**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re: | ) | Chapter 11 |
| BPS US Holdings Inc., *et al.,*[1] | ) | Case No. 16-12373 (____) |
| Debtors. | ) | (Joint Administration Requested) |

**DEBTORS' MOTION: (A) FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO 11 U.S.C. § 364, (II) AUTHORIZING THE DEBTORS' USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, AND (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED CREDITORS PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; (B) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001; AND (C) GRANTING RELATED RELIEF**

BPS US Holdings Inc. and its above-captioned affiliated debtors and debtors in possession (collectively, the "***Debtors***") by and through their undersigned counsel, hereby move this Court for entry of an interim order, substantially in the form attached hereto as ***Exhibit A*** (the "***Interim Order***"), and a final order (the "***Final Order***" and together with the Interim Order, the "***DIP Orders***"): (A) authorizing the Debtors to obtain postpetition financing (the "***DIP Facilities***") provided by a group of investors affiliated with Sagard Capital Partners, L.P. ("***Sagard***") and certain of the Debtors' prepetition secured lenders (collectively, the "***DIP Lenders***"); (B) authorizing the Debtors to use cash collateral pursuant to 11 U.S.C. § 363; (C) granting liens and superpriority administrative expense status in connection with the DIP

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors' headquarters are located at 100 Domain Dr., Exeter, NH 03885.

Facilities pursuant to 11 U.S.C. § 364; (D) granting adequate protection to the Prepetition Secured Creditors (as defined below) pursuant to 11 U.S.C. §§ 363 and 364; (E) modifying the automatic stay; and (F) scheduling a final hearing with respect to the relief requested herein pursuant to Federal Rule of Bankruptcy Procedure 4001 on a final basis, and respectfully state as follows:

## PRELIMINARY STATEMENT[2]

1. The primary focus of these Bankruptcy Proceedings is to facilitate an orderly sale of substantially all of the Debtors' assets (the "***Subject Assets***") as a going concern following a fair and robust sale process (the "***Sale Process***"). The Debtors have already negotiated an asset purchase agreement (the "***Stalking Horse Bid***") with a group of investors led by Sagard and Fairfax Financial Holdings Limited (collectively, the "***Stalking Horse Bidder***") as a proposed stalking horse purchaser of the Subject Assets (the "***Asset Sale***"). Given the Debtors' challenged operating performance and ongoing accounting investigation, among other factors, leading up to the commencement of the Bankruptcy Proceedings, the Stalking Horse Bid sets an excellent starting point for the Sale Process. It provides for, among other things, (1) the repayment in full of all of the Debtors' secured creditors, (2) the assumption by the Stalking Horse Bidder of certain unsecured liabilities, (3) meaningful distributions to the Debtors' remaining stakeholders under a plan, and (4) the continued operation of the Debtors' business as a going concern under new ownership post-closing.

2. To continue operating their business in the ordinary course to preserve the going-concern value of the Debtors' assets and complete the Sale Process, it is critical that the Debtors have access to debtor-in-possession ("***DIP***") financing during the Bankruptcy

[2] Capitalized terms in this section, unless otherwise defined, have the meaning used in the remainder of this Motion.

Proceedings. Without DIP financing, the Debtors would not have sufficient liquidity, whether unencumbered cash on hand or generated from operations, to continue to operate their business or pursue the Sale Process.

3. Accordingly, by this Motion, the Debtors seek approval of, among other things, two separate but coordinated DIP financing facilities. The proposed facilities are (1) an asset-based revolving credit facility and (2) a new money term loan facility (together, the "***DIP Facilities***"). The Debtors also seek approval of the continued use of the Prepetition Secured Creditors' collateral, including Cash Collateral, to which the Prepetition Secured Creditors consent. Such use of collateral, together with the DIP Facilities, will provide the Debtors sufficient liquidity to conduct the Sale Process, repay and refinance the Debtors' obligations under the Prepetition Term Loan Facility, and otherwise fund the Bankruptcy Proceedings.

4. One of the DIP Facilities is a new senior secured asset-based revolving credit facility in a principal amount not to exceed $200 million (the "***ABL DIP Facility***"), to be provided by certain of the Debtors' Prepetition ABL Lenders and will be available to the Debtors upon entry of the Interim Order. The Debtors believe that the ABL DIP Facility will provide approximately $25 million of incremental liquidity in excess of their Prepetition ABL Facility through revisions to the borrowing base and reserves, among other things. The ABL DIP Facility, like the Prepetition ABL Facility, will be secured by, among other things, a first priority lien on the Debtors' accounts receivable, inventory, and the cash proceeds thereof, and a second priority lien on the Debtors' fixed collateral assets. In addition to providing incremental liquidity to the Debtors, the ABL DIP Facility allows collections that constitute ABL Priority Collateral to be applied to reduce amounts outstanding under the Prepetition ABL Facility, to create borrowing base availability under the ABL DIP Facility.

5. The other DIP Facility is a senior secured new money multiple draw term loan facility of up to $361,300,000, with $30 million available to fund working capital needs and approximately $331,300,000 available to repay in full the Prepetition Obligors' (as defined below) obligations under the Prepetition Term Loan Facility (as defined below) (the "***Term Loan DIP Facility***"), to be provided by affiliates of the Stalking Horse Bidder. The Term Loan DIP Facility will be committed financing for the Debtors upon entry of the Interim Order, with related fees earned upon entry of the Interim Order, but funding thereunder and grants of liens and claims in respect thereof shall not occur until entry of the Final Order. Fees under the Term Loan DIP Facility shall not be payable until borrowings are available. Following entry of the Final Order, borrowings under the Term Loan DIP Facility will be used to, among other things, provide incremental liquidity to fund the Debtors' business through the conclusion of the Sale Process and repay and refinance in full the Debtors' obligations under the Prepetition Term Loan Facility.

6. More specifically, the chart below briefly summarizes the relief requested by the Debtors upon entry of the Interim Order and Final Order:

| | Approved by Interim Order | Approved by Final Order |
|---|---|---|
| **ABL DIP Facility** | Authority to draw on the full $200 million aggregate commitment, which provides approximately $25 million of incremental liquidity under the ABL DIP Facility's expanded borrowing base. The Debtors will also be authorized to pay down outstanding amounts under the Prepetition ABL Facility as ABL Priority Collateral is collected in the ordinary course of business. | Same |
| **Term Loan DIP Facility** | Approval of the commitments and fees payable under the Term Loan DIP Facility | Debtors will have authority to incur delayed-draw term loans of up $361,300,000, with $30 million available to fund working capital needs and approximately $331,300,000 available to repay in full the Prepetition Obligors' (as defined below) obligations under the Prepetition Term Loan Facility (as defined below) |
| **Use of Cash Collateral pledged to Prepetition ABL and Term Loan** | Use of cash collateral, with adequate protection as described herein | Same, with continuing adequate protection for Prepetition Term Loan Facility. |
| **Liens & Claims** | As set forth in the priority waterfall attached hereto as ***Exhibit C*** (the "***Priority Waterfall***") | |

## BACKGROUND

### A. General

7. On the date hereof (the "***Petition Date***"), each of the Debtors filed voluntary petitions (collectively, the "***Chapter 11 Cases***") for relief under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***"). Each of the Debtors has or will make an application for protection from their creditors under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, with the Ontario Superior Court of Justice (Commercial List) (the "***Canadian Court***," and the filing, the "***Canadian Proceedings***" and the Chapter 11 Cases and the Canadian Proceedings together, the "***Bankruptcy Proceedings***"). A

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monitor (the "***Monitor***") has been selected in the Canadian Proceedings, and his appointment is awaiting court approval in Canada.[3]

8. The Debtors seek to continue in possession of their respective properties and to operate and maintain their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108 and under the supervision of the Canadian Court. No party has requested the appointment of a trustee or examiner, and no committee has been established in these Chapter 11 Cases.

9. Additional information regarding the Debtors' business and these Bankruptcy Proceedings is set forth in the *Declaration of Brian J. Fox in Support of Debtors' Chapter 11 Petitions and First-Day Motions* (the "***First Day Declaration***"), filed substantially contemporaneously herewith. In addition, and in support of the relief sought in this Motion, the Debtors submit the *Declaration of Marc D. Puntus in Support of the Debtors' Motion: (A) for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Debtors' Use of Cash Collateral Pursuant to 11 U.S.C. § 363, And (III) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; (B) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001; and (C) Granting Related Relief* (the "***Puntus Declaration***"), attached hereto as ***Exhibit B***. Both the First Day Declaration and the Puntus Declaration are incorporated herein by reference.

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[3] A monitor in Canada is an independent party appointed by the CCAA Court to monitor the company's operations and to assist with the restructuring of the company. The Monitor reports to the CCAA Court on any material matters and often provides recommendations about a proposed action to the CCAA Court.

**B. Prepetition Indebtedness**

10. As of the Petition Date, the Debtors have prepetition funded secured indebtedness in a principal amount of approximately $480 million, and general unsecured obligations, including trade credit, of approximately $40 million.

**(i) Prepetition ABL Facility**

11. On April 15, 2014, Performance Sports Group, Ltd., as parent, together with each of the Debtors, other than PSG Innovation Inc. and PSG Innovation Corp., as co-borrowers and co-guarantors (collectively, whether in the capacity as parent, borrower or guarantor, the "***Prepetition Obligors***"), entered into that certain ABL Credit Agreement (as amended, restated, modified, supplemented, or replaced from time to time, the "***Prepetition ABL Credit Agreement***," and together with all related documents, guaranties, and agreements, the "***Prepetition ABL Credit Documents***"), by and among the Prepetition Obligors, the lenders party thereto from time to time (in such capacity, the "***Prepetition ABL Lenders***"), and Bank of America, N.A. as the administrative agent and collateral agent (in such capacities, the "***Prepetition ABL Agent***," and together with the Prepetition ABL Lenders, the "***Prepetition ABL Creditors***") providing the Debtors a $200 million asset-based credit facility (the "***Prepetition ABL Facility***"). The borrowing availability under the Prepetition ABL Facility is capped by a borrowing base calculated by taking the sum of certain percentages of value of the Prepetition Obligors' inventory and accounts receivables, subject to certain reserves and sub-limits. The Prepetition ABL Facility matures on April 15, 2019.

12. The Prepetition Obligors secured their obligations under the Prepetition ABL Facility by granting the Prepetition ABL Agent, for the benefit of the Prepetition ABL Lenders, a first-priority lien on substantially all of their accounts, deposits and securities

accounts, inventory, and other current assets (collectively, and as further defined in the Prepetition Intercreditor Agreement (defined below), the "***ABL Priority Collateral***"). The Prepetition ABL Facility is also secured by, subject to certain exclusions, a second-priority lien on the Fixed Asset Priority Collateral (defined below), subject to certain permitted liens and exceptions.

