and Guarantors;

(l) Promptly upon request therefor, any information required by the Administrative Agent on behalf of itself or any Lender under or in connection with the USA Patriot Act;

(m) From time to time such additional information regarding the financial condition, operations or business of any Credit Party, any Material Agreement or the Collateral as the Administrative Agent may reasonably request, including management letters issued to a Credit Party by its auditors; and

(n) Any other information or reports delivered at any time to any lender or creditor of any Credit Party (other than trade creditors ) when and as such information or reports are so delivered.

SECTION 5.2. Corporate Existence; Compliance with Laws. Do or cause to be done all things necessary (i) to preserve, renew and keep in full force and effect its legal existence, good standing in the jurisdiction of its organization and foreign qualification (as applicable), except as expressly permitted under Section 6.6, and material rights, licenses, permits and franchises and (ii) to comply with all Applicable Laws. No Credit Party will take any action, or conduct its affairs in a manner, which is likely to result in (x) the separate corporate existence of such Credit Party being ignored or (y) the assets and liabilities of such Credit Party being substantively consolidated with any other Credit Party or any other Person.

SECTION 5.3. Maintenance of Properties. Keep its tangible properties which are material to its business in good repair, working order and condition (ordinary wear and tear excepted) and, from time to time (i) make (or cause to be made) all necessary and proper repairs, renewals, replacements, additions and improvements thereto, and (ii) comply at all times with the applicable provisions of all material leases and other material agreements to which it is a party so as to prevent any loss or forfeiture thereof or thereunder unless the Debtors' compliance therewith is stayed by the Bankruptcy Code or being currently contested in good faith by appropriate proceedings and, in each case, appropriate reserves, if any, have been established in accordance with GAAP.

SECTION 5.4. Notice of Material Events.

(a) Upon any Authorized Officer of any Credit Party obtaining knowledge of (i) any Default or Event of Default or (ii) any event which could reasonably be expected to result in a Material Adverse Effect, promptly (and, in any event, within two (2) Business Days after such Authorized Officer obtains such knowledge) give written notice thereof to the Administrative Agent specifying the nature and period of existence of any such condition or event, or specifying the notice given or action taken by such Person and the nature of such claimed Event of Default or condition and what action any Credit Party has taken, is taking and proposes to take with respect thereto.

(b) Upon any Authorized Officer of any Credit Party obtaining knowledge of the filing or commencement of, or any threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against any Credit Party which, if adversely determined, could reasonably be expected to result in a judgment in excess of \$50,000, promptly (and, in any event, within two (2) Business Days after such Authorized Officer obtains such knowledge) give written notice to the Administrative Agent specifying the nature of such action, suit or proceeding and what actions the Credit Parties have taken, are taking and propose to take with respect thereto.

(c) Promptly (and, in any event, within two (2) Business Days) upon any Authorized Officer of any Credit Party obtaining knowledge thereof, provide written notice to the Administrative Agent of: (i) any attachment, judgment, lien, levy or order that may be assessed against or threatened against any Credit Party (other than Permitted Encumbrances) which could reasonably be expected to have a Material Adverse Effect, (ii) the occurrence of any default under any Material Agreement, (iii) the creation or formation of any new Subsidiary by any Credit Party or (iv) any labor controversy that has resulted in, or threatens to result in, a strike, boycott, work stoppage, shutdown or other work action or disruption against any Credit Party which could reasonably be expected to have a Material Adverse Effect, in each case, which written notice shall specify the nature of such occurrence and what actions the Credit Parties have taken, are taking and propose to take with respect thereto.



## SECTION 5.5. Insurance.

(a) Keep its assets which are of an insurable character insured (to the extent and for the time periods consistent with customary industry standards) by financially sound and reputable insurance companies (which are not Affiliates of any Credit Party) against loss or damage by fire, explosion, theft or other hazards which are included under extended coverage of such types and in such amounts, with such deductibles and covering such risks, as are customarily maintained by Persons engaged in the same or similar businesses and owning similar properties in localities where any Credit Party operates and as are otherwise satisfactory to the Administrative Agent.

(b) Maintain with financially sound and reputable insurance companies (which are not Affiliates of any Credit Party), policies of insurance against other hazards and risks and liability to Persons and property of such types and in such amounts, with such deductibles and covering such risks, as are customarily maintained by Persons engaged in the same or similar businesses and owning similar properties in localities where any Credit Party operates and as are otherwise satisfactory to the Administrative Agent.

(c) Cause the insurers providing all such above-described insurance (excluding worker's compensation insurance) to: (i) provide not less than thirty (30) days' prior written notice to the Administrative Agent of cancellation, termination, non-renewal or lapse or material change of coverage; (ii) name the Administrative Agent for the benefit of the Administrative Agent and the Lenders as a loss payee or additional insured, as applicable; (iii) provide that no act or default of any Credit Party or any other Person shall affect the rights of the Administrative Agent and the Lenders thereunder; and (iv) provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Administrative Agent and the Lenders.

(d) If the Credit Parties shall fail to maintain insurance in accordance with this Section 5.5, or if any Credit Party shall fail to so endorse and deposit all policies or certificates with respect thereto, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance at the Credit Parties' expense to protect the Lenders' interests (which insurance may, but need not, also protect the Credit Parties' interests) in the Credit Parties' properties. The coverage that the Administrative Agent purchases may not pay any claim that any Credit Party makes or any claim that is made against such Credit Party in connection with said property. The applicable Credit Party may later cancel any insurance purchased by the Administrative Agent, but only after providing the Administrative Agent with evidence satisfactory to the Administrative Agent that such Credit Party has obtained insurance as required by this Section 5.5. If the Administrative Agent purchases insurance, the Credit Parties will be responsible for the costs of that insurance, including interest and any other charges that the Administrative Agent may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs incurred by the Administrative Agent or any Lender in obtaining and maintaining such insurance

shall be added to the Obligations, which costs may be more than the cost of insurance that the Credit Parties may be able to obtain on their own.

SECTION 5.6. Books and Records, Examination. Maintain or cause to be maintained at all times true and complete books and records of its financial operations in accordance with GAAP and permit any Persons designated by the Administrative Agent or any Lender to visit and inspect the financial records and the properties of the Credit Parties at reasonable times, upon reasonable prior notice to the Borrowers, and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent or any Lender upon reasonable prior notice to the Borrowers to discuss the affairs, finances and condition of any of the Credit Parties with the officers thereof and independent accountants therefor (subject to reasonable requirements of confidentiality, including requirements imposed by law or by contract).

SECTION 5.7. Observance of Material Agreements; Payment of Obligations.

(a) Subject to the Bankruptcy Code and applicable law, timely and duly observe and perform all terms and conditions of all Material Agreements to which a Credit Party is a party and diligently protect and enforce the rights of the Credit Parties under all such Material Agreements in a manner consistent with and subject to the terms and conditions of such Material Agreements as from time to time in effect; provided that the foregoing shall not prevent any Credit Party from managing its vendor payables in a manner consistent with its past practices, notwithstanding the stated payment date for such payables, but in any event in a manner consistent in all respects with the Cash Flow Projections most recently delivered pursuant to Section 5.1(i).

(b) Furnish to the Administrative Agent, concurrently with the delivery of each monthly Compliance Certificate referred to in Section 5.1(d)(ii), a list in the form of Schedule 3.17(a) hereto of all Material Agreements executed during the preceding month and all material amendments to existing Material Agreements which amendments were executed during the preceding month.

(c) Subject to the Orders, timely pay, discharge or otherwise satisfy all of its obligations under any Material Agreement or other agreement, Guaranty Obligations or other liabilities of any nature, together with any costs imposed as a result of any failure to so timely pay, discharge or otherwise satisfy such obligations and liabilities; provided that the foregoing shall not prevent any Credit Party from managing its vendor payables in a manner consistent with its past practices, notwithstanding the stated payment date for such payables, but in any event in a manner consistent in all respects with the Cash Flow Projections most recently delivered pursuant to Section 5.1(i).

SECTION 5.8. Taxes and Charges. Subject to the Bankruptcy Code, duly pay and discharge, or cause to be paid and discharged, before the same shall become in arrears (after giving effect to applicable extensions), all post-petition Taxes, assessments, levies and other

governmental charges, imposed upon any Credit Party or its properties, sales and activities, or any part thereof, or upon the income or profits therefrom, as well as all post-petition claims for labor, materials, or supplies which if unpaid might by law become a Lien (other than a Permitted Encumbrance) upon any property of any Credit Party, in each case which arises after the Petition Date; provided, however, that any such Tax, assessment, levy or charge need not be paid if the validity or amount thereof shall currently be contested in good faith by appropriate proceedings and if such Credit Party shall have set aside on its books reasonable reserves (the presentation of which is segregated to the extent required by GAAP) adequate with respect thereto if reserves shall be deemed necessary, and the nonpayment of such contested Tax, assessment, levy or charge is shall not result in a Material Adverse Effect; and provided, further, that, subject to order of the Bankruptcy Court, such Credit Party will pay all such Taxes, assessments, levies or other governmental charges forthwith upon the commencement of proceedings to foreclose any Lien which may have attached as security therefor or post a bond or other security therefor. Each Credit Party will, subject to the Bankruptcy Code and any necessary further order of the Bankruptcy Court, promptly pay when due, or in conformance with customary trade terms, all other indebtedness incident to its operations.

SECTION 5.9. Liens. Defend the Collateral (including the Pledged Securities) against any and all Liens howsoever arising, other than Permitted Encumbrances, and in any event defend against any attempted foreclosure on Collateral.

SECTION 5.10. Further Assurances; Security Interests.

(a) Upon the reasonable request of the Administrative Agent, duly execute and deliver, or cause to be duly executed and delivered, at the cost and expense of the Credit Parties, such further instruments as may be necessary or desirable in the reasonable judgment of the Administrative Agent to carry out the provisions and purposes of this Credit Agreement and the other Fundamental Documents.

(b) Upon the reasonable request of the Administrative Agent, promptly execute and deliver or cause to be executed and delivered, at the cost and expense of the Credit Parties, such further instruments as may be appropriate in the reasonable judgment of the Administrative Agent, to provide the Administrative Agent for the benefit of the Administrative Agent and the Lenders a first priority perfected Lien (subject only to Liens securing the Existing First Lien Facilities) in the Collateral and any and all documents (including the execution, amendment or supplementation of any financing statement and continuation statement or other statement or any IP Security Agreement) for filing under the provisions of the UCC and the rules and regulations thereunder, or any other Applicable Law, and perform or cause to be performed such other ministerial acts which are reasonably necessary or advisable, from time to time, in order to grant and maintain in favor of the Administrative Agent for the benefit of itself and the Lenders the security interest in the Collateral contemplated hereunder and under the other Fundamental Documents, subject only to Permitted Encumbrances.

SECTION 5.11. ERISA Compliance and Reports. Furnish to the Administrative Agent (a) as soon as possible, and in any event within fifteen (15) days after any Authorized Officer of a Credit Party has knowledge that (i) any Reportable Event with respect to any Plan has occurred, a statement of an Authorized Officer of the Credit Party, setting forth on behalf of such Credit Party details as to such Reportable Event and the action which it proposes to take with respect thereto, together with a copy of the notice, if any, required to be filed of such Reportable Event given to the PBGC, or (ii) an accumulated funding deficiency has been incurred or an application has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard or an extension of any amortization period under Section 412 of the Code with respect to a Plan, a Plan or Multiemployer Plan has been or is proposed to be terminated, reorganized, partitioned or declared insolvent under Title IV of ERISA, proceedings have been instituted to terminate a Plan, a proceeding has been instituted pursuant to Section 515 of ERISA to collect a material delinquent contribution to a Multiemployer Plan, or any such Credit Party or ERISA Affiliate will incur any material liability (including any contingent or secondary liability) to or on account of the termination of or withdrawal from a Plan or Multiemployer Plan under Sections 4062, 4063, 4201 or 4204 of ERISA, a statement of an executive officer of the Credit Party, setting forth details as to such event and the action the applicable Credit Party proposes to take with respect thereto, promptly upon reasonable request of the Administrative Agent, copies of each annual and other report with respect to each Plan subject to Title IV of ERISA and (c) promptly after receipt thereof, a copy of any notice any Credit Party or ERISA Affiliate may receive from the PBGC relating to the PBGC's intention to terminate any Plan or to appoint a trustee to administer any Plan.

SECTION 5.12. Environmental Laws.

(a) Promptly notify the Administrative Agent upon an Authorized Officer of any Credit Party becoming aware of any violation or potential violation or non-compliance with, or liability or potential liability under any Environmental Laws which, when taken together with all other pending violations, could reasonably be expected to have a Material Adverse Effect, and promptly furnish to the Administrative Agent all notices of any nature which any Credit Party may receive from any Governmental Authority or other Person with respect to any violation, or potential violation or non-compliance with, or liability or potential liability under any Environmental Laws which, in any case or when taken together with all such other notices, could reasonably be expected to have a Material Adverse Effect.

(b) Comply with and use reasonable efforts to ensure compliance by all tenants and subtenants with all Environmental Laws, and obtain and comply in all respects with and maintain and use best efforts to ensure that all tenants and subtenants (if applicable) obtain and comply in all respects with and maintain any and all licenses, approvals, registrations or permits required by Environmental Laws, except where failure to do so could not have a Material Adverse Effect.

(c) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under all Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities, except where failure to do so could not have a Material Adverse Effect. Any order or directive whose lawfulness is being contested in good faith by appropriate proceedings shall be considered a lawful order or directive when such proceedings, including any judicial review of such proceedings, have been finally concluded by the issuance of a final non-appealable order; provided, however, that the appropriate Credit Party shall have set aside on its books reasonable reserves (the presentation of which is segregated to the extent required by GAAP) adequate with respect thereto if reserves shall be deemed necessary.

(d) Defend, indemnify and hold harmless the Administrative Agent and the Lenders, and their respective employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to the violation of or non-compliance by any Credit Party with any Environmental Laws, or any orders, requirements or demands of Governmental Authorities related thereto, including reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, but excluding therefrom all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses arising out of or resulting from (i) the gross negligence or willful acts or willful misconduct of any indemnified party, (ii) any claims, demand, penalties, fines, liabilities, settlements, damages, costs and expenses against an indemnified party by any Credit Party in which (but only to the extent that) such Credit Party is the prevailing party or (iii) any acts or omissions of any indemnified party occurring after any indemnified party is in possession of, or controls the operation of, any property or asset.