13. As of the Petition Date, there is approximately $159 million in principal outstanding under the Prepetition ABL Facility and interest under the Prepetition ABL Facility accrues at variable rates that are currently on a non-default basis approximately 3.33% per annum.

**(ii) Prepetition Term Loan Facility**

14. On April 15, 2014, the Prepetition Obligors entered into a term loan facility (the "***Prepetition Term Loan Agreement***," and together with all related documents, guaranties, and agreements, the "***Prepetition Term Loan Credit Documents***"; the Prepetition Term Loan Credit Documents and the Prepetition ABL Credit Documents are referred to collectively herein as the "***Prepetition Credit Documents***") among the Prepetition Obligors, the lenders party thereto from time to time (in such capacity, the "***Prepetition Term Loan Lenders***,"), and Bank of America, N.A. as administrative agent and collateral agent (in such capacities, or any successors thereof, the "***Prepetition Term Agent***," and together with the ***Prepetition ABL Agent***, the "***Prepetition Agents***,") (the Prepetition Term Loan Lenders and the Prepetition Term Loan Agent, the "***Prepetition Term Loan Creditors***" and, collectively with the Prepetition ABL Creditors, the "***Prepetition Secured Creditors***"), providing the Debtors with a $450 million term loan credit facility (the "***Prepetition Term Loan Facility***"). The Prepetition Term Loan Facility matures on April 15, 2021.

15. The Prepetition Obligors secured their obligations under the Prepetition Term Loan Facility by granting the Prepetition Term Loan Agent, for itself and the benefit of the Prepetition Term Loan Lenders, a perfected first priority security interest (subject to certain exceptions) in: (1) the present and future capital stock of each present and future subsidiary of the Company; (2) all present and future debt owed to the Prepetition Obligors; and (3) all present and future property and assets, real and personal (other than assets constituting ABL Priority Collateral) of the Prepetition Obligors, including the proceeds thereof (collectively, and as further defined in the Prepetition Intercreditor Agreement (defined below), the "***Fixed Asset Priority Collateral***," and together with the ABL Priority Collateral, the "***Prepetition Collateral***"). The Prepetition Term Loan Facility is also secured by a second lien priority interest in the ABL Priority Collateral, subject to certain permitted liens and exceptions.

16. As of the Petition Date, there is approximately $330.5 million of principal outstanding under the Prepetition Term Loan Facility, plus accrued and unpaid interest of approximately $1.4 million. Interest accrues under the Prepetition Term Loan Facility at variable rates that are currently approximately 4.83% per annum.

**(iii) Intercreditor Agreement**

17. The Prepetition Term Agents and the Prepetition ABL Agent entered into an ABL/Term Intercreditor Agreement, dated as of April 15, 2014 (the "***Prepetition Intercreditor Agreement***"), which was acknowledged and agreed to by the Prepetition Obligors, pursuant to which the parties thereto agreed, among other things, that (1) the security interests and liens of the Prepetition ABL Agent upon the ABL Priority Collateral would be senior in all respects to the security interests and liens of the Prepetition Term Agent on such property, and (2) the security interests and liens of the Prepetition Term Agent upon the Fixed Asset Priority

Collateral would be senior in all respects to the security interests and liens of the Prepetition ABL Agent in such property. In addition, the Prepetition Intercreditor Agreement controls the Prepetition Agents' ability to exercise remedies against certain of the Prepetition Secured Creditors' collateral, such that the Prepetition Term Agent cannot exercise remedies against any ABL Priority Collateral until the obligations under the Prepetition ABL Loan are discharged in full, and the Prepetition ABL Agent cannot exercise remedies against the Fixed Asset Priority Collateral until the obligations under the Prepetition Term Loan are discharged in full.

**C. Efforts to Obtain DIP Financing and the Debtors' Liquidity Needs**

18. For the reasons described in the First Day Declaration and Puntus Declaration, the Debtors focused their pre-filing financing efforts on obtaining DIP financing proposals from the Stalking Horse Bidder and the Prepetition Secured Creditors, and ultimately received financing proposals from each of these parties. After extensive good-faith negotiations and due consideration of these prospective sources of DIP financing, the Debtors determined in their sound business judgment, and in consultation with the Restructuring Advisors and other professionals, that the DIP Facilities were the best path forward to obtain the necessary liquidity to fund these Bankruptcy Proceedings and successfully conduct the Sale Process and complete the Asset Sale.

19. As more fully set forth in the Puntus Declaration, in connection with the DIP Facilities, the Debtors' restructuring advisors Centerview Partners LLC ("***Centerview***")[4] and Alvarez and Marsal North America, LLC ("***A&M***," and together with Centerview, the "***Restructuring Advisors***"), have prepared a budget forecasting projected cash flows for the 13-week period after the Petition Date (attached hereto as ***Exhibit D***) (the "***Approved Budget***"). As

[4] Centerview was retained by a special committee of Performance Sport Group Ltd.'s board of directors, formed by the Debtors in August 2016 to address their impending liquidity needs.

shown in the Approved Budget, Cash Collateral is not sufficient to fund the Bankruptcy Proceedings and the Debtors' business between the Petition Date and the projected closing of the Asset Sale. Absent this Court's approval of the proposed DIP Facilities and the Debtors' use of Cash Collateral, the Debtors would immediately run out of funds required to operate their businesses and would not be able to proceed with the Sale Process or consummate the Asset Sale. Consequently, there is urgent and immediate need to obtain the postpetition financing provided by the DIP Facilities in addition to the use of Cash Collateral.

## RELIEF REQUESTED

20. By this Motion, and pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 507 of the Bankruptcy Code, Rules 2002, 4001, 6004 and 9014 of the Bankruptcy Rules and Rules 2002-1, 4001-1 and 6004-1 of the Local Rules, the Debtors seek entry of the DIP Orders granting the following relief:[5]

a. authority for the Debtors to obtain postpetition financing consisting of (i) the Superpriority Debtor-in-Possession ABL DIP Credit Agreement substantially in the form attached hereto as ***Exhibit E*** among the Debtors, the lenders party thereto (the "***ABL DIP Lenders***") and Bank of America, N.A., as both administrative and collateral agent (in such capacities, the "***ABL DIP Agent***," together with the ABL DIP Lenders, the "***ABL DIP Lender Parties***") (together with all schedules, exhibits and annexes thereto, and as at any time amended, the "***ABL DIP Loan Agreement***," and together with all such other instruments, and documents, including, without limitation, security agreements, pledge agreements, mortgages, deeds of trust, deeds to secure debt, financing statements, amendments, waivers, consents, other modifications, and intellectual property filings, and other documents, as at any time amended, executed and delivered in connection therewith, the "***ABL DIP Loan Documents***") and (ii) the Superpriority Debtor-in-Possession Term Loan Credit Agreement substantially in the form attached hereto as ***Exhibit F*** among the Debtors, the lenders party thereto (the "***Term Loan DIP Lenders***") and 9938982 Canada Inc., as both administrative and collateral agent (in such capacities, the "***Term Loan DIP Agent***", and together with the Term Loan DIP Lenders, the "***Term Loan DIP Lender Parties***,") (together with all schedules, exhibits and annexes thereto, and

[5] Capitalized terms used in this section, unless otherwise defined, have the meaning given such terms in Interim Order.

as at any time amended, the "***Term Loan DIP Credit Agreement***"; and together with all such other instruments, and documents, including, without limitation, security agreements, pledge agreements, mortgages, deeds of trust, deeds to secure debt, financing statements, amendments, waivers, consents, other modifications, and intellectual property filings, and other documents, as at any time amended, executed and delivered in connection therewith), the "***Term Loan DIP Documents***", and collectively with the ABL DIP Loan Documents, the "***DIP Loan Documents***");

b. authorizing the Debtors to execute and enter into the DIP Loan Documents and to perform all such other and further acts as may be required in connection with the DIP Loan Documents;

c. authority for the Debtors to borrow under the ABL DIP Facility upon entry of the Interim Order and under the Term Loan DIP Facility upon entry of the Final Order;

d. authorizing the Debtors to use proceeds of the DIP Facilities as permitted in the DIP Loan Documents and in accordance with the DIP Orders;

e. upon entry of the Interim Order, granting automatically perfected (i) security interests in and liens on all of the ABL Priority Collateral (as defined in the DIP Loan Documents), the Fixed Asset Priority Collateral (as defined in the DIP Loan Documents), and other property of the Debtors, if any, on which a lien is granted pursuant to the ABL DIP Loan Documents (collectively, the "***ABL DIP Collateral***") and (ii) non-priming security interests in and liens with respect to property upon which there are either pre-existing permitted senior liens other than the Prepetition Senior Liens (as defined in the Interim Order) or no pre-existing liens, to the ABL DIP Agents for the benefit of the ABL DIP Lender Parties in the priority and to the extent provided in the ABL DIP Loan Documents and the DIP Orders, and granting superpriority administrative expense status to the obligations under the ABL DIP Loan Documents, in each case subject to the Carve-Out (as defined below) on the terms and subject to the relative priorities set forth in the DIP Loan Documents and in accordance with the DIP Orders and the Post-Petition Intercreditor Arrangements (a summary of the relative priority of the ABL DIP Lender Parties and the Term Loan DIP Lender Parties (collectively, the "***DIP Credit Parties***") liens on the DIP Collateral (as defined below) is set forth in the Priority Waterfall));[6]

f. upon entry of the Final Order, granting automatically perfected (i) security interests in and liens on all of the Fixed Asset Priority Collateral (as defined in the DIP Loan Documents), the Fixed Asset Priority Collateral (as defined in the DIP Loan Documents), and other property of the Debtors, if any, on which a lien is granted pursuant to the Term Loan DIP Documents (collectively, the "***Term Loan***

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[6] As discussed below, the DIP Collateral includes liens on proceeds of avoidance actions, subject to entry of the Final Order.

***DIP Collateral***" and, together with the ABL DIP Collateral, the "***DIP Collateral***") and (ii) non-priming security interests in and liens with respect to property upon which there are either pre-existing permitted senior liens other than the Prepetition Senior Liens (as defined in the Interim Order) or no pre-existing liens, to the Term Loan DIP Agents for the benefit of the Term Loan DIP Lender Parties in the priority and to the extent provided in the Term Loan DIP Documents and the DIP Orders, and granting superpriority administrative expense status to the obligations under the Term Loan DIP Documents, in each case subject to the Carve-Out (as defined below) on the terms and subject to the relative priorities set forth in the DIP Loan Documents and in accordance with the DIP Orders and the Post-Petition Intercreditor Arrangements (a summary of the relative priority of the DIP Credit Parties' liens on the DIP Collateral is set forth in the Priority Waterfall));[7]

g. authorizing the Debtors to provide adequate protection to the Prepetition Secured Creditors as set forth in the DIP Orders;

h. authorizing the Debtors to pay the principal, interest, fees, expenses, disbursements, and other amounts payable under the DIP Loan Documents as such amounts become due and payable;

i. authorizing the Debtors to use "cash collateral," as that term is defined in section 363(a) of the Bankruptcy Code ("***Cash Collateral***") and all other Prepetition Collateral, subject to the terms of the DIP Loan Documents and the DIP Orders;

j. modifying the automatic stay set forth in section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Orders and the DIP Loan Documents;

k. waiving any applicable stay with respect to the effectiveness and enforceability of the Interim Order (including under Bankruptcy Rule 6004);

l. subject to entry of the Final Order, limiting the Debtors' right to surcharge any DIP Collateral or Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code; and

m. scheduling a final hearing (the "***Final Hearing***") held within 30 days of the entry of the Interim Order to consider entry of the Final Order approving the relief sought herein on a final basis and authorizing the Debtors to borrow from the DIP Lenders, to repay in full the Prepetition Term Loan Facility under the DIP Loan Documents up to the full amount of the DIP Facilities and otherwise incur the obligations set forth in the applicable DIP Loan Documents.

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[7] As discussed below, the DIP Collateral includes liens on proceeds of avoidance actions, but subject to entry of the Final Order.

## SUMMARY TERMS OF THE DIP FACILITIES[8]

21. Pursuant to Bankruptcy Rule 4001(b), (c) and (d), the following is a concise statement and summary of the proposed material terms of the DIP Facilities, as specified in the DIP Loan Documents and the DIP Orders:[9]

| Material Term | ABL DIP Facility | Term Loan DIP Facility |
|---|---|---|
| **Parties** | Parent: Performance Sports Group Ltd.<br><br>Subsidiary Borrowers: each of the Debtors other than Performance Sports Group Ltd.<br><br>Lenders: Certain of the Prepetition ABL Lenders party to the ABL DIP Facility from time to time<br><br>Guarantors: Each of the Debtors<br><br>Agent: Bank of America, N.A.<br><br>*See* ABL DIP Credit Agreement, Preamble, § 1.01. | Borrower: Performance Sports Group Ltd.<br><br>Guarantors: each of the Debtors other than Performance Sports Group Ltd.<br><br>Lenders: Affiliates of the Stalking Horse Purchaser from time to time party to the Term Loan DIP Credit Agreement<br><br>Agent: 9938982 Canada Inc., as both Administrative Agent and Collateral Agent for the Lenders<br><br>*See* Term Loan DIP Credit Agreement, Preamble, §§ 1.01, 13.01. |
| **Commitments** | Revolving Commitment: $200 million<br><br>Swingline Subfacility: $20 million<br><br>Letter of Credit Subfacility: $1.5 million<br><br>*See* ABL DIP Credit Agreement, §§ 1.01; 2.12. | Refinancing Term Loans**:** Term Loans in an amount equal to the lesser (1) the amount necessary to repay in full the Debtors' obligations under the Prepetition Term Loan Facility and (2) $331,300,000.<br><br>Delayed Draw Term Loans: Term Loans in an aggregate amount equal to $30 million.<br><br>*See* Term Loan DIP Credit Agreement, § 2.01. |
| **Interest Rate and Default Interest** | Interest Rate:<br>• U.S. Base Rate / Canadian Base Rate + 3.50%<br>• LIBO Rate / CDOR + 4.50%<br><br>Default Rate: otherwise applicable rate + 2.00%<br><br>*See* ABL DIP Credit Agreement, § 2.06. | Interest Rate: 8.00% per annum<br><br>Default Rate: otherwise applicable rate + 2.00%<br><br>*See* Term Loan DIP Credit Agreement, § 2.08. |
| **Use of Proceeds** | All Loans shall be used in accordance with the Budget (subject to Permitted Budget | The Delayed Draw Term Loans shall be used in accordance with the Budget (subject to |

[8] The following summary is included for convenience only and is qualified in its entirety by reference to the definitive DIP Loan Documents, which shall control in the event of any inconsistency. Capitalized terms used in this summary, unless otherwise defined, have the meaning used in the applicable DIP Loan Documents.

[9] Subject to final documentation of the respective DIP Loan Documents.

| Material Term | ABL DIP Facility | Term Loan DIP Facility |
|---|---|---|
| | Variances) or as otherwise permitted under the ABL DIP Credit Agreement or by the Financing Orders.<br><br>*See* ABL DIP Credit Agreement, §§ 7.08, 8.11. | Permitted Budget Variances); provided that the Refinancing Term Loans shall be used solely to refinance the Prepetition Term Loan Facility.<br><br>*See* Term Loan DIP Credit Agreement, §§ 7.08, 8.10. |
| **Repayment Provisions** | Proceeds of DIP Collateral (other than net identifiable proceeds of Fixed Asset Priority Collateral) received by the ABL DIP Agent shall be applied first to the payment of the Prepetition ABL Obligations.<br><br>*See* Interim Order, ¶ 18. | The Refinancing Term Loans shall be used to repay the outstanding obligations under the Prepetition Term Loan Facility upon entry of the Final Order.<br><br>*See* Term Loan DIP Credit Agreement, §§ 7.08, 8.10. |
| **Fees**[10] | Commitment Fee: 0.50% on undrawn Revolving Commitments, payable monthly<br><br>Origination Fee: $600,000<br><br>Agent Fee: $120,000<br><br>Letter of Credit and "Fronting Fees": accruing at the Applicable Margin on the average daily amount of the aggregate LC Exposure during the period from and including the Closing Date, and a "Fronting Fee" of 0.125% per annum on the average outstanding daily amount of the LC Exposure<br><br>*See* ABL DIP Credit Agreement, § 2.05. | Commitment Fee: 1.00% of the aggregate principal amount of the Refinancing Term Loans; 3.00% of the aggregate principal amount of the Delayed Draw Term Loans, in each case due and payable on the Closing Date<br><br>Unused Term Loan Commitment Fee: 1.00% per annum on undrawn Delayed Draw Term Loan Commitments<br><br>Agent Fee: $100,000<br><br>*See* Term Loan DIP Credit Agreement, § 3.01. |
| **Prepayment Premium** | Borrowers have the right at any time to repay any Loan without premium or penalty.<br><br>*See* ABL DIP Credit Agreement, § 2.09. | 1.00% on Refinancing Term Loans and 2.50% on Delayed Draw Term Loans repaid before the Scheduled Maturity Date, provided that such Prepayment Premium shall be reduced to 0.00% upon the Bankruptcy Courts' approval of the Bidding Procedures Motion and entry of the related orders.<br><br>*See* Term Loan DIP Credit Agreement, § 3.01. |

[10] In addition to the fees provided for in the DIP Loan Documents, the Debtors seek approval in the Interim Order, subject to the U.S. Bankruptcy Court's approval of Centerview's retention application, to pay financing fees owed to Centerview, in connection with that certain engagement letter dated August 19, 2016, in an amount not to exceed $3,500,000, with such amount being reduced by any retainer held by Centerview as of the Petition Date in respect of any financing fee, and the remainder of the fee shall be earned as of the date of this Interim Order and payable as follows: (i) $1,650,000 payable upon entry of the Final Order, and (ii) any remaining amounts to be paid upon consummation of the Asset Sale.

| Material Term | ABL DIP Facility | Term Loan DIP Facility |
|---|---|---|
| **Maturity and Termination Date** | The earliest to occur of:<br><br>• 120 days after the Petition Date;<br>• consummation of a Sale Transaction;<br>• acceleration of the Term Loans;<br>• 3 business days after the Petition Date if the Interim Financing Orders are not entered in the Bankruptcy Courts; and/or;<br>• 30 days after entry of the Interim Financing Order if the Final Financing Order is not entered by the U.S. Bankruptcy Court.<br><br>*See* ABL DIP Credit Agreement, § 1.01. | The earliest to occur of:<br><br>• 120 days after the Petition Date;<br>• consummation of a Sale Transaction;<br>• acceleration of the Term Loans;<br>• 3 business days after the Petition Date if the Interim Financing Orders are not entered in the Bankruptcy Courts; and/or;<br>• 30 days after entry of the Interim Financing Order if the Final Financing Order is not entered by the U.S. Bankruptcy Court.<br><br>*See* Term Loan DIP Credit Agreement, § 1.01. |
| **Priority and Security** | All obligations of the Debtors under the ABL DIP Facility shall, subject to the Carve Out (discussed below), and in each case with the priority set forth in the Priority Waterfall, the Interim Order, and the Post-Petition Intercreditor Arrangements:<br><br>(a) 364(c)(1) Claims: constitute allowed superpriority administrative expense claims;<br><br>(b) 364(c)(2) Liens: be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable security interest on the Debtors' unencumbered property;<br><br>(c) 364(c)(3) Liens: be secured by valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all Fixed Asset Priority Collateral of each Debtor Creditor Party, subject to (1) preexisting prepetition liens (including those of the Prepetition Term Loan Lenders) and (2) any other Permitted Liens on such Fixed Asset Priority Collateral;[11] and | Subject to entry of the Final Order, all obligations of the Debtors under the Term Loan DIP Facility shall, subject to the Carve Out (discussed below), and in each case with the priority set forth in the Priority Waterfall and the Post-Petition Intercreditor Arrangements:<br><br>(e) 364(c)(1) Claims: constitute allowed superpriority administrative expense claims;<br><br>(f) 364(c)(2) Liens: be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable security interest on the Debtors' unencumbered property;<br><br>(g) 364(c)(3) Liens: be secured by valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all ABL Priority Collateral of each Debtor Creditor Party, subject to (1) preexisting prepetition liens (including those of the Prepetition ABL Lenders), (2) any other Permitted Liens on such ABL Priority Collateral, and (3) liens securing the ABL DIP Facility;[12] and<br><br>(h) 364(d) Liens: be secured by a first lien, senior, valid, binding, perfected, |

[11] The ABL DIP Lenders will receive liens on the proceeds of avoidance actions upon entry of the Final Order (except for avoidance actions under section 549 of the Bankruptcy Code, which will be approved upon entry of the Interim Order).