(e) Refrain from causing or permitting any of its properties or assets to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance in all material respects with all applicable Environmental Laws, or releasing, discharging, disposing of or permitting or suffering any release or disposal as a result of any intentional act or omission on its part of Hazardous Materials onto any such property or asset in violation of any Environmental Law, in each case, except where the same could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.13. Use of Proceeds. Use the proceeds of the Facility for general working capital purposes of the Debtors (to the extent permitted by the terms of this Credit Agreement) and to pay the fees and expenses of the Debtors incurred in connection with the transactions contemplated by this Credit Agreement, in each case in accordance with the Budget. Notwithstanding the foregoing and subject to the Budget, Orders and “first day” orders, the proceeds of the Loans may not be used to (a) make any payments to or on behalf of the Parent Entity other than to pay the corporate overhead expenses and legal, accounting and other professional expenses of the Parent Entity incurred in the ordinary course of business (regardless of whether prior to or after the Filing Date), (b) make any payment prohibited hereunder,

including any payment that would result in a violation of Section 6.16 or (c) make any Pre-Petition Payment that is not expressly permitted pursuant to this Credit Agreement, in each case, without the prior written consent of the Administrative Agent and approval by a Court order reasonably satisfactory to the Administrative Agent, provided that the Borrowers may use proceeds from the Facility to pay for adequate protection payments (if any) expressly approved in the Orders. The proceeds of the Loans and the Carve-Out may not be used in connection with litigating (including discovery proceedings), initiating or prosecuting any claims, causes of action, adversary proceedings or other litigations against the Administrative Agent or the Lenders, including as proscribed by Section 2.11(b). In addition, and notwithstanding the foregoing or anything else to the contrary, the proceeds of the Facility may not be used to pay, either directly or indirectly, any fees, costs or expenses incurred by the Credit Parties, including any financial advisory fees (including any success or similar fee), that are or become payable as a result of the consummation of any sale of all or substantially all of the assets of the Credit Parties under section 363 of the Bankruptcy Code (other than solely in connection with the Bayside Sale) or as a result of the consummation by the Credit Parties of any Alternative Transaction.

#### SECTION 5.14. Deposit Accounts.

(a) Maintain the deposit and other accounts identified on Schedule 3.25 and cash management services as are satisfactory to the Administrative Agent.

(b) With respect to all accounts of the Credit Parties identified on Schedule 3.25 as of the Closing Date, within thirty (30) days after the Closing Date to the extent not delivered on the Closing Date, deliver to the Administrative Agent an Account Control Agreement with respect to each such account that complies in all respects with the applicable provisions of the Orders.

(c) Upon the establishment by any Credit Party of any new deposit or other account, or other cash management service, with any financial institution or bank not identified on Schedule 3.25, (x) notify the Administrative Agent in writing not less than ten (10) Business Days prior to the establishment thereof (unless a Credit Party determines in good faith that it is necessary to establish a new deposit or other account, or other cash management service, in less than ten (10) Business Days, in which case, such Credit Party shall notify the Administrative Agent in writing as soon as reasonably practicable upon making such determination) and (y) no later than concurrently with the establishment thereof, enter into, and cause such financial institution or bank at which such new account was established to enter into, an Account Control Agreement with respect to such account that complies in all respects with the applicable provisions of the Orders.

SECTION 5.15. Subsidiaries. No later than concurrently with the acquisition or formation of any new Subsidiary by any Credit Party, cause such Subsidiary to deliver to the Administrative Agent (or, in the case of any certificates representing Equity Interests of such



Subsidiary, to a designee of the Administrative Agent, which designee shall include the Existing First Lien Agent in accordance with the Orders): (x) with respect to each such Subsidiary that is not a Foreign Subsidiary, (i) an Instrument of Assumption and Joinder duly executed by such Subsidiary, (ii) an appropriate UCC-1 financing statement for such Subsidiary, (iii) to the extent that one hundred percent (100%) of the issued and outstanding Equity Interests of such Subsidiary have not previously been pledged to the Administrative Agent (for the benefit of itself and the Lenders), a supplement or joinder to this Credit Agreement and the certificates representing one hundred percent (100%) of the issued and outstanding Equity Interests of such Subsidiary together (in the case of Pledged Securities comprising capital stock) with undated stock powers executed in blank, as applicable, or any comparable documents for non-corporate entities, and (iv) Organizational Documents and (y) with respect to each such Subsidiary that is a Foreign Subsidiary, to the extent that not more than sixty five percent (65%) of the issued and outstanding voting Equity Interests of such Subsidiary have not previously been pledged to the Administrative Agent (for the benefit of itself and the Lenders), a supplement or joinder to this Credit Agreement and the certificates representing sixty five percent (65%) of the issued and outstanding voting Equity Interests of such Subsidiary together (in the case of Pledged Securities comprising capital stock) with undated stock powers executed in blank, as applicable, or any comparable documents for non-corporate entities.

SECTION 5.16. Cash Receipts. In the event any Credit Party receives any payment from any account debtor or obligor, which payment should have been remitted to the Administrative Agent, within two (2) Business Days of its receipt thereof, remit such payment or proceeds to the Administrative Agent or its designee.

SECTION 5.17. Compliance with Cash Flow Projections. Commencing on September 9, 2011, and for each ~~one-week period~~ Weekly Period occurring thereafter, cause the Cumulative actual ~~cumulative~~ cash flows of the Credit Parties in respect of (with words in quotations referring to line items and headings set forth in the Cash Flow Projections most recently delivered in accordance with Section 5.1(i)):

(a) each of the following categories:

- (1) “Total Receipts” less “Credit Card reserve”
- (2) “Net Cash Flow”

~~shall each~~ to be ~~no~~ not less than ~~10~~ 90% of the ~~cumulative~~ Cumulative projected cash flows set forth for each category in the Cash Flow Projections most recently delivered pursuant to Section 5.1(i) ~~(and excluding any variances from periods occurring prior to the calendar month for which the most recent Cash Flow Projections were delivered)~~;

(b) each of the following categories:

- (1) “Total Disbursements”
- (2) “Prof. Fees – Debtor”

- (3) “Prof. Fees – Sr. Secured Lender”
- (4) “Prof. Fees – Jr. Secured Lender”
- (5) “Prof. Fees – UCC”

~~shall each to~~ be ~~no not~~ greater than ~~10110~~% of the ~~emulative~~Cumulative projected cash flows set forth for each category in the Cash Flow Projections most recently delivered pursuant to Section 5.1(i) ~~(and excluding any variances from periods occurring prior to the calendar month for which the most recent Cash Flow Projections were delivered)~~; and

(c) each of the following categories:

- (1) “Credit Card reserve”
- (2) “1099 CR’s”, “W-2 CR’s” and “Payroll Taxes” (as related to “Court Reporter Expenses”)
- (3) “PPN – Court Reporters”
- (4) “1099 CR Catch up”
- (5) “PPN – Cure/Advances”
- (6) “SG&A Payroll”, “Commissions”, “Payroll Taxes”, “Payroll Fees”, “Health Insurance”, “401k”, “Benefits” (in each case, as related to “Payroll & Benefits”)
- (7) “Rent”
- (8) “Depo Summaries & Other Software”
- (9) “Utilities”, “Taxes & Licenses”, “Telecomm”, “Insurance”, “EQ Leases”, “Other”, “Utility Deposit”
- (10) “T&E (P-Card)”
- (11) “Postage & Shipping”
- (12) “CapEx”
- (13) “Cure Costs”
- (14) “Misc. Restructuring Costs”
- (15) “Interest Expense – Senior Lenders”
- (16) “Interest Expense – DIP Lenders”
- (17) “Ordinary course prof. – non bankruptcy”
- (18) “September stub rent”

~~shall each to~~ be ~~no not~~ greater than ~~15115~~% of ~~emulative~~Cumulative projected cash flows set forth for each category in the Cash Flow Projections most recently delivered pursuant to Section 5.1(i) ~~(and excluding any variances from periods occurring prior to the calendar month for which the most recent Cash Flow Projections were delivered)~~.

SECTION 5.18. Sale. File, or cause to be filed, on or prior to September 14, 2011, a motion with the Bankruptcy Court seeking approval for a sale of all or substantially all of the assets of the Credit Parties under section 363 of the Bankruptcy Code, which motion shall (a) attach bidding procedures in form and substance acceptable in all respects to the Administrative



Agent for such sale that identify the Administrative Agent or an Affiliate thereof as a stalking horse bidder and authorize payment to the Administrative Agent of (i) a break-up fee in an amount equal to 3.75% of the value of the Administrative Agent's bid, if applicable, and (ii) any fees and expenses incurred by the Administrative Agent or any Affiliate thereof in connection with the preparation of its stalking horse bid and the consummation of the Bayside Sale and (b) be in form and substance acceptable in all respects to the Administrative Agent (such motion, the "Sale Motion").

## 6. NEGATIVE COVENANTS

From the date hereof and for so long as the Commitments shall be in effect, any amount shall remain outstanding under any Loan or any other Obligation shall remain unpaid or unsatisfied, each of the Credit Parties agrees that it will not:

SECTION 6.1. Limitations on Indebtedness. Incur, create, assume or suffer to exist any preferred Equity Interest or Indebtedness or permit any partnership or joint venture in which any Credit Party is a general partner to incur, create, assume or suffer to exist any Indebtedness other than (in each case, including to the extent constituting Indebtedness, all premium (if any), interest, fees, expenses, charges and additional or contingent interest on the obligations described):

(a) the Indebtedness represented by the Notes and the other Obligations or otherwise arising pursuant to any Fundamental Document in favor of the Administrative Agent and the Lenders;

(b) Guaranty Obligations permitted pursuant to Section 6.3;

(c) Indebtedness in respect of secured purchase money financing (including Capital Leases) to the extent Liens securing such Indebtedness are permitted by Section 6.2(d), (x) in an amount not to exceed the aggregate outstanding amount of all such Indebtedness as of the Closing Date or (y) with the prior written consent of the Administrative Agent to be granted or withheld in its sole discretion (such consent to be deemed granted if not expressly withheld by the Administrative Agent within seven (7) Business Days of the Administrative Agent's receipt of a written request therefor, provided that such request contains a detailed description of such proposed Indebtedness, including all material terms and conditions thereof);

(d) the Existing Winston Notes, the Existing AKKR Notes and any other existing Indebtedness listed on Schedule 6.1;

(e) Indebtedness owing to the Existing First Lien Lenders under the Existing First Lien Facilities in an aggregate principal amount not to exceed the aggregate principal amount of such Indebtedness as of the Closing Date, provided that such principal amount may be increased following the Closing Date (i) in the face amount of any outstanding letters of credit issued by the Existing First Lien Lenders for the account of the Debtors, and for the benefit of

any Person that is not a Debtor or an Affiliate of any Debtor, for which no cash collateral has been provided, (ii) in the amount of any secured bank products obligations consisting of credit card programs (including p-card programs) owing by the Debtors to the Existing First Lien Lenders and (iii) for any amounts due and owing by the Debtors to the Existing First Lien Lenders under any existing Swap Agreement, in each case, in accordance with the provisions of the definitive documentation for the Existing First Lien Facilities as in effect on the Closing Date and subject to the Orders in all respects;

(f) Indebtedness owing to the Existing Purchaser under the Existing Second Lien Facilities, subject to the Orders in all respects;

(g) Indebtedness of any Credit Party to another Credit Party (other than the Parent Entity);

(h) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, bid bonds, appeal bonds, surety bonds, financial assurances and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business; and

(i) Indebtedness of any Credit Party arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn by such Credit Party in the ordinary course of business against insufficient funds, as well as from netting services and otherwise in connection with deposit accounts, so long as such Indebtedness does not exceed \$25,000 and is repaid within five (5) Business Days.

SECTION 6.2. Limitations on Liens. Incur, create, assume or suffer to exist any Lien on any of its revenues, property or assets, whether now owned or hereafter acquired, except:

(a) the Liens in favor of the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) under this Credit Agreement, the other Fundamental Documents and any other document contemplated hereby or thereby;

(b) existing Liens listed on Schedule 6.2;

(c) the Liens securing the Existing Facilities, in each case, subject to the Orders;

(d) purchase money Liens granted to the vendor or Person financing the acquisition of the asset so acquired if: (x) the Lien is limited to the particular assets acquired and proceeds thereof, (y) the Indebtedness secured by the Lien does not exceed the acquisition cost of the particular assets acquired and (z) the aggregate amount of purchase money Indebtedness secured thereby does not exceed the limitations set forth in Section 6.1(c);

(e) deposits under worker's compensation, unemployment insurance and social security and similar laws or to secure statutory obligations or surety, appeal, performance or other similar bonds (other than completion bonds) or to secure performance as lessee under leases of real or personal property and other obligations of a like nature, in each case incurred in the ordinary course of business;

(f) Liens customarily granted or incurred in the ordinary course of business in favor of common carriers, landlords, warehousemen, mechanics and suppliers of materials and equipment or other service providers which either arise by operation of law or are otherwise on terms and conditions satisfactory to the Administrative Agent;

(g) Liens for taxes, assessments or other governmental charges or levies the validity or amount of which is not yet due or is currently being contested in good faith by appropriate proceedings pursuant to the terms of Section 5.8;

(h) possessory Liens which (i) occur in the ordinary course of business, (ii) secure normal trade debt which is not yet due and payable and (iii) do not secure Indebtedness for borrowed money;

(i) Liens arising by virtue of any statutory or common law provision relating to banker's Liens, rights of setoff or similar rights for usual and customary fees and expenses directly relating to the maintenance of deposit accounts;

(j) easements, rights of way, restrictions, minor defects or irregularities in title and other similar encumbrances on real property which do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Credit Parties;

(k) Liens with respect to operating leases not prohibited under this Credit Agreement and entered into in the ordinary course of business, on commercially reasonable terms and so long as the property secured thereby does not extend beyond such property as is being leased to the Credit Parties thereunder; and

(l) other Liens not specifically listed above in an aggregate amount not to exceed \$50,000 outstanding at any time, provided that such Liens shall not secure Indebtedness for borrowed money.

**SECTION 6.3. Limitation on Guaranty Obligations.** Incur, create, assume or suffer to exist any Guaranty Obligation (including any obligation as a general partner of a partnership or as a joint venturer of a joint venture in respect of Indebtedness of such partnership or joint venture), either directly or indirectly, except (a) the Guaranty made by the Guarantors pursuant to Article 9; (b) existing Guaranty Obligations listed on Schedule 6.3; (c) Guaranty Obligations under the Existing Facilities, in each case, subject to the Orders; and (d) any Guaranty Obligation by any Credit Party of the obligations of any other Credit Party.

SECTION 6.4. Limitations on Investments. Create, make or incur any Investment after the date hereof, except:

- (a) Investments consisting of cash and Cash Equivalents;
- (b) Indebtedness permitted under Section 6.1 and Guaranty Obligations permitted under Section 6.3, in each case to the extent constituting Investments;
- (c) Investments (including debt obligations) received (i) in connection with the bankruptcy or reorganization of, or disputes with or judgments against, suppliers, customers or other debtors or (ii) in settlement of delinquent obligations arising in the ordinary course of business;
- (d) Investments consisting of deposits, prepayments and other credits to suppliers made in the ordinary course of business of the Credit Parties; provided that the aggregate amount of Investments at any one time under this clause (d) shall not exceed \$50,000;
- (e) other Investments in an aggregate amount (or value, if not cash) not to exceed \$50,000 at any one time outstanding;
- (f) Investments constituting promissory notes or non-cash consideration received from third parties as a portion of the purchase price for an asset disposition consummated prior to the Filing Date so long as any such notes or non-cash consideration are, to the extent received in connection with dispositions of assets that constitute Collateral, pledged to the Administrative Agent as Collateral hereunder;
- (g) Investments in any Credit Party (other than the Parent Entity); and
- (h) Investments existing on the Filing Date and listed on Schedule 6.4.