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| Material Term | ABL DIP Facility | Term Loan DIP Facility |
|---|---|---|
| | (d) <u>364(d) Liens</u>: be secured by a first lien, senior, valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all ABL Priority Collateral of each Debtor Creditor Party, subject to Permitted Liens on such ABL Priority Collateral.<br><br>*See* ABL DIP Credit Agreement, § 2.19; Interim Order, ¶¶ 6-8. | continuing, enforceable, non-avoidable security interest and Lien on all Term Priority Collateral of each Debtor Creditor Party, subject to Permitted Liens on such Term Priority Collateral.<br><br>*See* Term Loan DIP Credit Agreement, § 3.01; Interim Order, ¶¶ 6-8. |
| **Adequate Protection** | The Prepetition Secured Creditors shall receive adequate protection to the extent of any diminution in value of their interests in the Prepetition Collateral from and after the Petition Date, including through the provision of replacement liens, superpriority administrative claims, current cash payment of reasonable fees and expenses, including attorneys' fees, and monthly cash payments in an amount equal to interest on the debt under the Prepetition Credit Documents at the default rate. The priority of the Prepetition Secured Creditors' adequate protection liens shall have the priority set forth in the Priority Waterfall.<br><br>*See* Interim Order, ¶¶ 12, 13. | |
| **Carve-Out** | The "**<u>Carve-Out</u>**" means, collectively, the sum of: (I) all allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6) for statutory fees payable to the Office of the United States Trustee, together with the statutory rate of interest, or by final order of the Court, and 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Court; (II) all reasonable and documented fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (III) to the extent allowed at any time, whether by interim order, procedural order, or otherwise all unpaid fees, costs, and expenses (the "**<u>Professional Fees</u>**") incurred by (x) persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code and (y) the Monitor and Professionals of the Debtors and the monitor retained, in each case, in connection with the Canadian Proceedings, to the extent such fees are covered by "Administrative Charges" set forth in the Interim Order entered by the Canadian Court, however the "Administrative Charges" shall be included in the Carve-Out and not duplicative of the Carve-Out (collectively, the "**<u>Debtor Professionals</u>**") and the Committee, if any, appointed in the Chapter 11 Cases pursuant to section 328 or 1103 of the Bankruptcy Code (together with the Debtor Professionals, the "**<u>Professionals</u>**")[13] at any time before or on or before the day which the ABL DIP Agent delivers a Carve-Out Trigger Notice (in accordance with and as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (IV) Professional Fees (excluding any success fees, completion fees, or similar compensation) in an aggregate amount not to exceed $7,500,000 (the "**<u>Carve-Out Cap</u>**") incurred after the first business day following delivery by the ABL DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (IV) being the "**<u>Post Carve-Out Trigger Notice Cap</u>**").<br><br>Upon entry of the Final Order, $3,500,000 of the Carve-Out Cap shall be allocated to the | |

[12] The Term Loan DIP Lenders will receive liens on the proceeds of avoidance actions upon entry of the Final Order.

[13] The Carve-Out incorporates relevant "Administrative Charges" set forth in the Interim Order entered by the Canadian Court, however the "Administrative Charges" shall be included in the Carve-Out and not duplicative of the Carve-Out.

| Material Term | ABL DIP Facility | Term Loan DIP Facility |
|---|---|---|
| | Term Loan DIP Facility, with the remaining $3,500,000 of the Carve-Out Cap being allocated to the ABL DIP Facility.<br><br>*See*, Interim Order ¶ 30. | |
| **Events of Default** | Usual and customary for financings of this type, including, without limitation, non-payment of principal, interest and fees, defaults under affirmative and negative covenants, breaches of representations and warranties, judgments or foreclosure actions exceeding certain thresholds, and dismissal or conversion under the Bankruptcy Cases.<br><br>It is also an Event of Default if the Biscuit Stalking Horse Bid is amended in a way that would result in either the Prepetition ABL Facility or the obligations under the ABL DIP Facility not being paid in full in cash.<br><br>*See* ABL DIP Credit Agreement, Art. 10 | Usual and customary for financings of this type, including, without limitation, non-payment of principal, interest and fees, defaults under affirmative and negative covenants, breaches of representations and warranties, judgments or foreclosure actions exceeding certain thresholds, and dismissal or conversion under the Bankruptcy Cases.<br><br>*See* Term Loan DIP Credit Agreement, Art. 10 |
| **Milestones** | The Debtors must comply with the following milestones:<br><br>(a) on the Petition Date, file a motion to approve bidding procedures and stalking horse protections for Stalking Horse Bidder in respect of a 363 sale transaction in the U.S. Cases and an asset sale transaction under the CCAA Cases;<br><br>(b) within three (3) business days after the Petition Date, obtain entry of Interim Financing Orders from the Bankruptcy Courts;<br><br>(c) within twenty-one (21) days after the Petition Date, the Debtors shall obtain entry from each Bankruptcy Court an order approving the Bidding Procedures Motion and the Bid Protections specified therein;<br><br>(d) within thirty (30) days after the Interim Financing Order Date, entry of a Final Financing Order in each Bankruptcy Court;<br><br>(e) on or before January 4, 2017, the | The Debtors must comply with the following milestones:<br><br>(a) on the Petition Date, file a motion to approve bidding procedures and stalking horse protections for Stalking Horse Bidder in respect of a 363 sale transaction in the U.S. Cases and an asset sale transaction under the CCAA Cases;<br><br>(b) within three (3) business days after the Petition Date, obtain entry of Interim Financing Orders from the Bankruptcy Courts;<br><br>(c) within twenty-one (21) days after the Petition Date, the Debtors shall obtain entry from each Bankruptcy Court an order approving the Bidding Procedures Motion and the Bid Protections specified therein;<br><br>(d) within thirty (30) days after the Interim Financing Order Date, entry of a Final Financing Order in each Bankruptcy Court;<br><br>(e) on or before January 4, 2017, the bid deadline set forth in the Bid Procedures Order shall occur; |

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| Material Term | ABL DIP Facility | Term Loan DIP Facility |
|---|---|---|
| | bid deadline set forth in the Bid Procedures Order shall occur;<br><br>(f) on or before January 9, 2017, if qualifying bids are received, the Debtors shall hold an auction with respect to the Sale Transaction;<br><br>(g) on or before January 16, 2017, the Debtors shall obtain entry of the court orders of the Bankruptcy Courts authorizing the Sale Transaction to the successful bidder;<br><br>(h) on or before February 16, 2017, the Sale Transaction shall close; provided, that such date shall be extended to February 28, 2017 if (x) Stalking Horse Bidder] is designated as the "back-up bidder" for purposes of the Sale Transaction or (y) if the Stalking Horse Bidder is unable to complete necessary regulatory approvals on or before February 16, 2017.<br><br>*See* ABL DIP Credit Agreement, § 8.15 | (f) on or before January 9, 2017, if qualifying bids are received, the Debtors shall hold an auction with respect to the Sale Transaction;<br><br>(g) on or before January 16, 2017, the Debtors shall obtain entry of the court orders of the Bankruptcy Courts authorizing the Sale Transaction to the successful bidder;<br><br>(h) on or before February 16, 2017, the Sale Transaction shall close; provided, that such date shall be extended to February 28, 2017 if (x) Stalking Horse Bidder] is designated as the "back-up bidder" for purposes of the Sale Transaction or (y) if the Stalking Horse Bidder is unable to complete necessary regulatory approvals on or before February 16, 2017.<br><br>*See* Term Loan DIP Credit Agreement, § 8.14 |
| **Acknowledgements** | The Debtors make certain customary admissions and stipulations with respect to the amounts outstanding under the Prepetition Credit Documents, the validity, perfection, enforceability and priority of liens and security interests securing the Prepetition Term Loan Facility and Prepetition ABL Facility, the non-existence of any grounds for the Debtors to challenge any aspect of the Prepetition Credit Documents or the respective holders thereof and a release by the Debtors with respect to the foregoing.<br><br>*See* Interim Order, ¶ F. | |

22. The provisions described in Bankruptcy Rule 4001(c)(1)(B)(i)-(xi), to the extent applicable, are set out at the following sections of the Interim Order and the DIP Facilities Agreements:

a. Grant of Priority or a Lien on Property of the Estate (Bankruptcy Rule 4001(c)(1)(B)(i)). Interim Order, ¶¶ 6-8; ABL DIP Credit Agreement, §§ 2.19, 14.01; Term Loan DIP Credit Agreement, §§ 2.14, 14.01.

b. Adequate Protection or Priority for a Claim that Arose before the Commencement of the Case (Bankruptcy Rule 4001(c)(1)(B)(ii)). Interim Order, ¶¶ 12, 13.

c. Determination of the Validity, Enforceability, Priority, or Amount of a Claim that Arose before the Commencement of the Case, or of any Lien Securing the Claim (Bankruptcy Rule 4001(c)(1)(B)(iii)). Interim Order, ¶ F.

d. Waiver or Modification of the Automatic Stay (Bankruptcy Rule 4001(c)(1)(B)(iv)). Interim Order, ¶ 16.

e. Waiver or Modification of Authority to File a Plan, Seek an Extension of Time in which the Debtor has the Exclusive Right to File a Plan, Request Use of Cash Collateral or Request Authority to Obtain Credit (Bankruptcy Rule 4001(c)(1)(B)(v)). Interim Order, ¶¶ 3-5, 11.

f. Establishment of Deadlines for Filing a Plan of Reorganization, for Approval of a Disclosure Statement, for a Hearing on Confirmation or Entry of a Confirmation Order (Bankruptcy Rule 4001(c)(1)(B)(vi)). Not applicable.

g. Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to the Perfection of a Lien on Property of the Estate, or on the Foreclosure or Other Enforcement of the Lien (Bankruptcy Rule 4001(c)(1)(B)(vii)). Interim Order, ¶ 17.

h. Release, Waiver or Limitation on any Claim or Cause of Action Belonging to the Estate (Bankruptcy Rule 4001(c)(1)(B)(viii)). Interim Order, ¶ F; ABL DIP Credit Agreement, § 5.10, 13.03; Term Loan DIP Credit Agreement, § 13.03.

i. Indemnification of Any Entity (Bankruptcy Rule 4001(c)(1)(B)(ix)). Interim Order, ¶ 27.

j. Release, Waiver or Limitation of Any Right under Section 506(c) of the Bankruptcy Code (Bankruptcy Rule 4001(c)(1)(B)(x)). Effective upon entry of a Final Order, Interim Order ¶ 34.

k. Liens Granted on Claims Arising Under Chapters 5 or 7 of the Bankruptcy Code (Bankruptcy Rule 4001(c)(1)(B)(xi)). Liens on proceeds of avoidance actions subject to entry of the Final Order (other than pursuant to section 549 of the Bankruptcy Code, which are authorized upon entry of the Interim Order solely with respect to the ABL DIP Facility). Interim Order, ¶¶ 6-7; ABL DIP Credit Agreement, § 14.01; Term Loan DIP Credit Agreement, § 14.01.

23. In accordance with Local Rule 4001-2(a)(i)(A)-(G), the Debtors also draw the Court's attention to certain material provisions of the DIP Facilities and in the relief set forth in the attached Interim Order:

a. Provisions that Grant Cross-Collateralization Protection (Other than Replacement Liens or Other Adequate Protection) to the Prepetition Secured Creditors (Local Rule 4001-2(a)(i)(A)). Not applicable.

b. Binding the Estate to Validity, Perfection or Amount of Secured Debt or Limitations on Investigation (Local Rule 4001-2(a)(i)(B)). Interim Order ¶¶ 6-8.

c. Waiver of Section 506(c) Rights (Local Rule 4001-2(a)(i)(C)). Subject to entry of a Final Order, Interim Order, ¶ 34;

d. Liens on the Debtors' Claims and Causes of Action Arising Under Chapter 5 of the Bankruptcy Code (Local Rule 4001-2(a)(i)(D)). Liens on proceeds of avoidance actions subject to entry of the Final Order (other than pursuant to section 549 of the Bankruptcy Code, which are authorized upon entry of the Interim Order). Interim Order, ¶ 6-8; ABL DIP Credit Agreement, § 14.01; Term Loan DIP Credit Agreement, § 14.01.

e. Roll-Over Provisions (Local Rule 400l-2(a)(i)(E)). The ABL DIP Credit Agreement provides for repayment of prepetition amounts outstanding under the Prepetition ABL Facility during the duration of the Bankruptcy Proceedings. Interim Order, ¶ 18, ABL DIP Credit Agreement, § 2.09.

f. Disparate Treatment of Professionals (Local Rule 400l-2(a)(i)(F)). Not applicable.

g. Priming Lien (Local Rule 4001-2(a)(i)(G)). Not Applicable.

24. The DIP Lenders would not provide the DIP Facilities and the Prepetition Secured Creditors would not consent to the use of Cash Collateral without the inclusion of the aforementioned, each of which was heavily negotiated among the various parties. Moreover, "extraordinary" provisions are justified under the circumstances. Finally, the Debtors determined in their sound business judgment that agreeing to such provisions was appropriate

under the circumstances of these Bankruptcy Proceedings to afford the Debtors immediate and much needed liquidity on the most competitive terms available to the Debtors.

## BASIS FOR RELIEF

### I. The Debtors Should Be Authorized to Obtain the DIP Facilities Under Section 364 of the Bankruptcy Code

25. The Debtors satisfy the requirements for relief under section 364 of the Bankruptcy Code, which permits a debtor to obtain postpetition financing and, in return, to grant superpriority administrative claim status and liens on their property. Section 364 of the Bankruptcy Code "provides bankruptcy courts with the power to authorize postpetition financing for a Chapter 11 debtor-in-possession." *In re Defender Drug Stores, Inc.*, 126 B.R. 76, 81 (Bankr. D. Ariz. 1991). "Having recognized the natural reluctance of lenders to extend credit to a company in bankruptcy, Congress designed [section] 364 to provide 'incentives to the creditor to extend postpetition credit.'" *Id.* In particular, section 364(c) of the Bankruptcy Code establishes the conditions under which a debtor may obtain certain types of secured credit and provides, in pertinent part, as follows:

26. If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt –

> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien[.]

11 U.S.C. § 364(c). Further, section 364(d) of the Bankruptcy Code provides:

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> (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:
>
> > (A) the trustee is unable to obtain such credit otherwise; and
> >
> > (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.
>
> (2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364(d).

27. As long as a debtor's business judgment does not run afoul of the letter and spirit of the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g., In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); I*n re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, inter alia, an exercise of "sound and reasonable business judgment").

28. Further, in determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Loan Documents, the Court may

appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009).

29. Here, given all the facts and circumstances present in these cases, the Debtors have amply satisfied the necessary conditions under sections 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Facilities. Unable to obtain credit on an unsecured, administrative expense, or consensual priming basis, the Debtors exercised proper business judgment in securing the DIP Facilities on terms that are fair and reasonable and the best available to them under the circumstances. For all the reasons discussed further below and in the Puntus Declaration, the Court should grant the Debtors' request to enter into the DIP Facilities pursuant to sections 364(c) and (d) of the Bankruptcy Code.

### A. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Facilities

30. Based on the circumstances of these Bankruptcy Proceedings, the DIP Facilities represent a proper exercise of the Debtors' business judgment. Bankruptcy courts

routinely defer to the debtor's business judgment on most business decisions, including decisions about whether and how to borrow money. *Grp. of Institutional Investors v. Chi., Milwaukee, St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943); *In re Farmland Indus., Inc.*, 294 B.R. at 882 ("Business judgments should be left to the board room and not to this Court.") (quoting *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985)); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983). "More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

31. In general, a bankruptcy court defers to a debtor's business judgment regarding the need for, and the proposed use of, funds, unless the debtor's decision improperly leverages the bankruptcy process or its purpose is not so much to benefit the estate as it is to benefit a party in interest. *See Ames Dep't Stores*, 115 B.R. at 40; *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981).

32. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied as long as the proposed action appears to enhance the debtor's estate. *See In re AbitibiBowater*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is "not a difficult standard to satisfy"). Under the business judgment rule, "management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, inter alia, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." *In re Farmland Indus.,*

*Inc.*, 294 B.R. at 881 (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003), *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985) and *In re Defender Drug Stores, Inc.*, 145 B.R. at 317; *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) ("[w]here the [debtor's] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor's estate'" (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985)).

33. Here, the Debtors have exercised sound business judgment in determining that the DIP Facilities are appropriate. The Debtors' effort to obtain the DIP Facilities was guided by the Debtors' current financial and operational needs and their sound business judgment that value would be best maximized for all constituents by entering into a stalking horse bid that would provide a foundation for a robust sales process. Both DIP Facilities, along with use of Cash Collateral, facilitate the Debtors' objectives while, at the same time, providing ample liquidity to support the Debtors' operating needs throughout the Sale Process. Without access to the DIP Facilities and Cash Collateral, the Debtors would not have access to any unencumbered or available liquidity to be able to pay expenses necessary to sustain ongoing operations and conduct the Sale Process, which would significantly impair the value of the Debtors' estates. The Debtors received a DIP financing proposal from the Prepetition Term Loan Lenders predicated upon the Prepetition Term Lenders also being the stalking horse bidder through a credit bid, with no additional cash consideration beyond satisfaction of their $330 million of Prepetition Term Loans. This proposal was not as advantageous to the Debtors as the DIP Facilities, both in terms of economics and liquidity, as well as maximizing proceeds of the Sale Process when compared to the Stalking Horse Bid's purchase price of $575 million plus

assumed liabilities. With the Prepetition Term Loan Lenders unwilling to provide standalone DIP financing (independent of a credit bid) that would facilitate a robust Sale Process, the Debtors offered the Prepetition Term Loan Lenders an adequate protection package, as described below. Importantly, upon entry of the Final Order, the Term Loan DIP Facility also provides sufficient liquidity for the payment in full in cash of the Prepetition Term Loan Lenders upon entry of the Final Order. *See* Puntus Decl. at ¶ 13.

34. Overall the terms of the DIP Facilities and related adequate protection were extensively negotiated at arm's length and in good faith by the Debtors and their advisors to ensure that they contained the most favorable terms possible. *See* Puntus Decl. at ¶¶ 11-17.

35. For all of these reasons, the Debtors determined that entry into the DIP Facilities is in the best interests of the Debtors, their estates and creditors. The DIP Facilities will provide the Debtors with access to the liquidity needed to preserve the value of their assets through ongoing operations and ultimately, achieve a successful outcome through a sale of the Debtors' assets. Accordingly, the Debtors' decision to enter into the proposed DIP Facilities is an exercise of their sound judgment that warrants approval by the Court.

### B. The Debtors Satisfy the Conditions Necessary Under Section 364(c) to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis

36. Section 364(c) of the Bankruptcy Code authorizes a debtor to obtain postpetition financing on a secured or superpriority basis, or both, where the Court finds, after notice and a hearing, that the debtors are "unable to obtain unsecured credit allowable under section 503(b)(1) of the [the Bankruptcy Code] . . . ." 11 U.S.C. § 364(c).

37. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

(i) the debtor is unable to obtain unsecured credit under section 364(b), i.e., by allowing a lender only an administrative claim;

(ii) the credit transaction is necessary to preserve the assets of the estate; and

(iii) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

*See, e.g., In re Aqua Assocs.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (applying the above factors and holding that "[o]btaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for the use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor's estate and that the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere").

**(i) The Debtors Are Unable to Obtain Financing on More Favorable Terms than the DIP Facilities**

38. The Debtors, advised by Centerview, a leading restructuring advisory firm, have diligently assessed their financing options and concluded that they cannot obtain financing on terms more favorable than the DIP Facilities. A debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) ("The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable."); *accord In re Ames Dep't Stores, Inc.*, 115 B.R. at 37 (debtor must show that it has made reasonable efforts to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code); *In re Crouse Grp., Inc.*, 71 B.R. at 549 (secured credit under section 364(c)(2) of the Bankruptcy Code is authorized, after

notice and hearing, upon showing that unsecured credit cannot be obtained). "The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Id.*; *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). This is true especially when time is of the essence. *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987). When few lenders are likely able and willing to extend the necessary credit, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff'd sub nom., *Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also Ames Dep't Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received); *see also In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met).

39. As set forth in the Puntus Declaration and described above, the Debtors engaged in extensive good faith negotiations and carefully reviewed their DIP financing alternatives. The DIP Facilities and related adequate protection are the product of these negotiations between the Debtors, the DIP Credit Parties, the Prepetition Secured Creditors, and the Stalking Horse Bidder, each of whom was represented by experienced counsel. Through these negotiations, the Debtors were able to secure the most favorable terms possible under the circumstances. Simply put, the DIP Facilities provide the Debtors with the liquidity they need at

the lowest cost available while maximizing the Debtors' ability to conduct a successful Sale Process and Asset Sale. Based on the negotiation history of the DIP Facilities, the DIP Facilities represent the Debtors' best available postpetition financing option.