SECTION 6.5. Restricted Payments. Pay or declare or enter into any agreement to pay or otherwise become obligated to make any Restricted Payment, other than:

- (a) payments by any Credit Party to another Credit Party (other than the Parent Entity);
- (b) so long as no Event of Default has occurred and is continuing, distributions to the Parent Entity for the payment in the ordinary course and consistent with past practice of corporate overhead expenses and legal, accounting and other professional fees and expenses of the Parent Entity, in each case incurred in connection with any activity not prohibited by this Credit Agreement, not to exceed \$50,000 in the aggregate; and
- (c) any Pre-Petition Payments constituting (i) regularly scheduled interest payments in respect of the Existing Facilities, (ii) letter of credit fees in respect of the Existing

First Lien Facilities, (iii) payments in respect of Indebtedness permitted under clauses (ii) and (iii) of Section 6.1(e) and (iv) fees, costs and expenses required to be paid pursuant to a Cash Collateral Order in respect of the Existing First Lien Facilities, in each case, subject to the Orders.

SECTION 6.6. Consolidation, Merger, Recapitalization or Sale of Assets, etc. Other than the Bayside Sale, whether in one transaction or a series of transactions, wind up, liquidate or dissolve its affairs, or enter into any transaction of merger or consolidation, or engage in any recapitalization, or sell or consummate any Disposition of any portion of its property, stock or Equity Interests, except (a) that any Credit Party (other than the Parent Entity) or Subsidiary of any Borrower may with the prior written consent of the Administrative Agent merge with and into, or transfer assets to, another Credit Party; provided that at the time of such merger or transfer and after giving effect thereto no Default or Event of Default shall have occurred and be continuing; (b) any Disposition of obsolete or worn-out property or assets of any Credit Party that are no longer useful in the conduct of the Credit Parties' business and sales of inventory in the ordinary course of business; and (c) sales, transfers, leases or other Dispositions of assets not otherwise permitted by this Section 6.6 for aggregate gross proceeds (including non cash proceeds) in the aggregate from the date hereof through and including the Maturity Date not exceeding \$50,000.

SECTION 6.7. Receivables. Sell, discount or otherwise dispose of notes, accounts receivable or other obligations owing to any Credit Party except (a) for the purpose of collection in the ordinary course of business or (b) with the prior written consent of the Administrative Agent.

SECTION 6.8. Equity Issuances. Issue any Equity Interests.

SECTION 6.9. Places of Business; Change of Name, Jurisdiction. Change (a) its legal name, (b) the location of its chief executive office or principal place of business, (c) its jurisdiction of organization, (d) its taxpayer identification number or organizational identification number, (e) the location of any office in which it maintains books or records or records and information relating to the Collateral owned by it or any office or facility at which Collateral is located (including the establishment of any such new office or facility) or (f) its fiscal year or any fiscal period occurring during any fiscal year, in each case, without (x) giving the Administrative Agent not less than twenty (20) days' prior written notice (in the form of a certification from an Authorized Officer of such Credit Party) of its intention to effect any such change, clearly describing such change and providing such other information in connection therewith as either agent may request, (y) taking all actions required by the Administrative Agent to maintain the perfection and priority of the Liens granted in favor of the Administrative Agent (for the benefit of itself and the Lenders) in any Collateral, if applicable, and (z) promptly providing the Administrative Agent with certified Organizational Documents of such Credit Party reflecting any of the changes described in the preceding sentence, if applicable.

SECTION 6.10. Transactions with Affiliates. Enter into any transaction with any Affiliate of any Credit Party, whether or not in the ordinary course of business, except: (a) transactions expressly permitted by Sections 6.1, 6.2, 6.3, 6.4 or 6.5, (b) transactions set forth on Schedule 6.10, (c) transactions between or among a Credit Party and a wholly-owned Subsidiary of such Credit Party, (d) transactions between AGH and Hobart West in the ordinary course of business and consistent in all respects with past practices, (e) payments of reasonable fees and indemnities to directors, officers and employees of the Credit Parties and their Subsidiaries in the ordinary course of business and consistent with industry practice (provided that in the case of indemnities, recourse shall first have been made to relevant insurance), or (f) (i) employment agreements entered into by any Credit Party in the ordinary course of business, and (ii) employee compensation, benefit plans or arrangements, any health, disability or similar insurance plans which covers employees.

SECTION 6.11. Business Activities. Engage in any business activities other than activities in which the Credit Parties engaged on December 31, 2010, or any business or business activities incidental or related thereto.

SECTION 6.12. Anti-Terrorism; Anti-Money Laundering.

(a) Knowingly (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 3.11(b), (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that violates, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Cause or permit any of the funds of any Credit Party that are used to repay the Obligations to be derived from any unlawful activity of any Credit Party or any other Person.

SECTION 6.13. Swap Agreements. Enter into any Swap Agreement (other than any existing Swap Agreement in connection with the Existing First Lien Facilities).

SECTION 6.14. Modification of Documents. (a) Make or permit to be made any modification to the terms of (i) any Material Agreement, (ii) any of its Organizational Documents, or (iii) any document or agreement executed in connection with the Existing Facilities, the Existing Winston Notes or the Existing AKKR Notes, in each case, without the prior written consent of the Administrative Agent to be granted or withheld in its sole discretion; provided that, with respect to any modification to the terms of a Material Agreement, the Administrative Agent's consent shall be deemed granted if not expressly withheld by the Administrative Agent within seven (7) Business Days of the Administrative Agent's receipt of a written request therefor, such written request to contain a detailed description of the proposed modification and all material terms and conditions thereof.

(b) Reject or assume any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code without the prior written consent of the Administrative Agent to be granted or withheld in its sole discretion; provided that the Administrative Agent's consent shall be deemed granted if not expressly withheld by the Administrative Agent within seven (7) Business Days of the Administrative Agent's receipt of a written request therefor, such written request to contain a detailed description of the proposed rejection or assumption and all material terms and conditions thereof.

SECTION 6.15. No Negative Pledge; No Burdensome Agreement.

(a) Enter into any agreement (i) prohibiting the creation or assumption of any Lien in favor of the Administrative Agent (for the benefit of itself and the Lenders) or an administrative agent or collateral agent (including any successor to the Administrative Agent) under a potential refinancing of the Facility upon the properties or assets of any Credit Party, whether now owned or hereafter acquired, or (ii) requiring an obligation to be secured as a result of any Lien being granted to the Administrative Agent (for the benefit of itself and the Lenders), except this Credit Agreement and the other Fundamental Documents, the Existing Facilities and the documents entered into in connection therewith; provided, however, that this provision shall not apply to any agreement executed in connection with secured Indebtedness incurred pursuant to Section 6.1(c) to the extent of such assets and proceeds thereof.

(b) Enter into any contract, agreement or other instrument that contains terms or provisions (financial or otherwise) that are more restrictive on the Credit Parties than the terms and provisions of this Agreement.

SECTION 6.16. Reserved.

SECTION 6.17. Activities of the Parent Entity. Permit:

(a) The Parent Entity to (i) own assets other than the Equity Interests of AGH or (ii) engage in any business activities other than such ownership interest and business activities directly related to those conducted prior to the Filing Date.

(b) The Parent Entity to engage in any business activities which are currently engaged in by the Borrowers or any of their Subsidiaries or which may be engaged in by the Borrowers and their Subsidiaries pursuant to Section 6.11.

SECTION 6.18. Certification of Equity Interests. Permit its Equity Interests to become certificated without simultaneously delivering to the Administrative Agent or its designee (which designee shall include the Existing First Lien Agent in accordance with the Orders) the definitive instruments representing all of its Equity Interests, accompanied by undated stock powers, duly endorsed or executed in blank by the appropriate Pledgor, and such other instruments or documents as the Administrative Agent or its counsel shall reasonably request.



SECTION 6.19. Chapter 11 Claims. Incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is pari passu with or senior to the claims of the Administrative Agent and the Lenders against the Borrowers except as otherwise set forth in Section 2.11 or the superpriority administrative claim in favor of the Existing First Lien Lenders as set forth in the Orders.

## **7. EVENTS OF DEFAULT**

Upon the occurrence of any of the following events (each, an “Event of Default”):

(a) any representation, warranty or certification made by a Credit Party in this Credit Agreement or any other Fundamental Document to which it is a party or in any report, financial statement, certificate or other document furnished to the Administrative Agent or any Lender pursuant to this Credit Agreement or any other Fundamental Document, shall prove to have been false or misleading in any material respect when made or delivered;

(b) any Credit Party shall default in the payment of principal of any of the Loans as and when due and payable hereunder, whether by reason of maturity, mandatory prepayment, acceleration or otherwise;

(c) any Credit Party shall default in the payment of any interest on the Loans, Commitment Fees or other monetary Obligations, as and when due and payable hereunder or under any Fundamental Document, and such default shall continue unremedied for two (2) Business Days;

(d) any Credit Party shall default in the due observance or performance of any covenant, condition or agreement contained in Sections 5.1, 5.2, 5.4, 5.5, 5.6, 5.7, 5.8, 5.13, 5.17 or 5.18 or Article 6 of this Credit Agreement, and such default shall continue unremedied for two (2) Business Days (other than a default under Section 5.5 which shall be not be subject to a grace or cure period);

(e) any Credit Party shall default in the due observance or performance of any other covenant, condition or agreement to be observed or performed pursuant to the terms of this Credit Agreement or any other Fundamental Document, and such default shall continue unremedied for ten (10) days;

(f) any of the Cases shall be dismissed, terminated or converted to a case under Chapter 7 of the Bankruptcy Code or any Borrower or any Guarantor shall file a motion or other pleading seeking the dismissal of any of the Cases under section 1112 of the Bankruptcy Code or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under



section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within thirty (30) days after the entry thereof; or an application shall be filed by any Borrower or any Guarantor for the approval of any other superpriority claim or other charge of any kind (other than the Carve-Out) in any of the Cases which is pari passu with or senior to the claims of the Administrative Agent and the Lenders against any Borrower or any Guarantor hereunder, or there shall arise or be granted any such pari passu or senior superpriority claim or other charge of any kind;

(g) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code, as may be extended from time to time, or shall enter any order granting relief to the holder or holders of any security interest, which permits foreclosure (or the granting of a deed in lieu of foreclosure or the like) or any other enforcement of security interests on any assets of any Borrower or any Guarantors which have a value in excess of \$50,000 in the aggregate, other than those assets that are subject to a security interest granted by any Borrower or any Guarantor in favor of a lessor pursuant to a Capital Lease permitted hereunder and identified on Schedule 7(g);

(h) the Debtors shall take any action directly or indirectly for the purpose of, or that results in, delaying, preventing, frustrating or impeding approval, acceptance, confirmation, consummation or implementation of the Bayside Sale, as the case may be, including encouraging or supporting any non-Debtor party in furtherance of any such action, taking any action to authorize, approve, consummate or enter into an Alternative Transaction or taking any action that is inconsistent with the bidding procedures attached to the Sale Motion;

(i) the Bankruptcy Court shall not have approved the bidding procedures contemplated by the Sale Motion, on or prior to ~~September 27,~~October 5, 2011;

(j) the Debtors shall have withdrawn the Sale Motion or shall have amended, supplemented or otherwise modified the Sale Motion, including any of the exhibits thereto, without the prior written consent of the Administrative Agent;

(k) the Debtors shall not have conducted an auction as set forth in the Sale Motion, as approved by the Bankruptcy Court, on or prior to November 7, 2011;

(l) an order of the Bankruptcy Court in form and substance acceptable to the Administrative Agent approving the Bayside Sale shall not have been entered on or prior to November 10, 2011;

(m) ~~(m)~~-the Sale Date shall not have occurred on or prior to November 23, 2011;

(n) ~~(m)~~-an order of the Bankruptcy Court shall be entered reversing, staying, vacating or (without the written consent of the Administrative Agent) otherwise amending,

supplementing or modifying any of the Orders or any order approving the Sale Motion or the Bayside Sale in a manner that is materially adverse to the Lenders as determined by the Administrative Agent;

(o) ~~(n)~~ any material breach by any Credit Party of any of the terms, conditions, covenants or conditions applicable to it under either Order (beyond any applicable cure period, if any);

(p) ~~(o)~~ any Debtor shall bring an action seeking reconsideration of either Order;

(q) ~~(p)~~ any Debtor shall file or submit a motion or application or otherwise seek approval from the Bankruptcy Court to permit, or shall conduct, a sale of any material portion of the Credit Parties' assets (under section 363 of the Bankruptcy Code or otherwise) other than the Bayside Sale without the prior written consent of the Administrative Agent and each of the Lenders;

(r) ~~(q)~~ any judgment or order in excess of \$50,000 (exclusive of any judgment or order the amounts of which are fully covered by insurance (less any applicable deductible) and as to which the insurer has acknowledged its responsibility to cover such judgment or order) as to any post-petition or post-filing obligation shall be rendered against the Borrowers or any of the Guarantors and the enforcement thereof shall not have been stayed;

(s) ~~(r)~~ any non-monetary judgment or order with respect to a post-petition or post-filing event shall be rendered against any Borrower or any Guarantor which has or could reasonably be expected to have a Material Adverse Effect;

(t) ~~(s)~~ except as permitted by the Orders or as otherwise agreed to by the Administrative Agent, any Borrower or any Guarantor shall make any Pre-Petition Payment other than Pre-Petition Payments which are specifically permitted by Section 6.5 and other Pre-Petition Payments which are authorized by the Bankruptcy Court and which are approved by the Administrative Agent (x) in accordance with "first day" orders reasonably satisfactory to the Administrative Agent (which shall not include any orders regarding the assumption of executory contracts except as may be acceptable to the Administrative Agent in its sole and absolute discretion) and (y) in respect of accrued payroll and related expenses and customary and usual employee benefits as of the Filing Date;

(u) ~~(t)~~ (i) failure by any Credit Party or ERISA Affiliate to make any post-petition contributions required to be made to a Plan subject to Title IV of ERISA or Multiemployer Plan, (ii) any accumulated funding deficiency (within the meaning of Section 4971 of the Code) shall exist with respect to any Plan (whether or not waived), (iii) the present value of all benefits under all Plans subject to Title IV of ERISA (based on those assumptions used to fund such Plans) exceeds, in the aggregate, as of the last annual valuation date applicable thereto, the actuarial value of the assets of such Plans allocable to such benefits, (iv) any Credit

Party or ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred withdrawal liability to such Multiemployer Plan, or that a Multiemployer Plan is being terminated, (v) a Reportable Event with respect to a Plan shall have occurred which is reasonably likely to result in a termination of such Plan for purposes of ERISA, (vi) the termination of a Plan, or the filing of a notice of intent to terminate a Plan under section 4041(c) of ERISA, (vii) the institution of proceedings to terminate, or the appointment of a trustee with respect to, a Plan by the PBGC, (viii) any other event or condition which could constitute grounds under section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or (ix) the imposition of a Lien pursuant to section 412 of the Code or section 302 of ERISA as to any Credit Party or ERISA Affiliate; provided that with respect to items (i) through (ix), only if such event or condition could reasonably be expected to result in a Material Adverse Effect;

(v) ~~(u)~~ any of the Fundamental Documents shall be declared null and void or the Fundamental Documents, together with the Orders, shall not give or shall cease to give the Administrative Agent the Liens, rights, powers and privileges purported to be created thereby with respect to any material portion (with materiality determined in the Administrative Agent's sole discretion) of the Collateral in favor of the Administrative Agent for the benefit of the Administrative Agent and the Lenders, superior to and prior to the rights of all third Persons and subject to no other Liens (other than Permitted Encumbrances);

(w) ~~(v)~~ the validity or enforceability of the Guaranty under Article 9 or the Liens granted, to be granted, or purported to be granted, by any of the Fundamental Documents shall be contested by any Person;

(x) ~~(w)~~ any material provision of any Fundamental Document shall, for any reason, cease to be valid and binding on any Borrower or any Guarantor, or any Borrower or any Guarantor shall so assert in any pleading filed in any court;

(y) ~~(x)~~ it shall be determined (whether by the Bankruptcy Court or by any other judicial or administrative forum) that any Borrower or any Guarantor is liable for the payment of claims arising out of any failure to comply (or to have complied) with applicable Environmental Laws and Environmental Permits, the payment of which will have a Material Adverse Effect, and the enforcement thereof shall not have been stayed;

(z) ~~(y)~~ other than for the Carve-Out, the allowance of any claim under section 506(c) of the Bankruptcy Code or otherwise against the Administrative Agent, any Lender or any Collateral;

(aa) ~~(z)~~ the entry of an order in any Case avoiding or requiring the repayment of any portion of any payments made on account of the Facility or the Existing Second Lien Facilities;

(bb) ~~(aa)~~ any Credit Party bringing any motion or taking any action in any Case to (i) obtain additional post-petition financing, (ii) grant any Lien (except Permitted Encumbrances), (iii) use cash collateral except as provided in the Cash Collateral Orders or (iv) which is otherwise materially adverse to the Administrative Agent and the Lenders or which is adverse to their rights and remedies in the Collateral; or

(cc) ~~(bb)~~ a Change in Control shall occur (other than in connection with the Bayside Sale).

then, and in every such event and at any time thereafter during the continuance of such event, subject to the Orders and without further order of or application to the Bankruptcy Court, the Administrative Agent may, and at the request of the Required Lenders, shall, by notice to the Borrowers (with a copy to counsel for the Official Creditors' Committee if one has been appointed in the Cases and to the United States Trustee for the Southern District of New York), take one or more of the following actions, at the same or different times (provided that, with respect to the enforcement of Liens or other remedies with respect to the Collateral under clause (iv) below, the Administrative Agent shall provide the parties described above with five (5) days' written notice prior to taking the action contemplated thereby (such period the "Remedies Notice Period"): (i) terminate forthwith the Total Commitments; (ii) declare the Obligations or any portion thereof then outstanding to be forthwith due and payable, whereupon the principal of the Loans together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Borrowers accrued hereunder and under any other Fundamental Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrowers and the Guarantors, anything contained herein or in any other Fundamental Document to the contrary notwithstanding; (iii) set-off amounts in any accounts maintained with the Administrative Agent and apply such amounts to the obligations of the Borrowers and the Guarantors hereunder and in the other Fundamental Documents; provided, that, solely during the Remedies Notice Period, the Borrowers may continue to make monetary disbursements from such accounts solely to pay payroll and other expenses critical to keep the Credit Parties operating so long as such expenses are in accordance with the Cash Flow Projections; and/or (iv) exercise any and all remedies under the Fundamental Documents and under applicable law available to the Administrative Agent or the Lenders, including to proceed and realize upon the Collateral. Any payment received as a result of the exercise of remedies hereunder shall be applied in accordance with Section 8.6.

## **8. GRANT OF SECURITY INTERESTS**

SECTION 8.1. Security Interests. Each of the Borrowers, as security for the due and punctual payment of the Obligations (including interest accruing on and after the filing of any petition in bankruptcy or of reorganization of any Borrower whether or not post-filing interest is allowed in such proceeding), and each of the Guarantors, as security for its obligations under Article 9 hereof, hereby mortgages, pledges, hypothecates, transfers, collaterally assigns

and delivers to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) and grants to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) a security interest in all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Credit Party (including under any trade name or derivations thereof), and whether owned or consigned by or to, or leased from or to, such Credit Party, and regardless of where located (all of which will be collectively referred to as the “Collateral”), including:

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Documents;
- (d) all Equipment;
- (e) all Fixtures;
- (f) all General Intangibles;
- (g) all Goods;
- (h) all Instruments;
- (i) all Intellectual Property;
- (j) all Inventory;
- (k) all Investment Property;
- (l) all Pledged Collateral;
- (m) all Commercial Tort Claims
- (n) all cash or Cash Equivalents;
- (o) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;
- (p) all Deposit Accounts and Securities Accounts with any bank or other financial institution;
- (q) and all accessions to, substitutions for and replacements, proceeds, insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records

related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing.

Notwithstanding the foregoing, the Collateral shall not include: (i) any General Intangible of any Credit Party (A) that prohibits or requires the consent of any Person other than the Credit Parties and their Affiliates which has not been obtained as a condition to the creation by such Credit Party of a Lien on any right, title or interest in such General Intangible related thereto (provided that the Credit Parties shall have used commercially reasonable efforts to obtain such consent), (B) to the extent that any Applicable Law prohibits the creation of a Lien thereon or (C) to the extent that a Lien granted thereon would cause such Credit Party's rights in or with respect to such General Intangible to be forfeited or to become void, voidable, terminable or revocable, or would cause such Credit Party to have breached, violated or defaulted in respect thereof and the consent of the applicable third party thereto (if any) has not been obtained, but only, with respect to the prohibition in clauses (A), (B) and (C), to the extent, and for as long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Applicable Law, (ii) any Excluded Equity, (iii) any Farm Products or as-extracted collateral of any Credit Party and (iv) any Excluded Peachtree Assets; provided that "Excluded Assets" shall not include any Proceeds, substitutions or replacements of Excluded Assets (unless such Proceeds, substitutions or replacements would constitute Excluded Assets).

SECTION 8.2. Use of Collateral. So long as no Event of Default shall have occurred and be continuing, and subject to the various provisions of this Credit Agreement and the other Fundamental Documents, a Credit Party may use any of its property constituting Collateral in any lawful manner except as otherwise provided hereunder or thereunder.

SECTION 8.3. Credit Parties to Hold in Trust. Subject to the Orders, upon the occurrence and during the continuance of an Event of Default, each of the Credit Parties will, upon receipt by it of any revenue, income, profits or other sums in which a security interest is granted by this Article 8, payable pursuant to any agreement or otherwise, or of any check, draft, note, trade acceptance or other instrument evidencing an obligation to pay any such sum, hold the sum or instrument in trust for the Administrative Agent (for the benefit of itself and the Lenders), segregate such sum or instrument from their own assets and forthwith, without any notice, demand or other action whatsoever (all notices, demands, or other actions on the part of the Administrative Agent or the Lenders being expressly waived by each Credit Party), endorse, transfer and deliver any such sums or instruments or both, to the Administrative Agent or its designee to be applied to the repayment of the Obligations in accordance with the provisions of Section 8.6 hereof.

SECTION 8.4. Collections, etc. Subject to the Orders, upon the occurrence and during the continuance of an Event of Default (and without further order of the Bankruptcy Court), the Administrative Agent may, in its sole discretion, in its name (on behalf of the Administrative Agent and the Lenders) or in the name of any Credit Party or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of



or in exchange for, or make any compromise or settlement deemed desirable with respect to, any of the Collateral, but shall be under no obligation to do so, or the Administrative Agent may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, any Credit Party. The Administrative Agent will not be required to take any steps to preserve any rights against prior parties to the Collateral. Upon the occurrence and during the continuance of an Event of Default, if any Credit Party fails to make any payment or take any action required hereunder, the Administrative Agent may, subject to the Orders, make such payments and take all such actions as the Administrative Agent reasonably deems necessary to protect the Administrative Agent's (on behalf of the Administrative Agent and the Lenders) security interests in the Collateral and/or the value thereof, and the Administrative Agent is hereby authorized (without limiting the general nature of the authority hereinabove conferred), subject to the Orders, to pay, purchase, contest or compromise any Liens that in the judgment of the Administrative Agent appear to be equal to, prior to or superior to the security interests of the Administrative Agent (on behalf of the Administrative Agent and the Lenders) in the Collateral (other than Permitted Encumbrances) and any Liens not expressly permitted by this Credit Agreement.

SECTION 8.5. Possession, Sale of Collateral, etc. Subject to the Orders, upon the occurrence and during the continuance of an Event of Default (and without further order of the Bankruptcy Court), the Administrative Agent and the Lenders may, upon reasonable notice to the applicable Credit Party, enter upon the premises of any Credit Party or wherever the Collateral may be, and take possession of the Collateral, and may demand and receive such possession from any Person who has possession thereof, and the Administrative Agent and the Lenders may take such measures as they deem necessary or proper for the care or protection thereof, including the right to remove all or any portion of the Collateral, and with or without taking such possession may sell or cause to be sold, whenever the Administrative Agent and the Lenders shall decide, in one or more sales or parcels, at such prices as the Administrative Agent and the Lenders may deem appropriate, and for cash or on credit or for future delivery, without assumption of any credit risk, all or any portion of the Collateral, at any broker's board or at public or private sale, without demand of performance but with not less than ten (10) days' prior written notice to the Credit Parties of the time and place of any such public sale or sales (which notice the Credit Parties hereby agree is commercially reasonable) and with such other notices as may be required by Applicable Law and cannot be waived, and none of the Administrative Agent or any of the Lenders shall have any liability should the proceeds resulting from a private sale be less than the proceeds realizable from a public sale, and the Administrative Agent, on behalf of itself, the Lenders or any other Person may be the purchaser of all or any portion of the Collateral so sold and thereafter hold the same absolutely, free (to the fullest extent permitted by Applicable Law) from any claim or right of whatever kind, including any equity of redemption, of any Credit Party, any such demand, notice, claim, right or equity being hereby expressly waived and released. At any sale or sales made pursuant to this Article 8, including any sale of all or substantially all of the assets of the Credit Parties pursuant to section 363 of the Bankruptcy Code, the Administrative Agent, on behalf of itself and the Lenders, may bid for or

purchase, free (to the fullest extent permitted by Applicable Law) from any claim or right of whatever kind, including any equity of redemption, of any Credit Party, any such demand, notice, claim, right or equity being hereby expressly waived and released, any part of or all of the Collateral offered for sale, and may make any payment on account thereof by using any claim for moneys then due and payable to the Administrative Agent and Lenders by any Credit Party hereunder as a credit against the purchase price. The Administrative Agent, on behalf of itself and the Lenders, shall in any such sale make no representations or warranties with respect to the Collateral or any part thereof, and none of the Administrative Agent or any of the Lenders shall be chargeable with any of the obligations or liabilities of any Credit Party. Each Credit Party hereby agrees (i) that it will indemnify and hold the Administrative Agent and the Lenders harmless from and against any and all claims with respect to the Collateral asserted before the taking of actual possession or control of the relevant Collateral by the Administrative Agent pursuant to this Article 8, or arising out of any act of, or omission to act on the part of, any Person prior to such taking of actual possession or control by the Administrative Agent (whether asserted before or after such taking of possession or control), or arising out of any act on the part of any Credit Party or its Affiliates or agents before or after the commencement of such actual possession or control by the Administrative Agent, but excluding therefrom all claims with respect to the Collateral resulting from (x) the gross negligence or willful misconduct of any of the Administrative Agent or the Lenders as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment or (y) any claims with respect to the Collateral asserted against an indemnified party by a Credit Party in which such Credit Party is the prevailing party; and (ii) none of the Administrative Agent or any of the Lenders shall have any liability or obligation to any Credit Party arising out of any such claim except for acts of willful misconduct or gross negligence as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment. Subject to the Orders, in any action hereunder, the Administrative Agent shall be entitled if permitted by Applicable Law to the appointment of a receiver without notice, to take possession of all or any portion of the Collateral and to exercise such powers as the court shall confer upon the receiver. Notwithstanding the foregoing, but subject to the Orders, upon the occurrence and during the continuation of an Event of Default, the Administrative Agent and the Lenders shall be entitled to apply, without prior notice to any of the Credit Parties, any cash or cash items constituting Collateral in the possession or under the control of the Administrative Agent and the Lenders to payment of the Obligations.

SECTION 8.6. Application of Proceeds after Event of Default. Upon the occurrence and during the continuance of an Event of Default (and without further order of the Bankruptcy Court, but subject to any limitations set forth in the Orders), the balances on deposit in any account of any Credit Party that is held at or with a Lender, all other income on the Collateral (including any Pledged Collateral), and all proceeds from any sale of the Collateral pursuant hereto shall be applied first toward payment of the costs and expenses paid or incurred by the Administrative Agent in enforcing this Credit Agreement, in realizing on or protecting any Collateral and in enforcing or collecting any Obligations, including court costs and all fees and expenses of counsel incurred by the Administrative Agent, and then to the payment in full of the Obligations in accordance with Section 12.2 hereof. Any amounts remaining after the



indefeasible payment in full in cash of the Obligations shall be remitted to the appropriate Credit Party or as a court of competent jurisdiction may otherwise direct.

SECTION 8.7. Power of Attorney. Upon the occurrence and during the continuance of an Event of Default which is not waived in writing by the Required Lenders, subject to the Orders: (a) each Credit Party does hereby irrevocably make, constitute and appoint the Administrative Agent or any of its officers, representatives or designees its true and lawful attorney-in-fact with full power in the name of the Administrative Agent, such other Person or such Credit Party to receive, open and dispose of all mail addressed to any Credit Party, and to endorse any notes, checks, drafts, money orders or other evidences of payment relating to the Collateral that may come into the possession of the Administrative Agent with full power and right to cause the mail of such Persons to be transferred to the Administrative Agent's own offices or otherwise, and to do any and all other acts necessary or proper to carry out the intent of this Credit Agreement and the grant of the security interests hereunder and under the Fundamental Documents, and each Credit Party hereby ratifies and confirms all that the Administrative Agent or its substitutes shall properly do by virtue hereof; and (b) each Credit Party does hereby further irrevocably make, constitute and appoint the Administrative Agent or any of its officers, representatives or designees its true and lawful attorney-in-fact in the name of the Administrative Agent or any Credit Party (i) to enforce all of such Credit Party's rights under and pursuant to all agreements with respect to the Collateral, all for the sole benefit of the Administrative Agent for the benefit of the Administrative Agent and the Lenders as contemplated hereby and under the other Fundamental Documents, (ii) to enter into and perform such agreements as may be necessary in order to carry out the terms, covenants and conditions of the Fundamental Documents that are required to be observed or performed by such Credit Party, (iii) to execute such other and further mortgages, pledges and assignments of the Collateral, and related instruments or agreements, as the Administrative Agent may reasonably require for the purpose of perfecting, protecting, maintaining or enforcing the security interests granted to the Administrative Agent for the benefit of the Administrative Agent and the Lenders hereunder and under the other Fundamental Documents, and (iv) to do any and all other things necessary or proper to carry out the intention of this Credit Agreement and the grant of the security interests hereunder and under the other Fundamental Documents. Each of the Credit Parties hereby ratifies and confirms in advance all that the Administrative Agent as such attorney-in-fact or its substitutes shall properly do by virtue of this power of attorney.