**(ii) The DIP Facilities Are Necessary to Preserve Assets of the Estates**

40. It is essential that the Debtors obtain the proposed financing to continue the orderly operation of their businesses to preserve their going-concern value pending completion of the sale process. As discussed above, absent the requisite financing provided by the DIP Facilities, the Debtors will need to wind down their operations, resulting in irreparable harm to their businesses, going concern value and ability to pursue the sale process on an orderly basis. Accordingly, the circumstances of these Bankruptcy Proceedings necessitate postpetition financing under section 364(c) of the Bankruptcy Code. *See Burtch v. Ganz (In re Mushroom Transp. Co., Inc.)*, 382 F.3d 325, 339 (3d Cir. 2004) (observing that a debtor in possession has a fiduciary duty to "protect and maximize" the value of its estate).

**(iii) Terms of the DIP Facilities Are Fair, Reasonable, and Appropriate Under the Circumstances**

41. In considering whether the terms of post-petition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. at 886; *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record* at 740:4-6, *In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr S.D.N.Y. Feb. 27, 2009) ("[B]y reason of present market conditions, as

disappointing as the [DIP] pricing terms are, I find the provisions [of a DIP that included a roll-up of prepetition secured debt] reasonable here and now.”).

42. Here, the terms of the DIP Facilities are fair, appropriate, reasonable and in the best interests of the Debtors, their estates and their creditors. As set forth in the Puntus Declaration, the covenants and restrictions included in the DIP Facilities are reasonable and are not designed to make the Debtors disproportionately susceptible to a breach of such terms. As is customary, the DIP Facilities contain certain case controls (*e.g.*, milestones) and other bankruptcy-related terms, but the Debtors believe that these terms provide sufficient flexibility for the Debtors to maximize value and pursue the sale of their assets. Notably, although the Term Loan DIP Lenders include entities affiliated with the Stalking Horse Bidder, the Debtors have preserved the ability to pursue higher and better offers through the Sale Process.

43. Finally, without the financing provided by the DIP Facilities, the Debtors would not be able to realize the full value of their assets through a sale to the detriment of all stakeholders. Accordingly, the terms of the DIP Facilities are fair, reasonable and appropriate.

### C. The Debtors Satisfy the Requirements for Obtaining Credit Under Section 364(d) of the Bankruptcy Code

44. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, a court may also authorize a debtor to obtain postpetition credit secured by a lien that is senior in priority to existing liens on encumbered property if the debtor cannot otherwise obtain such credit and the interests of existing lien holders are adequately protected or consent is obtained. *See* 11 U.S.C. § 364(d)(1).

45. When determining whether to authorize a debtor to obtain credit secured by a lien that is senior or equal to a prepetition lien under section 364(d), courts consider a number of factors, including, without limitation:

- whether alternative financing is available on any other basis (i.e., whether any better offers, bids or timely proposals are before the court);
- whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtor's businesses;
- whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtor and proposed lender(s); and
- whether the proposed financing agreement was negotiated in good faith and at arm's length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors.

*See, e.g., Ames Dep't Stores*, 115 B.R. at 37-39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *Farmland Indus.*, 294 B.R. at 862-79; *Barbara K. Enters.*, 2008 WL 2439649, at *10; *see also* 3 Collier on Bankruptcy ¶ 364.04[1] (16th ed.).

46. The DIP Facilities satisfy each of these factors. First, any priming contemplated by the DIP Facilities is consensual. In fact, the existing Prepetition ABL Creditors are providing the ABL DIP Facility and therefore consent to the ABL DIP Facility priming the ABL Priority Collateral and the Term Loan DIP Facility's senior lien on the Fixed Asset Priority Collateral, consistent with existing intercreditor agreements. In addition, there is no priming of the Prepetition Term Loan Creditors upon entry of the Interim Order. Upon entry of the Final Order, proceeds of the Term Loan DIP Facility will be used to repay the Prepetition Term Loan Creditors in full, with the liens in favor of the Term Loan DIP Facility being senior to any adequate protection claims of the Prepetition Term Loan Lenders that may arise after payment in full of the Prepetition Term Loans.

47. Second, the Debtors and their advisors undertook a focused process appropriate to the circumstances and explored financing proposals with various participants both in and outside the capital structure of the Debtors. The Debtors conducted arm's length

negotiations with the DIP Lenders, and the resulting agreements reflect the most favorable terms the Debtors were able to obtain. The Debtors are not able to obtain financing on equal or better terms from the DIP Lenders.

48. Third, the Debtors need the funds to be provided under the DIP Facilities to preserve the value of their estates for the benefit of creditors and other parties in interest, facilitate the sale process, and otherwise support the Debtors' restructuring activities.

49. Fourth, the terms of the DIP Facilities are reasonable and adequate to support the Debtors' operations and Sale Process through the pendency of these Bankruptcy Proceedings.

50. Finally, as described in greater detail above and in the Puntus Declaration, the Debtors and the DIP Lenders negotiated the DIP Loan Documents in good faith and at arm's length, and the Debtors' entry into the DIP Loan Documents is an exercise of their sound business judgment. The DIP Facilities represent the most favorable terms available to the Debtors under current market conditions and in light of the Debtors' financial condition. Taking into account all of these factors, therefore, the Debtors should be authorized to secure the DIP Facilities as set forth in the DIP Loan Documents and the DIP Orders.

### D. The Interests of the Prepetition Secured Creditors Are Adequately Protected

51. A debtor may obtain postpetition credit "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the debtor, among other things, provides "adequate protection" to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). What constitutes adequate protection is decided on a case-by-case basis, and adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest or granting of replacement liens or administrative claims. *See, e.g., In re Martin*, 761

F.2d 472, 474 (8th Cir. 1985) ("[S]uch matters 'are [to be] left to case-by-case interpretation and development.'") (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. 339, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6295); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case"); *In re Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (citation omitted). The critical purpose of adequate protection is to guard against the diminution of a secured creditor's collateral during the period when such collateral is being used by the debtor in possession. *See Martin*, 761 F.2d at 474; *In re Johnson*, 90 B.R. 973, 978 (Bankr. D. Minn. 1988) (holding that secured creditor is not impaired and is not entitled to receive adequate protection payments where value of collateral does not decline); 495 Cent. Park, 136 B.R. at 631 ("The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization."); In re Beker Indus. Corp., 58 B.R. at 736; In re Hubbard Power & Light, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996).

52. Courts in this district and others have approved similar forms of adequate protection to that being provided to the Prepetition ABL Lenders. *See, e.g., In re Halcón Res. Corp.*, Case No. 16-16-11724 (BLS) (Bankr. D. Del. Aug. 19, 2016) (Docket No. 130); *In re Offshore Grp. Inv. Ltd.*, Case No. 15-12422 (BLS) (Bankr. D. Del. Jan. 8, 2016) (Docket No. 158); *In re Samson Res. Corp.*, Case No. 15-11934 (CSS) (Bankr. D. Del. Sept. 25, 2015) (Docket No. 111) (Interim Order); *In re Quicksilver Res. Inc.*, No. 15-10585 (LSS) (Bankr. D. Del. May 1, 2015) (Docket No. 307); *In re Entegra Power Grp. LLC*, Case No. 14-11859 (PJW)

(Bankr. D. Del. Sept. 3, 2014) (Docket No. 106); *In re Energy Future Holdings Corp.*, Case No. 14-10979 (CSS) (Bankr. D. Del. June 6, 2014) (Docket No. 855).

53. The Prepetition Secured Creditors will be granted adequate protection through the provision of replacement liens, superpriority administrative claims, current cash payment of reasonable fees and expenses, the establishment of an indemnity reserve, monthly cash payments in an amount equal to interest on the debt under the applicable Prepetition Credit Documents at the default rate, and, solely with respect to the Prepetition ABL Facility, the repayment of the Debtors' obligations thereunder over the course of the Bankruptcy Proceedings consistent with the ABL DIP Facility and the Interim Order. In addition, the adequate protection liens proposed to be granted are consistent with the priorities set forth in the Prepetition Intercreditor Agreement. Accordingly, the adequate protection provided to the Prepetition Secured Creditors is fair and reasonable, and satisfies the requirements of section 364 of the Bankruptcy Code.

## II. The Debtors Should Be Authorized to Use Cash Collateral

54. Section 363(c)(2) of the Bankruptcy Code governs a debtor's use of a secured creditor's cash collateral. Specifically, that provision provides, in pertinent part, that:

> The trustee may not use, sell, or lease cash collateral . . . unless—
>
> (A) each entity that has an interest in such cash collateral consents; or
>
> (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2). Further, section 363(e) provides that "on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

55. The Debtors have satisfied the requirements of sections 363(c)(2) and 363 (e), and should be authorized to use the Cash Collateral. First, as discussed above, the requisite Prepetition Secured Creditors consent to the use of the Cash Collateral. Second, the Debtors are providing the Prepetition Secured Creditors with adequate protection in the form of replacement liens on the DIP Collateral, including Cash Collateral, in accordance with the priorities set forth in and subject to the Prepetition Intercreditor Agreement, as well as the other protections described above.

56. As described above, the Debtors have an urgent need for the immediate use of the Prepetition Collateral, including the Cash Collateral, to honor obligations critical to the success of their ongoing operations, including to employees, vendors, and customers. Absent access to Cash Collateral, the Debtors cannot continue to operate their business postpetition, diminishing the value of the Debtors' estates to the detriment of all stakeholders, including the Prepetition Secured Creditors.

57. Therefore, the Debtors submit that they should be authorized to use the Cash Collateral on the terms set forth in the Interim Order.

## III. The Debtors Should Be Authorized to Pay the Fees in Connection with the DIP Facilities

58. As described above, the Debtors have agreed, subject to Court approval and the effectiveness of the DIP Loan Documents, to pay certain fees to the DIP Agent and the DIP Lenders in connection with the DIP Facilities. Specifically, the Debtors will pay fees owed to the ABL DIP Creditors following entry of the Interim Order, while fees payable to the Term Loan DIP Creditors will be earned upon entry of the Interim Order but not payable until entry of the Final Order. Altogether, the fees payable to the DIP Agents and the DIP Lenders and other obligations under the DIP Loan Documents are reasonable and appropriate and give the Debtors

access to DIP financing on the most favorable terms on which the DIP Lenders would agree to make the DIP Facilities available. *See* Puntus Decl. ¶ 20. The Debtors considered these fees when determining in the exercise of their sound business judgment that the DIP Facilities constitute the best terms on which the Debtors could obtain the postpetition financing necessary to continue their operations and conduct a fair, robust sale process. Consequently, paying these fees in order to obtain the DIP Facilities is in the best interests of the Debtors' estates and creditors and other parties in interest.