SECTION 8.8. Financing Statements, Direct Payments. Each Credit Party hereby authorizes the Administrative Agent to file UCC financing statements and any amendments thereto or continuations thereof, any IP Security Agreement, the Orders and any other appropriate security documents or instruments and to give any notices necessary or desirable to perfect the Liens of the Administrative Agent for the benefit of itself and the Lenders, in the Collateral, in all cases without the signature of any Credit Party or to execute such items as attorney-in-fact for any Credit Party; provided that the Administrative Agent shall provide copies of any such documents or instruments to the Borrowers. Each Credit Party authorizes the Administrative Agent to use the collateral description "all assets" in any such

UCC financing statements. Subject to the Orders, each Credit Party further authorizes the Administrative Agent to notify, at the time that any Event of Default shall have occurred and be continuing, any account debtors that all sums payable to such Credit Party relating to the Collateral shall be paid directly to the Administrative Agent.

SECTION 8.9. Further Assurances. Upon the request of the Administrative Agent, each Credit Party hereby agrees to duly and promptly execute and deliver, or cause to be duly executed and delivered, at the cost and expense of the Credit Parties, such further instruments as may be necessary or proper, in the reasonable judgment of the Administrative Agent, to carry out the provisions and purposes of this Article 8 or to perfect and preserve the Liens of the Administrative Agent (for the benefit of itself and the Lenders) hereunder and under the Fundamental Documents in the Collateral or any portion thereof.

SECTION 8.10. Termination and Release. The security interests granted under this Article 8 shall terminate when the Obligations have been fully and indefeasibly paid in cash and performed and the Commitments shall have terminated. Upon request by the Credit Parties (and at the sole expense of the Credit Parties) after such termination, the Administrative Agent will promptly take all reasonable action and do all things reasonably necessary, including executing UCC termination statements, pledgeholder agreement terminations, termination letters to account debtors and copyright and trademark releases, to terminate the security interest granted to it (for the benefit of the Administrative Agent and the Lenders) hereunder, provided that the Administrative Agent shall only be required to deliver such documents to the Borrowers or applicable Credit Party and shall have no obligation to file or record any such document.

SECTION 8.11. Remedies Not Exclusive. The remedies conferred upon or reserved to the Administrative Agent in this Article 8 are intended to be in addition to, and not in limitation of, any other remedy or remedies available to the Administrative Agent or otherwise set forth in this Credit Agreement or any other Fundamental Document. Without limiting the generality of the foregoing, the Administrative Agent and the Lenders shall have all rights and remedies of a secured creditor under Article 9 of the UCC and under any other Applicable Law.

SECTION 8.12. Continuation and Reinstatement. Each Credit Party further agrees that the security interest granted hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment or any part thereof of any Obligation is rescinded or must otherwise be restored by the Administrative Agent or the Lenders upon the bankruptcy or reorganization of any Credit Party or otherwise.

SECTION 8.13. Waivers; Non-Waiver of Rights and Remedies.

(a) The obligations of each Credit Party hereunder shall not be affected by (i) the failure of the Administrative Agent or the Lenders to assert any claim or demand or to enforce any right or remedy against any Credit Party, any of their Affiliates, any other Credit Party or any other Person under the provisions of this Credit Agreement, any Fundamental Document or any other agreement or otherwise; (ii) any extension or renewal of any provision

hereof or thereof; (iii) failure of the Administrative Agent or the Lenders to obtain the consent of the applicable Credit Party with respect to any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of this Credit Agreement, the Fundamental Documents or of any other agreement; (iv) the release, exchange, waiver or foreclosure of any security held by the Administrative Agent for the Obligations or any of them; (v) the failure of the Administrative Agent or the Lenders to exercise any right or remedy against the any Credit Party, any of their Affiliates or any other pledgor or guarantor with respect to the Obligations; or (vi) the release or substitution of any Credit Party or any Guarantor or other guarantor or pledgor with respect to the Obligations.

(b) Each Credit Party waives any right to require that any resort be had by the Administrative Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of the Administrative Agent or any Lender in favor of either of the any Credit Party or to any other Person.

(c) Each Credit Party's obligations under this Article 8 shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations, this Credit Agreement, any other Fundamental Document or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Article 8. The Administrative Agent and the Lenders make no representation or warranty with respect to any such circumstances and have no duty or responsibility whatsoever to any Credit Party in respect to the management and maintenance of the Obligations or any collateral security for the Obligations.

## **9. GUARANTY**

### **SECTION 9.1. Guaranty.**

(a) Each Guarantor unconditionally and irrevocably guarantees to the Administrative Agent and the Lenders the due and punctual payment by, and performance of, the Obligations (including interest accruing on and after the filing of any petition in bankruptcy or of reorganization of the obligor whether or not post filing interest is allowed in such proceeding). Each Guarantor further agrees that the Obligations may be increased, extended or renewed, in whole or in part, without notice or further assent from it (except as may be otherwise required herein), and it will remain bound upon this Guaranty notwithstanding any extension or renewal of any Obligation.

(b) Each Guarantor waives presentation to, demand for payment from and protest to, as the case may be, any Credit Party or any other guarantor of any of the Obligations, and also waives notice of protest for nonpayment, notice of acceleration and notice of intent to accelerate. The obligations of each Guarantor hereunder shall not be affected by (i) the failure of the Administrative Agent or the Lenders to assert any claim or demand or to enforce any right or remedy against the Borrowers or any Guarantor or any other guarantor under the provisions of

this Credit Agreement or any other agreement or otherwise; (ii) any extension or renewal of any provision hereof or thereof; (iii) the failure of the Administrative Agent or the Lenders to obtain the consent of any Guarantor with respect to any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of this Credit Agreement, the Notes, any other Fundamental Document or any other agreement; (iv) the release, exchange, waiver or foreclosure of any security held by the Administrative Agent for the Obligations or any of them; (v) the failure of the Administrative Agent or the Lenders to exercise any right or remedy against any other Guarantor or any other guarantor of the Obligations; or (vi) the release or substitution of any Guarantor or any other guarantor of the Obligations.

(c) Each Guarantor further agrees that this Guaranty constitutes a guaranty of performance and of payment when due and not just of collection, and waives any right to require that any resort be had by the Administrative Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of the Administrative Agent or any Lender in favor of any Borrower, or any Guarantor, or to any other Person.

(d) Each Guarantor hereby expressly assumes all responsibilities to remain informed of the financial condition of the Borrowers, the Guarantors and any other guarantors of the Obligations and any circumstances affecting the Collateral or the Pledged Securities or the ability of the Borrowers to perform under this Credit Agreement and the other Fundamental Documents.

(e) Each Guarantor's obligations under the Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations, the Notes, the Fundamental Documents or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Guaranty. The Administrative Agent and the Lenders make no representation or warranty with respect to any such circumstances and have no duty or responsibility whatsoever to any Guarantor in respect to the management and maintenance of the Obligations or any collateral security for the Obligations.

SECTION 9.2. No Impairment of Guaranty, etc. The obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Administrative Agent or any Lender to assert any claim or demand or to enforce any remedy under this Credit Agreement, any Fundamental Document or any other agreement, by any waiver or modification of any provision hereof or thereof, by any default, failure or delay, willful or

otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law, unless and until the Obligations are paid in full and the Commitments have terminated.

### SECTION 9.3. Continuation and Reinstatement, etc.

(a) Each Guarantor further agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the Administrative Agent or the Lenders upon the bankruptcy or reorganization of any Borrower or any Guarantor, or otherwise. In furtherance of the provisions of this Article 9, and not in limitation of any other right which the Administrative Agent or the Lenders may have at law or in equity against any Borrower, any Guarantor or any other Person by virtue hereof, upon failure of the Borrowers to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice or otherwise, each Guarantor hereby promises to and will, upon receipt of written demand by the Administrative Agent on behalf of itself and/or the Lenders, forthwith pay or cause to be paid to the Administrative Agent for the benefit of itself and/or the Lenders (as applicable) in cash an amount equal to the unpaid amount of such unpaid Obligations with interest thereon from the due date at a rate of interest equal to the rate specified in Section 2.3(c) hereof, and thereupon the Administrative Agent shall assign such Obligation, together with all security interests, if any, then held by the Administrative Agent in respect of such Obligation, to the Guarantor or Guarantors making such payment; such assignment to be subordinate and junior to the rights of the Administrative Agent on behalf of itself and the Lenders with regard to amounts payable by the Borrowers in connection with the remaining unpaid Obligations and to be pro tanto to the extent to which the Obligation in question was discharged by the Guarantor or Guarantors making such payments.

(b) All rights of each Guarantor against the Borrowers, arising as a result of the payment by such Guarantor of any sums to the Administrative Agent for the benefit of the Administrative Agent and/or the Lenders or directly to the Lenders hereunder by way of right of subrogation or otherwise, shall in all respects be subordinated and junior in right of payment to, and shall not be exercised by such Guarantor until and unless, the prior final payment in full of all the Obligations. If any amount shall be paid to such Guarantor for the account of the Borrowers, such amount shall be held in trust for the benefit of the Administrative Agent, segregated from such Guarantor's own assets, and shall forthwith be paid to the Administrative Agent on behalf of the Administrative Agent and/or the Lenders to be credited and applied to the Obligations, whether matured or unmatured.

SECTION 9.4. Limitation on Guaranteed Amount, etc. Notwithstanding any other provision of this Article 9, the amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations under this Article 9 shall not be subject to avoidance under section 548 of the Bankruptcy Code or to being set aside or annulled

under any Applicable Law relating to fraud on creditors. In determining the limitations, if any, on the amount of any Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation or contribution which such Guarantor may have under this Article 9, any other agreement or Applicable Law shall be taken into account.

SECTION 9.5. Payment by Guarantors. Subject to the provisions of Article 7, upon the Obligations becoming due and payable (by acceleration or otherwise), the Lenders shall be entitled to immediate payment of such Obligations by the Guarantors upon written demand by the Administrative Agent, without further application to or order of the Bankruptcy Court.

## **10. PLEDGE**

SECTION 10.1. Pledge. In addition to the security provided in Article 8, each Pledgor, as security for the due and punctual payment of the Obligations (including interest accruing on and after the filing of any petition in bankruptcy or of reorganization of any Pledgor whether or not post-filing interest is allowed in such proceeding) or as security for its obligations under Article 9 hereof, as the case may be, hereby mortgages, pledges, hypothecates, transfers, collaterally assigns and delivers to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) and grants to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) a security interest in all Pledged Collateral now owned or hereafter acquired by it. Each Pledgor shall deliver to the Administrative Agent or its designee the definitive instruments (if any) representing all Pledged Securities, accompanied by undated stock powers (in the case of Pledged Securities comprising capital stock), duly endorsed or executed in blank by the appropriate Pledgor, and such other instruments or documents as the Administrative Agent shall reasonably request (i) on the Initial Date for all Pledged Securities owned by any Pledgor on the Initial Date or (ii) within two (2) Business Days after any Pledged Securities are hereafter acquired by any Pledgor. As of the Closing Date, the Pledged Securities are set forth on Schedule 10.1. The Administrative Agent shall have the right to update Schedule 10.1 to reflect any additions to the Pledged Securities after the date hereof (provided that its failure to do so shall not invalidate any pledge of Pledged Securities).

SECTION 10.2. Registration in Nominee Name; Denominations. The Administrative Agent shall have the right (in its sole and absolute discretion) to hold the certificates representing any Pledged Securities (a) upon the occurrence and continuance of an Event of Default (without any further order of the Bankruptcy Court), in its own name (on behalf of the Administrative Agent and the Lenders) or in the name of its designee, or (b) prior to such time, in the name of the appropriate Pledgor, endorsed or assigned in blank or in favor of the Administrative Agent. The Administrative Agent shall have the right to exchange the certificates representing any of the Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Credit Agreement.

SECTION 10.3. Voting Rights; Dividends; etc.



(a) The appropriate Pledgor shall be entitled to exercise any and all voting and/or consensual rights and powers accruing to an owner of the Pledged Securities being pledged by it hereunder or any part thereof, at all times, except as expressly provided in paragraph (c) below; provided that no vote or other right shall be exercised or action taken or authorized by any Pledgor which would have the effect of impairing the value of the Pledged Collateral or the rights of the Administrative Agent in respect of such Pledged Collateral or which would violate or conflict with the terms of this Credit Agreement or any other Fundamental Document.

(b) All dividends or distributions of any kind whatsoever (other than cash dividends or cash distributions paid while no Event of Default is continuing) received by a Pledgor, whether resulting from a subdivision, combination, or reclassification of the outstanding capital stock or Equity Interests of the issuer or received in exchange for the Pledged Securities or any part thereof or as a result of any merger, consolidation, acquisition, or other exchange of assets to which the issuer may be a party, or otherwise, shall be and become part of the Pledged Securities pledged hereunder and shall immediately be delivered to the Administrative Agent to be held subject to the terms hereof. All dividends and distributions which are received contrary to the provisions of this paragraph (b) shall be received in trust for the benefit of the Administrative Agent and the Lenders, segregated from such Pledgor's own assets, and shall be delivered to the Administrative Agent immediately upon receipt thereof.

(c) Subject to the Orders, upon the occurrence and during the continuance of an Event of Default, all rights of any Pledgor (i) to exercise the voting and/or consensual rights and powers which it is entitled to exercise pursuant to this Section 10.3, and (ii) to receive and retain cash dividends and cash distributions shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to exercise such voting and/or consensual rights and receive such cash dividends and cash distributions.

**SECTION 10.4. Remedies Upon Default.** If an Event of Default shall have occurred and be continuing, the Administrative Agent, on behalf of itself and the Lenders, may sell the Pledged Securities, or any part thereof, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Administrative Agent shall deem appropriate subject to the terms hereof or as otherwise provided in the UCC. The Administrative Agent shall be authorized at any such sale (if it deems it advisable to do so) to restrict to the full extent permitted by Applicable Law the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Pledged Securities for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale, the Administrative Agent shall have the right to assign, transfer, and deliver to the purchaser or purchasers thereof the Pledged Securities so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Pledgor. The Administrative Agent shall give the Pledgors not less than ten (10) days' prior written notice of any such public or private sale, or sale at any broker's board or on

any such securities exchange, or of any other disposition of the Pledged Securities. Such notice, in the case of public sale, shall state the time and place for such sale and, in the case of sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Pledged Securities, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix and shall state in the notice of such sale. At any such sale, the Pledged Securities, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Administrative Agent may (in its sole and absolute discretion) determine. The Administrative Agent shall not be obligated to make any sale of the Pledged Securities if it shall determine not to do so, regardless of the fact that notice of sale of the Pledged Securities may have been given. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case the sale of all or any part of the Pledged Securities is made on credit or for future delivery, the Pledged Securities so sold shall be retained by the Administrative Agent until the sale price is paid by the purchaser or purchasers thereof, but the Administrative Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Pledged Securities so sold and, in case of any such failure, such Pledged Securities may be sold again upon like notice. At any sale or sales made pursuant to this Section 10.4, the Administrative Agent (on behalf of itself and/or the Lenders) may bid for or purchase, free from any claim or right of whatever kind, including any equity of redemption, of the Pledgors, any such demand, notice, claim, right or equity being hereby expressly waived and released, any or all of the Pledged Securities offered for sale, and may make any payment on the account thereof by using any claim for moneys then due and payable to the Administrative Agent or any consenting Lender by any Pledgor as a credit against the purchase price; and the Administrative Agent, upon compliance with the terms of sale, may hold, retain and dispose of the Pledged Securities without further accountability therefor to any Pledgor or any third party (other than the Lenders). The Administrative Agent shall in any such sale make no representations or warranties with respect to the Pledged Securities or any part thereof, and shall not be chargeable with any of the obligations or liabilities of the Pledgors with respect thereto. Each Pledgor hereby agrees (i) it will indemnify and hold the Administrative Agent and the Lenders harmless from and against any and all claims with respect to the Pledged Securities asserted before the taking of actual possession or control of the Pledged Securities by the Administrative Agent pursuant to this Credit Agreement, or arising out of any act of, or omission to act on the part of, any Person prior to such taking of actual possession or control by the Administrative Agent (whether asserted before or after such taking of possession or control), or arising out of any act on the part of any Pledgor, its agents or Affiliates before or after the commencement of such actual possession or control by the Administrative Agent but excluding from therefrom all claims with respect to the Pledged Securities resulting from (x) the gross negligence or willful misconduct of any of the Administrative Agent or the Lenders as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment, or (y) any claims with respect to the Pledged Securities asserted against an indemnified party by



a Pledgor in which such Pledgor is the prevailing party, and (ii) the Administrative Agent and the Lenders shall have no liability or obligation arising out of any such claim except for acts of willful misconduct or gross negligence as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment. As an alternative to exercising the power of sale herein conferred upon it, the Administrative Agent may proceed by a suit or suits at law or in equity to foreclose upon the Collateral and Pledged Securities under this Credit Agreement and to sell the Pledged Securities, or any portion thereof, pursuant to a judgment or decree of a court or courts having competent jurisdiction. The remedies conferred upon or reserved to the Administrative Agent in this Section 10.4 are intended to be in addition to, and not in limitation of, any other remedy or remedies available to the Administrative Agent or otherwise set forth in this Credit Agreement or any other Fundamental Document. Without limiting the generality of the foregoing, the Administrative Agent and the Lenders shall have all rights and remedies of a secured creditor under Article 9 of the UCC and under any other Applicable Law.

SECTION 10.5. Securities Act, etc. Each Pledgor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof. Each Pledgor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Pledgor or the issuer of the Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if the applicable Pledgor and the issuer would agree to do so.

SECTION 10.6. Continuation and Reinstatement. Each Pledgor further agrees that its pledge hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment or any part thereof of any Obligation is rescinded or must otherwise be restored by the Administrative Agent or the Lenders upon the bankruptcy or reorganization of any Pledgor or otherwise

SECTION 10.7. Termination. The pledge provided in this Article 10 shall terminate when the Obligations have been fully and indefeasibly paid in cash and performed and the Commitments shall have terminated. Upon request by the Pledgors (and at the sole expense of the Pledgors) after such termination, the Administrative Agent will promptly take all reasonable action and do all things reasonably necessary, including assigning and delivering to the appropriate Pledgor such of the Pledged Securities (if any) as shall not have been sold or otherwise applied by the Administrative Agent pursuant to the terms hereof, together with appropriate instruments of reassignment and release, to terminate the pledge granted to it (for the benefit of the Administrative Agent and the Lenders) hereunder, provided that the Administrative Agent shall only be required to deliver such documents to the applicable Pledgor and shall have no obligation to file or record any such document. Any such reassignment shall

be free and clear of all Liens, arising by, under or through the Administrative Agent but shall otherwise be without recourse upon or warranty by the Administrative Agent.

SECTION 10.8. Further Assurances. The Pledgors, at their own expense, will execute and deliver, from time to time, any and all further, or other, instruments, and perform such acts, as the Administrative Agent may reasonably request to effect the purposes of this Article 10 and to secure to the Administrative Agent (for the benefit of the Lenders) the benefits of all rights, authorities, and remedies conferred upon the Administrative Agent by the terms of this Credit Agreement and any other Fundamental Document.

SECTION 10.9. Waivers; Non-Waiver of Rights and Remedies.

(a) The obligations of each Pledgor hereunder shall not be affected by (i) the failure of the Administrative Agent or the Lenders to assert any claim or demand or to enforce any right or remedy against any Pledgor, any of their Affiliates, any other Pledgor or any other Person under the provisions of this Credit Agreement, any Fundamental Document or any other agreement or otherwise; (ii) any extension or renewal of any provision hereof or thereof; (iii) failure of the Administrative Agent or the Lenders to obtain the consent of the applicable Pledgor with respect to any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of this Credit Agreement, the Fundamental Documents or of any other agreement; (iv) the release, exchange, waiver or foreclosure of any security held by the Administrative Agent for the Obligations or any of them; (v) the failure of the Administrative Agent or the Lenders to exercise any right or remedy against the any Pledgor, any of their Affiliates or any other pledgor or guarantor with respect to the Obligations; or (vi) the release or substitution of any Pledgor or any Guarantor or other guarantor or pledgor with respect to the Obligations.

(b) Each Pledgor waives any right to require that any resort be had by the Administrative Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of the Administrative Agent or any Lender in favor of either of the any Pledgor or to any other Person.

(c) Each Pledgor's obligations under this Article 10 shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations, this Credit Agreement, any other Fundamental Document or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Article 10. The Administrative Agent and the Lenders make no representation or warranty with respect to any such circumstances and have no duty or responsibility whatsoever to any Pledgor in respect to the management and maintenance of the Obligations or any collateral security for the Obligations.

SECTION 10.10. PROXY; NATURE OF APPOINTMENT; LIMITATION ON DUTIES.

(a) EACH PLEDGOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE ADMINISTRATIVE AGENT AS ITS PROXY AND ATTORNEY-IN-FACT, EXERCISABLE UPON THE OCCURRENCE AND DURING THE CONTINUATION OF AN EVENT OF DEFAULT, WITH RESPECT TO ITS PLEDGED COLLATERAL, INCLUDING THE RIGHT TO VOTE SUCH PLEDGED COLLATERAL, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY SUCH PLEDGED COLLATERAL, THE APPOINTMENT OF THE ADMINISTRATIVE AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT, UPON THE OCCURRENCE AND DURING THE CONTINUATION OF AN EVENT OF DEFAULT, TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF SUCH PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY SUCH PLEDGED COLLATERAL ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF SUCH PLEDGED COLLATERAL OR ANY OFFICER OR AGENT THEREOF), UPON THE OCCURRENCE AND DURING THE CONTINUATION OF AN EVENT OF DEFAULT.

(b) THE APPOINTMENT OF THE ADMINISTRATIVE AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE 10 IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS CREDIT AGREEMENT IS TERMINATED IN ACCORDANCE WITH THE TERMS HEREOF. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NEITHER THE ADMINISTRATIVE AGENT, NOR ANY LENDER, NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; PROVIDED THAT, IN NO EVENT SHALL THEY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

**11. [RESERVED]**

**12. THE ADMINISTRATIVE AGENT AND THE ISSUING BANK**

SECTION 12.1. Administration by the Administrative Agent.

(a) The general administration of the Fundamental Documents and any other documents contemplated by this Credit Agreement or any other Fundamental Document shall be by the Administrative Agent or its designees. Except as otherwise expressly provided herein, each of the Lenders hereby irrevocably authorizes the Administrative Agent, at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Fundamental Documents, the Notes and any other documents contemplated by this Credit Agreement or any other Fundamental Document as are expressly delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto. The Administrative Agent shall have no duties or responsibilities except as set forth in the Fundamental Documents.

(b) The Lenders hereby authorize the Administrative Agent (in its sole discretion):

- (i) in connection with the sale or other disposition of any asset included in the Collateral or the capital stock of any Guarantor, to the extent undertaken in accordance with the terms of this Credit Agreement, to release a Lien granted to it (for the benefit of the Administrative Agent and the Lenders) on such asset or capital stock and/or to release such Guarantor from its obligations hereunder;
- (ii) to determine that the cost to the Borrowers or another Credit Party is disproportionate to the benefit to be realized by the Administrative Agent and the Lenders by perfecting a Lien in a given asset or group of assets included in the Collateral and that the Borrowers or other Credit Party should not be required to perfect such Lien in favor of the Administrative Agent (for the benefit of itself and the Lenders);
- (iii) to appoint subagents to be the holder of record of a Lien to be granted to the Administrative Agent (for the benefit of itself and the Lenders);
- (iv) to enter into and perform its obligations under the other Fundamental Documents; and
- (v) to determine when a Lender is or becomes a Defaulting Lender or is no longer a Defaulting Lender.

SECTION 12.2. Payments. As between the Administrative Agent and the Lenders, any amounts received by the Administrative Agent in connection with the Fundamental Documents, the application of which is not otherwise provided for in Article 2 or Article 8, shall be applied, first, to pay the accrued but unpaid expenses and Commitment Fees in accordance with each Lender's Percentage, second, to pay accrued but unpaid interest on the Loans in accordance with the amount of outstanding Loans owed to each Lender, and third, to pay the principal balance outstanding on the Loans (with amounts payable on the principal balance

outstanding on Loans in accordance with the amount of outstanding Loans owed to each Lender) and to pay any other amounts then due under this Credit Agreement and any other Obligations. All amounts to be paid to any Lender by the Administrative Agent shall be credited to that Lender, after collection by the Administrative Agent, in immediately available funds either by wire transfer or deposit in such Lender's correspondent account with the Administrative Agent, or as such Lender and the Administrative Agent shall from time to time agree.

SECTION 12.3. Sharing of Setoffs and Cash Collateral. Each of the Lenders agrees that if it shall, through the exercise of a right of banker's Lien, setoff or counterclaim against any Credit Party (including, but not limited to, a secured claim under Section 506 of Title 11 of the Code or other security or interest arising from, or in lieu of, such secured claim and received by such Lender under any applicable bankruptcy, insolvency or other similar law) or otherwise, obtain payment in respect of its Loans as a result of which the unpaid portion of its Loans is proportionately less than the unpaid portion of Loans of any of the other Lenders (a) it shall promptly purchase at par (and shall be deemed to have thereupon purchased) from such other Lenders a participation in the Loans of such other Lenders, so that the aggregate unpaid principal amount of each of the Lender's Loans and its participation in Loans of the other Lenders shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loans prior to the obtaining of such payment was to the principal amount of all Loans outstanding prior to the obtaining of such payment, and (b) such other adjustments shall be made from time to time as shall be equitable to ensure that the Lenders share such payment pro rata. If all or any portion of such excess payment is thereafter recovered from the Lender which originally received such excess payment, such purchase (or portion thereof) shall be canceled and the purchase price restored to the extent of such recovery. The Credit Parties expressly consent to the foregoing arrangements and agree that any Lender or Lenders holding (or deemed to be holding) a participation in a Note may exercise any and all rights of banker's Lien, setoff or counterclaim with respect to any and all moneys owing by the Borrowers to such Lender or Lenders as fully as if such Lender or Lenders held a Note and was the original obligee thereon, in the amount of such participation.

SECTION 12.4. Notice to the Lenders. Upon receipt by the Administrative Agent from any of the Credit Parties of any communication calling for an action on the part of the Lenders, or upon notice to the Administrative Agent of any Event of Default, the Administrative Agent will in turn immediately inform the other Lenders in writing (which shall include facsimile communications) of the nature of such communication or of the Event of Default, as the case may be.

SECTION 12.5. Liability of the Administrative Agent.

(a) The Administrative Agent, when acting on behalf of the Lenders, may execute any of its duties under this Credit Agreement or the other Fundamental Documents by or through its officers, agents or employees and neither the Administrative Agent nor its officers, agents or employees shall be liable to the Lenders or any of them for any action taken or omitted

to be taken in good faith, nor be responsible to the Lenders or to any of them for the consequences of any oversight or error of judgment, or for any loss, unless the same shall happen through its gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment. The Administrative Agent and its directors, officers, agents, and employees shall in no event be liable to the Lenders or to any of them for any action taken or omitted to be taken by it pursuant to instructions received by it from the Required Lenders or in reliance upon the advice of counsel selected by it with reasonable care. Without limiting the foregoing, neither the Administrative Agent nor any of its directors, officers, employees, or agents shall be responsible to any of the Lenders for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any statement, warranty, or representation in, or for the perfection of any security interest contemplated by, this Credit Agreement, any other Fundamental Document or any related agreement, document or order, or for freedom of any of the Collateral or any of the Pledged Securities from prior Liens or security interests, or shall be required to ascertain or to make any inquiry concerning the performance or observance by the Borrowers or any other Credit Party of any of the terms, conditions, covenants, or agreements of this Credit Agreement, any other Fundamental Document, or any related agreement or document.

(b) None of the Administrative Agent (in its capacity as agent for the Lenders) or any of its directors, officers, employees or agents shall have any responsibility to the Borrowers or any other Credit Party on account of the failure or delay in performance or breach by any of the Lenders of any of such Lender's obligations under this Credit Agreement, the other Fundamental Documents or any related agreement or document or in connection herewith or therewith. No Lender nor any of its directors, officers, employees or agents shall have any responsibility to the Borrowers or any other Credit Party on account of the failure or delay in performance or breach by any other Lender of such other Lender's obligations under this Credit Agreement, the other Fundamental Documents or any related agreement or document or in connection herewith or therewith.

(c) The Administrative Agent, in its capacity as agent for the Lenders hereunder, shall be entitled to rely on any communication, instrument or document believed by it to be genuine or correct and to have been signed or sent by a Person or Persons believed by it to be the proper Person or Persons, and it shall be entitled to rely on advice of legal counsel, independent public accountants, and other professional advisers and experts selected by it with reasonable care.

SECTION 12.6. Reimbursement and Indemnification. Each of the Lenders agrees (i) to reimburse the Administrative Agent for such Lender's Pro Rata Share of any expenses and fees incurred for the benefit of the Lenders under the Fundamental Documents, including counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, and any other expense incurred in connection with the operations or enforcement thereof not reimbursed by or on behalf of the Borrowers and (ii) to indemnify and hold harmless the Administrative Agent and any of its directors, officers, employees, or agents,



on demand, in accordance with such Lender's Percentage, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against, it or any of them in any way relating to or arising out of any of the Fundamental Documents or any related agreement or document, or any action taken or omitted by it or any of them under any Fundamental Documents or any related agreement or document, to the extent not reimbursed by or on behalf of the Borrowers or any Credit Party (except such as shall result from its gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment). To the extent indemnification payments made by the Lenders pursuant to this Section 12.6 are subsequently recovered by the Administrative Agent from a Credit Party, the Administrative Agent will promptly refund such previously paid indemnity payments to the Lenders.

SECTION 12.7. Rights of Administrative Agent. It is understood and agreed that the Administrative Agent shall have the same duties, rights and powers as a Lender hereunder (including the right to give such instructions) as any of the other Lenders and may exercise such rights and powers, as well as its rights and powers under other agreements and instruments to which it is or may be party, and engage in other transactions with any Credit Party or Affiliate thereof, as though it were not the Administrative Agent of the Lenders under this Credit Agreement and the other Fundamental Documents.

SECTION 12.8. Independent Investigation by Lenders. Each of the Lenders acknowledges that it has decided to enter into this Credit Agreement and the other Fundamental Documents and to make the Loans hereunder based on its own analysis of the transactions contemplated hereby and of the creditworthiness of the Credit Parties and agrees that the Administrative Agent shall not bear any responsibility therefor.