## IV. The Scope Of The Carve Out Is Appropriate

59. The DIP Facilities subject the security interests and administrative expense claims of the DIP Lenders to the Carve-Out. Such carve-outs for professional fees under the terms of the debtor's postpetition financing have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from their professionals during the Bankruptcy Proceedings, including during an event of default. *See Ames*, 115 B.R. at 40. Additionally, the Carve-Out protects against administrative insolvency during the course of these Bankruptcy Proceedings by ensuring that assets remain for payment of the U.S. Trustee's fees and professional fees of the Debtors and the Committee, if any, notwithstanding the grant of superpriority claims and DIP and adequate protection liens.

## V. The DIP Lenders Should Be Deemed Good Faith Lenders Under Section 364(e)

60. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its rights in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur

> debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

61. As explained in detail herein and in the Puntus Declaration, the DIP Facilities offer the most favorable terms available to the Debtors for postpetition financing and are the result of arm's length, good faith negotiations between the Debtors and the DIP Lenders, among others. *See* Puntus Decl. ¶¶ 11-17. The terms and conditions of the DIP Facilities are fair and reasonable, and the proceeds of the DIP Facilities will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Loan Documents with respect thereto, other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

## VI. The Section 506(c) And "Equities Of The Case" Waivers Are Appropriate

62. In connection with consenting to priming liens or the use of Cash Collateral, prepetition secured parties commonly request a waiver of (i) section 506(c) of the Bankruptcy Code, which permits the Debtors to surcharge collateral and (ii) the "equities of the case" exception from the general rule of section 552 of the Bankruptcy Code that prepetition liens that attach to proceeds of collateral will continue to attach to postpetition proceeds. Here, the requisite Prepetition ABL Lenders are consenting to the use of Cash Collateral and the liens set forth in the Priority Waterfall, thereby providing the Debtors with sufficient funds with which to continue their business operations. Absent such consent, the Debtors would be forced to seek

non-consensual use of Cash Collateral, which would require costly litigation, the outcome of which would be highly uncertain, with devastating consequences if the Debtors did not prevail. As a condition to providing consent, the requisite Prepetition Secured Creditors require the Debtors to waive their rights under section 506(c) and the "equities of the case" exception under Bankruptcy Code section 552(b), subject to and effective upon entry of the Final Order. In addition, as section 506(c) and "equities of the case" waivers would only be approved pursuant to the Final Order, parties in interest (including any Committee that may be appointed) will have an opportunity to be heard in connection with the approval of such waiver. Nevertheless, the Debtors submit that the proposed section 506(c) and "equities of the case" waivers are appropriate.

## VII. Modification of the Automatic Stay is warranted for the DIP Credit Parties

63. The DIP Loan Documents contemplate that the automatic stay arising under section 362 of the Bankruptcy Code shall be vacated or modified to the extent necessary to permit the DIP Agents to exercise, upon the occurrence and during the continuation of any Event of Default, but subject to any applicable motion requirements in the DIP Orders, all rights and remedies provided for in the DIP Loan Documents, without further order of or application to the Court.

64. Stay modification provisions of this sort are ordinary features of debtor-in-possession financing and, in the Debtors' business judgment, are reasonable under the circumstances. *See, e.g., In American Apparel, Inc.*, Case No. 15-12055 (BLS) [Docket No. 248] (Bankr. D. Del. Nov. 2, 2015) (authorizing stay modifications in order to permit DIP lenders to exercise remedies upon an event of default); *In re Molycorp, Inc.*, Case No. 15-11357 (CSS) [Docket No. 278] (Bankr. D. Del. July 24, 2015) (modifying automatic stay as necessary to

effectuate the terms of the order); *In re Coldwater Creek, Inc.*, Case No. 14-10867 (BLS) [Docket No. 576] (Bankr. D. Del. June 12, 2014) (modifying stay to authorize exercise of remedies upon default); *In re Broadway 401 LLC*, Case No. 10-10070 (KJC) [Docket No. 55] (Bankr. D. Del. Feb. 16, 2010) (modifying the stay to theextent necessary to effectuate the order).

## VIII. The Debtors Require Immediate Approval Of the DIP Facilities

65. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code where, as here, interim relief is "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2), (c)(2).

66. The Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein is not granted promptly after the Petition Date. As described above, the Debtors must have immediate access to cash to pay salaries, vendors, and other day-to-day expenditures, all as set forth in the first-day motions filed concurrently with this Motion, and fund these chapter 11 cases through the completion of a successful Sale Process. Given the immediate and irreparable harm to the Debtors, their estates, and their creditors absent interim relief, the Debtors request that, pending the Final Hearing, the Court approve the DIP Facilities on an interim basis as set forth in this Motion.

67. Moreover, it is essential that both the ABL DIP Facility and the Term Loan DIP Facility are committed to the Debtors upon entry of the Interim Order, notwithstanding that the Debtors' ability to borrow under the Term Loan DIP Facility is subject to entry of the Final Order. The Debtors must be certain that adequate financing is available from the Petition Date to support business operations, vendor and customer relationships, and the execution of the

Sale Process through the completion of the Asset Sale. By obtaining committed DIP financing on an interim basis, the Debtors ensure sufficient runway to consummate the Asset Sale and thereby maximize value for the Debtors' stakeholders. Thus, the Debtors' are receiving sufficient value to justify granting the Term Loan DIP Lenders' agreeing to pay certain fees and expenses provided for in the Term Loan DIP Credit Agreement, upon entry of the Interim Order, with liens and claims in respect of the Term Loan DIP Facility to be granted upon entry of the Final Order.

68. Accordingly, for the reasons set forth above, prompt entry of the Interim Order is necessary to avert immediate and irreparable harm to the Debtors' estates and is consistent with, and warranted under, Bankruptcy Rules 4001(b)(2) and (c)(2).

## IX. Waiver of Stay Under Bankruptcy Rule 6004(h)

69. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

## NOTICE

70. Notice of this Motion has been provided to: ((i) the U.S. Trustee; (ii) holders of the forty (40) largest unsecured claims on a consolidated basis against the Debtors;

(iii) counsel for the ABL DIP Agent; (iv) counsel for the Prepetition ABL Agent; (v) counsel for the Prepetition Term Loan Agent; (vi) counsel for the Steering Committee of Prepetition Term Loan Lenders; (vii) counsel to the Term Loan DIP Agent; (viii) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002; (ix) the monitor selected in the Canadian Proceedings; and (x) the United States Securities and Exchange Commission. Notice of this Motion and any order entered hereon will be served in accordance with Bankruptcy Rules 4001(b), (c), and (d) and 9014 and Local Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Districts of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

*[Remainder of this page intentionally left blank]*

## CONCLUSION

WHEREFORE, the Debtors request (1) entry of an order substantially in the form of the proposed Interim Order annexed hereto as ***Exhibit A***; (2) after the Final Hearing, entry of the Final Order substantially in the form that shall be filed with the Court; and (3) such other and further relief as is just.

Dated: October 31, 2016
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

# EXHIBIT A

## Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| BPS US Holdings Inc., *et al.,*[1] | ) | Case No. 16-________ (____) |
| Debtors. | ) | (Joint Administration Requested) |

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO 11 U.S.C. § 364, (II) AUTHORIZING THE DEBTORS' USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED CREDITORS PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; (IV) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001; AND (V) GRANTING RELATED RELIEF**

THIS MATTER having come before the Court upon the motion (the "**Motion**") by PERFORMANCE SPORTS GROUP LTD., a British Columbia corporation (the "**Lead Borrower**"), on behalf of itself and its affiliated debtors and debtors-in-possession (collectively the "**Debtors**") in the above-captioned Chapter 11 cases (collectively, the "**Cases**"), pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 507 of title 11 of the United States Code (11 U.S.C. §§ 101, *et seq.*, as amended, the "**Bankruptcy Code**") and Rules

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors' headquarters are located at 100 Domain Dr., Exeter, NH 03885.

2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), seeking entry of an interim order (this "**Interim Order**") and final order, *inter alia*:

(i) authorizing, under Sections 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rule 4001(c), the Debtors to obtain secured, superpriority postpetition revolving loans, advances and other financial accommodations (the "**ABL DIP Facility**"), on an interim basis for a period through and including entry of the Final Order (as defined below), pursuant to the terms and conditions of that certain Superpriority Debtor-In-Possession ABL Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "**ABL DIP Credit Agreement**"), substantially in the form of Exhibit A attached hereto, by and among (a) the Lead Borrower, (b) the other Borrowers thereto from time to time,[2] (c) the Guarantors thereto from time to time, if any, (d) Bank of America, N.A., as administrative agent and collateral agent (in such capacities herein, the "**ABL DIP Agent**") for its own benefit and the benefit of the other ABL DIP Lender Parties and (e) the Lenders from time to time party thereto (the "**ABL DIP Lenders**" and each an "**ABL DIP Lender**"; the ABL DIP Agent and the ABL DIP Lenders under the ABL DIP Loan Documents are collectively referred to herein as the "**ABL DIP Lender Parties**"); and

(ii) authorizing the Debtors to execute and deliver the ABL DIP Credit Agreement and all other related documents and agreements, including security agreements, guaranties, deposit account control agreements, pledge agreements, guaranties and promissory notes (collectively, the "**ABL DIP Loan Documents**") and to perform such other acts as may be necessary or desirable in connection with the ABL DIP Loan Documents; and

2 Capitalized terms used but not defined herein have the meanings given to them in the ABL DIP Loan Documents or Term Loan DIP Documents (as defined below), as applicable.

(iii) until the Interim Order Termination Date (as defined below) and subject to the terms, conditions, limitations on availability and reserves set forth in the ABL DIP Loan Documents, the ABL DIP Facility and this Interim Order, authorizing the Debtors, prior to the entry of the Final Order (as defined below), to request extensions of credit under the ABL DIP Facility up to an aggregate principal amount not to exceed $200,000,000[3] (consisting of revolving credit loans extended after the Petition Date and outstanding and new letters of credit) at any one time outstanding (the "**Interim Financing**");[4] and

(iv) granting allowed superpriority administrative expense claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in each of the Cases and any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "**Successor Cases**") to all obligations owing under the ABL DIP Credit Agreement and the other ABL DIP Loan Documents (collectively, and including all "Obligations" as described in the ABL DIP Credit Agreement, including all obligations with respect to letters of credit issued or deemed issued under the ABL DIP Credit Agreement, respectively, and, together, the "**ABL DIP Obligations**"), subject to the priorities set forth herein; and

(v) authorizing the Debtors to use "Cash Collateral," as defined in Section 363(a) of the Bankruptcy Code, that the Debtors are holding or may obtain, pursuant to Bankruptcy Code Sections 361 and 363 and Bankruptcy Rules 4001(b) and 6004; and

---

[3] For the avoidance of doubt, such amount is exclusive of bank product obligations and other related obligations that are deemed outstanding under the ABL DIP Facility.