SECTION 12.9. Agreement of Required Lenders. Except as set forth in Section 13.10 hereof, upon any occasion requiring or permitting an approval, consent, waiver, election or other action on the part of the Lenders, action shall be taken by the Administrative Agent for and on behalf of, or for the benefit of, all Lenders upon the direction of the Required Lenders and any such action shall be binding on all Lenders. No amendment, modification, consent or waiver shall be effective except in accordance with the provisions of Section 13.10 hereof.

SECTION 12.10. Notice of Transfer. The Administrative Agent may deem and treat any Lender which is a party to this Credit Agreement as the owner of such Lender's respective portions of the Loans for all purposes, unless and until a written notice of the assignment or transfer thereof executed by any such Lender shall have been received by the Administrative Agent and become effective in accordance with Section 13.3 hereof.

SECTION 12.11. Successor Administrative Agent. The Administrative Agent may resign at any time by giving ten (10) days' prior written notice thereof to the Lenders and the Borrowers, but such resignation shall not become effective until acceptance by a successor

agent of its appointment pursuant hereto. Upon any such resignation, the retiring Administrative Agent shall consult with the Borrowers and promptly appoint a successor agent from among the Lenders; provided, that such replacement is reasonably acceptable (as evidenced in writing) to the Required Lenders and the Borrowers; provided, however, that such approval of the Borrowers shall not be required at any time when a Default or Event of Default is continuing. If no successor agent shall have been so appointed by the retiring Administrative Agent and shall have accepted such appointment, within thirty (30) days after the retiring agent's giving of notice of resignation, the Borrowers may appoint a successor agent; provided, that such successor is reasonably acceptable to the Required Lenders (as evidenced in writing), which shall be either a Lender, a "Qualified Institutional Buyer" (as defined in Rule 144A under the Securities Act of 1933) or a commercial bank organized under the laws of the United States of America or of any State thereof and shall have a combined capital and surplus of at least \$250,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor agent, such successor agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Credit Agreement, the other Fundamental Documents and any other credit documentation. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article 12 and Article 13 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Credit Agreement.

### **13. MISCELLANEOUS**

#### **SECTION 13.1. Notices.**

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, portable document format ("pdf"), tagged image file format ("TIFF") or other electronic format sent by electronic mail, as follows:

if to any Credit Party, to:

Alexander Gallo Holdings, LLC  
2700 Centennial Tower  
101 Marietta Street  
Atlanta, GA 30303  
Attention: Alexander Gallo  
Email: [agallo@alexandergalloholdings.com](mailto:agallo@alexandergalloholdings.com)  
Telephone: (877) 495-0777  
Fax No.: (404) 529-9299



Carl Marks Advisory Group LLC  
900 Third Avenue, 33rd Floor  
New York, NY 10022  
Attention: Mark L. Pfefferle  
Telephone: (212) 909-8441  
Email: mpfefferle@carlmarks.com

Gordian Group, LLC  
950 Third Avenue, 17th Floor  
New York, NY 10022  
Attention: Peter S. Kaufmann  
Email: psk@gordiangroup.com  
Telephone: (212) 486-3600  
Fax No.: (212) 486-3616

with a copy (which shall not constitute notice) to:

DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020  
Attention: Thomas R. Califano  
Email: thomas.califano@dlapiper.com  
Attention: Jeremy R. Johnson  
Email: jeremy.johnson@dlapiper.com  
Telephone: (212) 335-4540  
Fax No.: (212) 335-4501

if to the Administrative Agent, to:

Bayside Capital, Inc.  
1450 Brickell Avenue, 31st Floor  
Miami, Florida 33131  
Attention: Jackson Craig  
Email: jcraig@higcapital.com  
Attention: Adam Schimel  
Email: aschimel@higcapital.com

with a copy (which shall not constitute notice) to:

Dechert LLP  
1095 Avenue of the Americas  
New York, New York 10036  
Attention: Michael J. Sage  
Email: michael.sage@dechert.com  
Telephone: (212) 698-3503  
Attention: Scott M. Zimmerman  
Telephone: (212) 698-3613  
Fax No.: (212) 698-3599

if to any other Lender, to the address, telephone number, facsimile number or email address set forth on the signature pages hereto.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrowers may, each in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to all of the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Credit Agreement shall be deemed to have been given on the date of receipt.

SECTION 13.2. Survival of Agreement, Representations and Warranties, etc.  
All warranties, representations and covenants made by any of the Credit Parties herein, in any other Fundamental Document or in any certificate or other instrument delivered by it or on its behalf in connection with this Credit Agreement or any other Fundamental Document shall be considered to have been relied upon by the Administrative Agent and the Lenders and, except for any terminations, amendments, modifications or waivers thereof in accordance with the terms hereof, shall survive the making of the Loans herein contemplated and the execution and delivery to the Administrative Agent of the Notes regardless of any investigation made by the Administrative Agent or the Lenders or on their behalf and shall continue in full force and effect so long as any Obligation is outstanding and unpaid and so long as the Commitments have not been terminated. All statements in any such certificate or other instrument shall constitute representations and warranties by the Credit Parties hereunder.

SECTION 13.3. Successors and Assigns; Syndications; Loan Sales;

### Participations.

(a) Whenever in this Credit Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; provided, however, that neither any Borrower nor any other Credit Party may assign its rights hereunder without the prior written consent of the Administrative Agent and all Lenders, and all covenants, promises and agreements by or on behalf of any of the Credit Parties which are contained in this Credit Agreement shall inure to the benefit of the successors and assigns of the Administrative Agent and the Lenders.

(b) Each of the Lenders may (but only with the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed) assign all or a portion of its interests, rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the same portion of all Loans at the time owing to it and the Notes held by it and its rights); provided, however, that (i) each assignment shall be of a constant, and not a varying, percentage of the assigning Lender's interests, rights and obligations under this Credit Agreement, (ii) each assignment shall be in a minimum Commitment amount (or at any time after the Termination Date, minimum aggregate amount of Loans) equal to \$1,000,000; provided that such minimum amount shall not apply to assignments by any Lender with a Commitment of less than \$1,000,000 in the aggregate so long as the entirety of its remaining Commitment is being assigned in full, (iii) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register (as defined below), an Assignment and Assumption, together with the assigning Lender's original Note if one has been issued to the Lender pursuant to Section 2.2 and a processing and recordation fee of \$3,500 to be paid to the Administrative Agent by the assigning Lender or the assignee and (iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an "Administrative Questionnaire" in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrowers and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including federal and state securities laws. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Assumption, which effective date shall not (unless otherwise agreed to by the Administrative Agent) be earlier than five (5) Business Days after the date of acceptance and recording by the Administrative Agent, (x) the assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Assumption, have the rights and obligations of a Lender hereunder and under the other Fundamental Documents and shall be bound by the provisions hereof, and (y) the assigning Lender thereunder shall, to the extent provided in such Assignment and Assumption, relinquish its rights and be released from its obligations under this Credit Agreement except that, notwithstanding such assignment, any rights and remedies available to the Borrowers for any breaches by such assigning Lender of its obligations hereunder while a Lender shall be preserved after such assignment and such Lender shall not be relieved of any liability to the Borrowers due to any such breach. In the case of an Assignment

and Assumption covering all or the remaining portion of the assigning Lender's rights and obligations under this Credit Agreement, such assigning Lender shall cease to be a party hereto.

(c) Any assignment to (i) any Affiliate of the assigning Lender, (ii) a Person, or Affiliate of a Person, that manages a Lender (a "Related Fund"), or (iii) any other Lender hereunder, shall not be subject to the requirement of Section 13.3(b)(ii) that the amount of the Commitment (or Loans if applicable) of the assigning Lender subject to each assignment be in a minimum principal amount of \$1,000,000, and any such assignment to any Affiliate of the assigning Lender shall not release the assigning Lender of its remaining obligations hereunder, if any. Notwithstanding any provision herein otherwise requiring the consent of the Administrative Agent, each Lender may at any time make an assignment of its interests, rights and obligations under this Credit Agreement without the consent of the Administrative Agent in the case of assignments of its interests, rights and obligations under the Facility to any Eligible Assignee that is a Related Fund of an existing Lender.

(d) By executing and delivering an Assignment and Assumption, the assigning Lender thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned thereby and that such interest is free and clear of any adverse claim, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Credit Agreement or any other Fundamental Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Fundamental Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) such assignor Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Credit Party or the performance or observance by any Credit Party of any of their obligations under the Fundamental Documents or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Sections 5.1(a) and 5.1(b) (if such financial statements shall have theretofore been delivered) and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (iv) such assignee agrees that it will, independently and without reliance upon the assigning Lender, the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Credit Agreement or any other Fundamental Document; (v) such assignee appoints and authorizes the Administrative Agent to take such action as the agent on its behalf and to exercise such powers under this Credit Agreement as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto; and (vi) such assignee agrees that it will be bound by the provisions of this Credit Agreement and will perform in accordance with their terms all of the obligations which by the terms of this Credit Agreement are required to be performed by it as a Lender.

(e) The Administrative Agent (acting for this purpose on behalf of the Borrowers) shall maintain at its address at which notices are to be given to it pursuant to Section 13.1 a copy of each Assignment and Assumption and a register for the recordation of the names and addresses of the Lenders and the Commitments of, and principal amount and stated interest of the Loans owing to, each Lender from time to time (the “Register”). The entries in the Register shall be conclusive, in the absence of manifest error, and the Credit Parties, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of the Fundamental Documents. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register. The Register shall be available for inspection by any Credit Party or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(f) Subject to the foregoing, upon its receipt of an Assignment and Assumption executed by an assigning Lender and an assignee together with the assigning Lender’s original Notes, if applicable, and the processing and recordation fee, the Administrative Agent shall, if such Assignment and Assumption has been completed and is in the form of Exhibit G, (i) accept such Assignment and Assumption and (ii) record the information contained therein in the Register. Within five (5) Business Days after receipt of the notice and upon the request of the assignee, the Borrowers, at their own expense, shall execute and deliver to the Administrative Agent, in exchange for the surrendered Note (if any), a new Note payable to such assignee in an amount equal to the Commitment assumed by it pursuant to such Assignment and Assumption and if the assigning Lender has retained a Commitment hereunder and so requests, a new Note payable to the assigning Lender in an amount equal to the Commitment retained by it hereunder. Any such new Notes shall be in an aggregate principal amount equal to the aggregate principal amount of the surrendered Note, if any, and shall otherwise be in form and substance reasonably satisfactory to such assignee. In addition the Credit Parties will promptly, at their own expense, execute such amendments to the Fundamental Documents to which each is a party and such additional documents, and take such other actions as the Administrative Agent or the assignee Lender may reasonably request in order to give such assignee Lender the full benefit of the Liens contemplated by the Fundamental Documents.

(g) Each of the Lenders may, without the consent of any of the Credit Parties, the Administrative Agent or the other Lenders, sell participations to one or more banks or other entities in all or a portion of its rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the Loans owing to it and the Note, if any, held by it); provided, however, that (i) such Lender’s obligations under this Credit Agreement shall remain unchanged, (ii) such participant shall not be granted any voting rights or any right to control the vote of such Lender under this Credit Agreement, except with respect to proposed reductions in interest rates or fees, extensions of final maturity or scheduled amortization of any Loan, releases of all or substantially all the Collateral and fees (in each case, only as applicable to such participant), (iii) any such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iv) the participating banks or other entities shall be entitled

to the cost protection provisions contained in Section 2.9 (subject to the last sentence of this Section 13.3(g)) and Section 13.8, but a participant shall not be entitled to receive pursuant to such provisions an amount larger than its share of the amount to which the Lender granting such participation would have been entitled to receive, and (v) the Credit Parties, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's and its participants' rights and obligations under this Credit Agreement. No holder of a participating interest shall be entitled to the benefits of Section 2.9 unless the Borrowers are notified of the participation sold to such holder and such holder agrees, for the benefit of the Borrowers, to comply with Section 2.9 as though it were a Lender.

(h) A Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 13.3, disclose to the assignee or participant or proposed assignee or participant, any information relating to any Credit Party furnished to the Administrative Agent or such Lender by or on behalf of the Borrowers or another Credit Party (provided that such proposed assignee or participant agrees to hold such information confidential in accordance with Section 13.18).

(i) Any assignment pursuant to paragraph (b) or (c) of this Section 13.3 shall constitute an amendment of the Schedule of Commitments as of the effective date of such assignment without any other further action required.

(j) The Credit Parties consent that any Lender may at any time and from time to time pledge or otherwise grant a security interest in any Loan or in any Note evidencing the Loans (or any part thereof) to (i) any Federal Reserve Bank or (ii) in the case of any Lender that is not a commercial bank, savings and loan association or savings bank, to any holders of obligations owed, or securities issued, by such Lender including to any trustee for, or any other representative of, such holders; and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or grant of security interest under this Section 13.3(j) shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**SECTION 13.4. Expenses; Documentary Taxes.** Whether or not the transactions hereby contemplated shall be consummated, the Borrowers agree to pay (i) all expenses incurred by the Administrative Agent in connection with, or arising out of, the performance of due diligence, the syndication of the credit facility contemplated hereby, the negotiation, preparation, execution, delivery, waiver or modification and administration of this Credit Agreement and any other documentation contemplated hereby, the making of the Loans, the Collateral, the Pledged Securities or any Fundamental Document, including the costs and internally allocated charges of audit or field examinations of the Administrative Agent in connection with the administration of this Credit Agreement and the fees and disbursements of counsel for the Administrative Agent (and any agents or advisors retained by any such counsel) and the fees and expenses of any other advisor retained by the Administrative Agent or its counsel (it being understood that reasonable efforts will be made to minimize unnecessary duplication of services), and (ii) all expenses



incurred by the Administrative Agent or the Lenders in the enforcement or protection (as distinguished from administration) and preservation of rights under the Fundamental Documents (including by way of a refinancing or restructuring of the Facility) of the rights and remedies of the Lenders in connection with this Credit Agreement, the Notes or the other Fundamental Documents, or as a result of any transaction, action or non-action arising from any of the foregoing, including the fees and disbursements of counsel for the Administrative Agent or the Lenders. Such payments shall be made on the date this Credit Agreement is executed by the Borrowers and thereafter on demand. Any invoices prepared or provided by the Administrative Agent or any Lender for purposes of this Agreement or any other Fundamental Document shall be in summary form and shall not be required to include time entries for individual attorneys or consultants or specific expense items. Notwithstanding any provision to the contrary, the Borrowers' obligations under this Section 13.4 shall not be duplicative of any amounts paid by Borrowers under any other provision of this Credit Agreement or agreed by the Borrowers and the Administrative Agent for expenses accrued prior to the Closing Date. The obligations of the Borrowers under this Section shall survive the termination of this Credit Agreement and the indefeasible payment in full of the Obligations.

SECTION 13.5. Indemnity. The Credit Parties agree (a) to indemnify and hold harmless the Administrative Agent and the Lenders, their affiliates and their respective directors, officers, employees, controlling persons, advisors and agents (each an "Indemnified Party") (to the full extent permitted by Applicable Law) from and against any and all demands, losses, claims, damages, liabilities or related out-of-pocket expenses (including liabilities for penalties and fees, disbursements and other charges of counsel) incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding (whether or not any Lender or the Administrative Agent is a party thereto) related to the entering into and/or performance of any Fundamental Document or the use of the proceeds of any Loans hereunder or the consummation of the transaction contemplated in any Fundamental Document or the exercise of remedies thereunder (but excluding any such losses, liabilities, claims, damages or expenses of an Indemnified Party to the extent incurred by reason of the gross negligence or willful misconduct of such Indemnified Party as determined by a court of competent jurisdiction pursuant to a final and non-appealable judgment). If any proceeding, including any governmental investigation, shall be instituted involving any Indemnified Party, in respect of which indemnity may be sought against the Credit Parties, such Indemnified Party shall promptly notify the Borrowers in writing. The foregoing indemnity agreement includes any costs incurred by an Indemnified Party in connection with any action or proceeding in connection with which any officer or employee of the Administrative Agent or the Lenders is called as a witness or deponent, including, but not limited to, the fees and disbursements of counsel to the Administrative Agent and any costs incurred by the Administrative Agent or the Lenders in appearing as a witness or in otherwise complying with legal process served upon them. The obligations of the Borrowers under this Section shall survive the termination of this Credit Agreement and the indefeasible payment in full of the Obligations and shall inure to the benefit of any Lender and its associated Indemnified Parties notwithstanding the assignment by such Lender of all of its Loans and Commitments hereunder.

If a Credit Party shall fail to do any act or thing which it has covenanted to do hereunder or under a Fundamental Document which failure would cause a Default or Event of Default to occur hereunder, or any representation or warranty of a Credit Party shall be breached, the Administrative Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach and there shall be added to the Obligations hereunder the cost or expense incurred by the Administrative Agent in so doing, and any and all amounts expended by the Administrative Agent in taking any such action shall be repayable to it upon its demand therefor and shall bear interest at a rate per annum of 2% in excess of the rate then in effect for the Loans from the date advanced to the date of repayment.

SECTION 13.6. CHOICE OF LAW. THIS CREDIT AGREEMENT AND THE FUNDAMENTAL DOCUMENTS SHALL IN ALL RESPECTS BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WHICH ARE APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED WHOLLY WITHIN SUCH STATE AND, IN THE CASE OF PROVISIONS RELATING TO INTEREST RATES, ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

SECTION 13.7. WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH CREDIT PARTY HEREBY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS CREDIT AGREEMENT, THE SUBJECT MATTER HEREOF, ANY OTHER FUNDAMENTAL DOCUMENT OR THE SUBJECT MATTER THEREOF, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE. EACH CREDIT PARTY ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THE PROVISIONS OF THIS SECTION 13.7 CONSTITUTE A MATERIAL INDUCEMENT UPON WHICH SUCH OTHER PARTIES HAVE RELIED, ARE RELYING AND WILL RELY IN ENTERING INTO THIS CREDIT AGREEMENT AND ANY OTHER FUNDAMENTAL DOCUMENT. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 13.7 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF ANY CREDIT PARTY TO THE WAIVER OF ITS RIGHTS TO TRIAL BY JURY.

SECTION 13.8. WAIVER WITH RESPECT TO DAMAGES. EACH CREDIT PARTY ACKNOWLEDGES THAT NEITHER THE ADMINISTRATIVE AGENT NOR ANY LENDER HAS ANY FIDUCIARY RELATIONSHIP WITH, OR FIDUCIARY DUTY TO, ANY CREDIT PARTY ARISING OUT OF OR IN CONNECTION WITH THIS CREDIT AGREEMENT OR ANY OTHER FUNDAMENTAL DOCUMENT AND THE RELATIONSHIP BETWEEN THE ADMINISTRATIVE AGENT AND THE LENDERS, ON THE ONE HAND, AND THE CREDIT PARTIES, ON THE OTHER HAND, IN



CONNECTION THEREWITH IS SOLELY THAT OF DEBTOR AND CREDITOR. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NO CREDIT PARTY SHALL ASSERT, AND EACH CREDIT PARTY HEREBY WAIVES, ANY CLAIMS AGAINST THE ADMINISTRATIVE AGENT AND THE LENDERS ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS CREDIT AGREEMENT, ANY FUNDAMENTAL DOCUMENT, ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 13.9. No Waiver. No failure on the part of the Administrative Agent or any Lender to exercise, and no delay in exercising, any right, power or remedy hereunder, under the Notes, the Orders or any other Fundamental Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

SECTION 13.10. Amendments, etc.

(a) No modification, amendment or waiver of any provision of this Credit Agreement or any Fundamental Document (except to the extent expressly contemplated herein or therein) and no consent to any departure by a Credit Party herefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders and the Administrative Agent, and acknowledged and agreed to by the Borrowers and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that (A) no such modification, amendment, waiver or consent shall, without the written consent of all Lenders, (i) amend or modify any provision of this Credit Agreement which provides for the unanimous consent or approval of the Lenders, (ii) release any portion of the Collateral with a fair market value in excess of \$100,000 or any portion of the Pledged Securities (except as explicitly contemplated herein) or release any Guarantor from its obligations hereunder (except as contemplated herein), (iii) subordinate the Obligations hereunder to other Indebtedness or subordinate the security interests of the Administrative Agent in any portion of the Collateral with a fair market value in excess of \$100,000, except as permitted by Section 12.1, (iv) amend the definition of "Required Lenders" to decrease the percentages of Lenders referred to therein, (v) amend or modify the superpriority claim status of the Lenders contemplated by Section 2.11 in any material respect or (vi) amend or modify this Section 13.10(a), (B) no such modification, amendment, waiver or consent shall (i) increase the Commitment of any Lender or (ii) alter the final scheduled maturity or principal amount of any Loan, or decrease the rate of interest payable thereon (including default interest), or decrease the rate at which the Commitment Fees accrue, or delay the fixed scheduled maturity of any payment required to be made under this Credit Agreement, in each case, without the written consent of each Lender so affected, (C) no such modification, amendment, waiver or consent shall amend Sections 2.1 or 2.2 hereof without the written consent of the Administrative Agent and (D) no

such modification, amendment, waiver or consent shall amend or modify the provisions of Section 2.14 or the definition of “Defaulting Lender” without the prior written consent of the Administrative Agent and all Lenders. No such amendment or modification may adversely affect the rights and obligations of the Administrative Agent hereunder without its prior written consent. No notice to or demand on any of the Credit Parties shall entitle such Credit Party to any other or further notice or demand in the same, similar or other circumstances. Each holder of a Note shall be bound by any amendment, modification, waiver or consent authorized as provided herein, whether or not such Note shall have been marked to indicate such amendment, modification, waiver or consent and any consent by any holder of such Note shall bind any Person subsequently acquiring such Note, whether or not such Note is so marked.

(b) If any Lender (i) requests compensation under Section 2.9 or (ii) becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort and upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 13.3), all of its interests, rights and obligations under this Credit Agreement to another Lender or an Eligible Assignee which shall assume such obligations and which accepts such assignment; provided that (a) the Borrowers shall have received the prior written consent of the Administrative Agent in its sole and absolute discretion, (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts then payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.9, such assignment will result in a reduction in such compensation thereafter. No Lender shall be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

SECTION 13.11. Severability. Any provision of this Credit Agreement or any other Fundamental Document which is invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating the remaining provisions hereof, and any such invalidity, illegality or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 13.12. SERVICE OF PROCESS; SUBMISSION TO JURISDICTION. EACH CREDIT PARTY (EACH, A “SUBMITTING PARTY”) HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND TO THE SUPREME COURT OF THE STATE OF NEW YORK AND TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF OR BASED UPON THIS CREDIT AGREEMENT, THE SUBJECT

MATTER HEREOF, ANY OTHER FUNDAMENTAL DOCUMENT AND THE SUBJECT MATTER THEREOF. EACH SUBMITTING PARTY TO THE EXTENT PERMITTED BY APPLICABLE LAW (A) HEREBY WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN THE ABOVE-NAMED COURTS, ANY CLAIM THAT IT IS NOT SUBJECT PERSONALLY TO THE JURISDICTION OF SUCH COURTS, THAT ITS PROPERTY IS EXEMPT OR IMMUNE FROM ATTACHMENT OR EXECUTION, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER OR THAT THIS CREDIT AGREEMENT, THE SUBJECT MATTER HEREOF, THE OTHER FUNDAMENTAL DOCUMENTS OR THE SUBJECT MATTER THEREOF (AS APPLICABLE) MAY NOT BE ENFORCED IN OR BY SUCH COURT, (B) HEREBY WAIVES THE RIGHT TO REMOVE ANY SUCH ACTION, SUIT OR PROCEEDING INSTITUTED BY THE ADMINISTRATIVE AGENT OR A LENDER IN STATE COURT TO FEDERAL COURT, AND (C) HEREBY WAIVES THE RIGHT TO ASSERT IN ANY SUCH ACTION, SUIT OR PROCEEDING ANY OFFSETS OR COUNTERCLAIMS EXCEPT COUNTERCLAIMS THAT ARE COMPULSORY OR OTHERWISE ARISE FROM THE SAME SUBJECT MATTER. EACH SUBMITTING PARTY HEREBY CONSENTS TO SERVICE OF PROCESS BY MAIL AT THE ADDRESS TO WHICH NOTICES ARE TO BE GIVEN TO IT PURSUANT TO SECTION 13.1 HEREOF. EACH SUBMITTING PARTY AGREES THAT ITS SUBMISSION TO JURISDICTION AND CONSENT TO SERVICE OF PROCESS BY MAIL IS MADE FOR THE EXPRESS BENEFIT OF EACH OF THE OTHER SUBMITTING PARTIES. FINAL JUDGMENT AGAINST ANY SUBMITTING PARTY IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE, AND MAY BE ENFORCED IN ANY OTHER JURISDICTION (X) BY SUIT, ACTION OR PROCEEDING ON THE JUDGMENT, A CERTIFIED OR TRUE COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND OF THE AMOUNT OF INDEBTEDNESS OR LIABILITY OF THE SUBMITTING PARTY THEREIN DESCRIBED, OR (Y) IN ANY OTHER MANNER PROVIDED BY OR PURSUANT TO THE LAWS OF SUCH OTHER JURISDICTION; PROVIDED, HOWEVER, THAT THE ADMINISTRATIVE AGENT OR A LENDER MAY AT ITS OPTION BRING SUIT, OR INSTITUTE OTHER JUDICIAL PROCEEDINGS AGAINST A SUBMITTING PARTY OR ANY OF ITS ASSETS IN ANY STATE OR FEDERAL COURT OF THE UNITED STATES OF AMERICA OR OF ANY COUNTRY OR PLACE WHERE THE SUBMITTING PARTY OR SUCH ASSETS MAY BE FOUND.

SECTION 13.13. Headings. Section headings used herein and the Table of Contents are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Credit Agreement.

SECTION 13.14. Execution in Counterparts. This Credit Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Delivery of an executed

counterpart of this Credit Agreement by electronic transmission shall be equally effective as delivery of a manually executed counterpart of this Credit Agreement. Any party delivering an executed counterpart of this Credit Agreement by electronic transmission shall also deliver a manually executed counterpart of this Credit Agreement, but failure to do so shall not affect the validity, enforceability or binding effect of this Credit Agreement, and the parties hereby waive any right they may have to object to such treatment.

SECTION 13.15. Subordination of Intercompany Indebtedness, Receivables and Advances.

(a) Each Credit Party hereby agrees that any intercompany Indebtedness or other intercompany receivables or intercompany advances of any other Credit Party, directly or indirectly, in favor of such Credit Party of whatever nature at any time outstanding shall be completely subordinate in right of payment to the prior indefeasible payment in full in cash of the Obligations, and that, upon the occurrence of an Event of Default, no payment on any such Indebtedness, receivable or advance shall be made without the prior written consent of the Administrative Agent.

(b) In the event that any payment on any such Indebtedness shall be received by such Credit Party other than as permitted by Section 13.15(a) prior to the indefeasible payment in full in cash of all Obligations and termination of the Commitments, such Credit Party shall receive such payments and hold the same in trust for, segregate the same from its own assets and shall immediately pay such amounts over to, the Administrative Agent on behalf of itself and the Lenders.

SECTION 13.16. USA Patriot Act. Each Lender hereby notifies the Borrowers that, pursuant to the requirements of the USA Patriot Act or similar foreign statutory requirements, it is required to obtain, verify and record information that identifies the Borrowers, which information includes, among other things the names and addresses of the Borrowers, certified copies of a current passport or driving license of the directors of the Borrowers, certified copies of utility bills of the Borrowers, local authority tax bill or building account statement for the main directors of the Borrowers, copies of resolutions authorizing the Borrowers to open accounts and details of principal directors, signatories and shareholders of the Borrowers and other information that will allow such Lender to identify the Borrowers in accordance with the USA Patriot Act or such similar foreign statutory requirements.

SECTION 13.17. Entire Agreement. This Credit Agreement (including the Exhibits and Schedules hereto) represents the entire agreement of the parties with regard to the subject matter hereof and the terms of any letters and other documentation entered into between any of the parties hereto (other than fee letters) prior to the execution of this Credit Agreement which relate to Loans to be made hereunder shall be replaced by the terms of this Credit Agreement.

SECTION 13.18. Confidentiality.

(a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to 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 confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by Applicable Laws or by any subpoena or similar legal process, (d) to any other party to this Credit Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Credit Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Credit Agreement, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) with the consent of the Borrowers, or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than a Credit Party. For the purposes of this Section, "Information" means all information received from any Credit Party relating to any Credit Party or its business, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by such Credit Party; provided that, in the case of information received from a Credit Party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. This Section 13.18 shall replace in its entirety any confidentiality agreements entered into by the Borrowers and the Credit Parties with the Administrative Agent and the Lenders hereto prior to the Closing Date.

(b) Each Lender acknowledges that Information furnished to it pursuant to this Credit Agreement may include material non-public Information concerning the Borrowers and its 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 Law, including federal and state securities laws.

SECTION 13.19. Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by any Credit Party or the transfer to the Lenders of any property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if the Lenders are required to repay or restore, in whole or in part, any such Voidable Transfer, or elect to do so upon the reasonable advice of their counsel, then, as to any such Voidable Transfer, or the amount thereof

that the Lenders are required or elect to repay or restore, and as to all costs, expenses, and attorneys fees of the Lenders, the Obligations shall automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

SECTION 13.20. Interpretation. This Credit Agreement and the other Fundamental Documents are the result of negotiations among the Administrative Agent, the Lenders, the Borrowers and the other Credit Parties hereto and thereto, have been reviewed (or have had the opportunity to be reviewed) by counsel to all such parties and are the products of all parties. Accordingly, this Credit Agreement and the other Fundamental Documents shall not be construed more strictly against the Lenders merely because of the Lenders' involvement in their preparation.

SECTION 13.21. Effectiveness. This Credit Agreement shall become effective on the date on which all of the parties have signed a copy hereof (whether the same or different copies) and shall have delivered the same to the Administrative Agent. For purposes of determining compliance with the conditions precedent specified in Section 4.1, each Lender that has signed this Credit Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required herein to be consented to or approved by or acceptable or satisfactory to such Lender.

[Signature Pages Follow]

Document comparison by Workshare Professional on Tuesday, October 04, 2011  
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Moved cell	
Split/Merged cell	
Padding cell	

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