[4] Notwithstanding anything to the contrary set forth in this Interim Order, effective upon the entry of this Interim Order, all Existing Letters of Credit and all bank product obligations existing under the Prepetition ABL Credit Agreement shall be deemed issued and continuing and part of the ABL DIP Obligations under the ABL DIP Credit Agreement, and thereafter shall cease to be Prepetition ABL Obligations.

(vi) granting to the ABL DIP Agent, for the benefit of the ABL DIP Lender Parties, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property constituting "Cash Collateral" as defined in Section 363(a) of the Bankruptcy Code, which liens shall be subject to the priorities set forth herein; and

(vii) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under each of the ABL DIP Loan Documents as they become due, including, without limitation, continuing commitment fees, closing fees, administrative fees, any additional fees set forth in the ABL DIP Loan Documents, the reasonable fees and disbursements of the ABL DIP Lender Parties' attorneys, advisers, accountants and other consultants, and all related expenses of the ABL DIP Lender Parties, all to the extent provided by and in accordance with the terms of the respective ABL DIP Loan Documents and this Interim Order, as well as authorizing and directing the Debtors to pay certain fees due and owing to Centerview Partners LLC ("**Centerview**"), proposed investment banker to the Debtors, as further described herein, subject to the approval of its retention in connection with the Cases; and

(viii) authorizing and directing the Debtors to apply the proceeds of any DIP Collateral (as defined herein) (other than net identifiable proceeds of any Fixed Asset Priority Collateral, as defined in the Prepetition Intercreditor Agreement and the Post-Petition Intercreditor Arrangements (each as defined below), the "**Fixed Asset Priority Collateral**") to reduce the Prepetition ABL Obligations in accordance with paragraph 18 of this Interim Order, subject to the rights of parties in interest described in paragraph 31 of this Interim Order; and

(ix) authorizing, under Sections 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rule 4001(c), the Debtors to execute and deliver that certain Term Loan

Superpriority Debtor-In-Possession Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "**Term Loan DIP Credit Agreement**") by and among (a) the Lead Borrower, (b) the other Borrowers party thereto from time to time, (c) the Guarantors party thereto from time to time, if any, (d) 9938982 Canada Inc., as administrative agent and collateral agent (in such capacities herein, the "**Term Loan DIP Agent**") for its own benefit and the benefit of the other Term Loan Lender Parties, and (e) the Lenders from time to time party thereto (the "**Term Loan DIP Lenders**" and each a "**Term Loan DIP Lender**" and, together with the ABL DIP Lenders, the "**DIP Lenders**"); the Term Loan DIP Agent and the Term Loan DIP Lenders are collectively referred to herein as the "**Term Loan DIP Lender Parties**" and, together with the ABL DIP Lender Parties, the "**DIP Lender Parties**"), substantially in the form of Exhibit B attached hereto, it being understood that no loans shall be requested by or made to the Debtors under the Term Loan DIP Credit Agreement prior to the entry of the Final Order, at which time the Debtors shall seek authority to obtain secured, super-priority postpetition term loans and other financial accommodations and to use the proceeds of the Term Loan DIP Facility to, among other things, repay in full in cash the Prepetition Term Loan Obligations, as defined below, and for working capital and other permitted purposes, upon entry of the Final Order (such facility, the "**Term Loan DIP Facility**" and, together with the ABL DIP Facility, the "**DIP Facilities**");

(x) authorizing the Debtors to execute and deliver the Term Loan DIP Credit Agreement and all other related documents and agreements, including security agreements, deposit account control agreements, pledge agreements, mortgages, guaranties, promissory notes, and other customary documents, whether upon entry of this Interim Order or the Final Order, as applicable (collectively, the "**Term Loan DIP Loan Documents**" and together with the ABL

DIP Loan Documents, the "**DIP Loan Documents**") and to, among other things, perform such other acts as may be necessary or desirable in connection with the Term Loan DIP Loan Documents; and

(xi) authorizing and directing the Debtors to pay to the Term Loan DIP Lender Parties, upon entry of the Final Order, the commitment fees earned on the Petition Date and costs and expenses due to the Term Loan DIP Lender Parties pursuant to 12.01 of the Term Loan DIP Credit Agreement (the amounts and obligations set forth in this clause (xi), the "**Interim Term Loan DIP Obligations**" together with the ABL DIP Obligations, collectively, the "**DIP Obligations**"); and

(xii) providing adequate protection to the Prepetition Secured Creditors (as defined herein) to the extent set forth herein; and

(xiii) vacating and modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the respective terms and provisions of the DIP Loan Documents and this Interim Order; and

(xiv) granting related relief; and

(xv) scheduling a final hearing (the "**Final Hearing**") to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the exhibits attached thereto, the DIP Loan Documents, the *Declaration of Brian J. Fox in Support of Debtors' Chapter 11 Petitions and First-Day Motions*, the *Declaration of Marc D. Puntus* in support of this Motion, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on the Motion (the "**Interim Hearing**"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, and Local Bankruptcy

Rule 9013-1; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that, pursuant to Bankruptcy Rule 4001(c)(2), granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors' businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING BY THE DEBTORS, INCLUDING THE SUBMISSIONS OF DECLARATIONS AND THE REPRESENTATIONS OF COUNSEL, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW: [5]

A. *Petition Date*. On October 31, 2016 (the "**Petition Date**"), each of the Debtors filed a separate voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Court**") commencing these Cases.

B. *Canadian Proceeding*. On the Petition Date, each of the Debtors filed cases before the Ontario Superior Court (Commercial Division) under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the "**Canadian Proceeding**").

C. *Debtors-in-Possession*. The Debtors are continuing in the management and operation of their businesses and properties as debtors- in- possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

[5] The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

D. *Jurisdiction and Venue*. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the Motion and granted in this Interim Order are sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Local Rule 4001-2.

E. *Committee Formation*. As of the date hereof, the Office of the United States Trustee (the "**U.S. Trustee**") has not appointed any official committee of unsecured creditors in these Cases pursuant to Section 1102 of the Bankruptcy Code (a "**Committee**").

F. *Debtors' Stipulations*. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 31 herein, the Debtors (on behalf of and for themselves) admit, stipulate, acknowledge and agree that (collectively, paragraphs F(i) through F(viii) below are referred to herein as the "**Debtors' Stipulations**"):

(i) *Prepetition ABL Credit Documents*. As of the Petition Date, each of the Debtors (other than PSG Innovation Inc. and PSG Innovation Corp.) (collectively, the "**Prepetition Obligors**") were parties, as co-borrowers and co-guarantors, to that certain ABL Credit Agreement dated as of April 15, 2014 (as amended, modified and supplemented from time to time, the "**Prepetition ABL Credit Agreement**" and together with all related documents, guaranties and agreements, the "**Prepetition ABL Credit Documents**"), by and among (a) the Lead Borrower, as Parent, (b) the other Borrowers party thereto from time to time, (c) Bank of America, N.A., as administrative agent and collateral agent (in such capacities herein, the

"**Prepetition ABL Agent**") for its own benefit and the benefit of the other "Lender Parties" (as defined therein), and (d) the Lenders from time to time party thereto (the "**Prepetition ABL Lenders**" and each a "**Prepetition ABL Lender**"; the Prepetition ABL Agent, the Prepetition ABL Lenders and the other "Lender Parties" under the Prepetition ABL Credit Documents are collectively referred to herein as the "**Prepetition ABL Creditors**"), pursuant to which the Prepetition ABL Lenders made a $200 million asset-based secured credit facility available to the Prepetition Obligors. Pursuant to the terms and conditions of the Prepetition ABL Credit Documents, each of the Prepetition Obligors is jointly and severally liable for all of the Prepetition ABL Obligations (as defined below).

(ii) *Prepetition ABL Obligations*. As of the Petition Date, the aggregate outstanding principal amount owed by the Prepetition Obligors under the Prepetition ABL Credit Documents was not less than $158 million, consisting of revolving credit loans in the outstanding principal amount of $157.9 million and issued and outstanding letters of credit in the amount of $1 million (collectively, together with any interest, fees, costs, bank product and swap obligations and other charges or amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition ABL Credit Documents, and further including all "Obligations" as described in the Prepetition ABL Credit Agreement, and all interest, fees, costs and other charges allowable under Section 506(b) of the Bankruptcy Code, the "**Prepetition ABL Obligations**").

(iii) *Prepetition Term Loan Documents*. As of the Petition Date, the Prepetition Obligors were parties, as Borrower and co-guarantors, to that certain Term Loan Credit Agreement dated as of April 15, 2014 (as amended, modified and supplemented from time to time, the "**Prepetition Term Loan Agreement**" and together with all related documents,

guaranties and agreements, the "**Prepetition Term Loan Documents**"), by and among (a) the Lead Borrower, as Borrower, (b) Bank of America, N.A., as administrative agent and collateral agent (in such capacity herein, the "**Prepetition Term Loan Agent**") for its own benefit and the benefit of the other "Lender Parties" (as defined therein), and (c) the lenders from time to time party thereto (the "**Prepetition Term Loan Lenders**" and each a "**Prepetition Term Loan Lender**"; the Prepetition Term Loan Agent, the Prepetition Term Loan Lenders and the other "Lender Parties" under the Prepetition Term Loan Documents are collectively referred to herein as the "**Prepetition Term Loan Creditors**"), pursuant to which the Prepetition Term Loan Lenders made a $450 million secured term loan facility available to the Prepetition Obligors. Each of the Prepetition Obligors, other than the Lead Borrower, guaranteed the obligations of the Lead Borrower under the Prepetition Term Loan Documents. The Prepetition ABL Creditors and the Prepetition Term Loan Creditors are collectively referred to herein as the "**Prepetition Secured Creditors**" and the Prepetition ABL Credit Documents and the Prepetition Term Loan Documents are collectively referred to herein as the "**Prepetition Credit Documents**".

(iv) *Prepetition Term Loan Obligations*. As of the Petition Date, the aggregate outstanding principal amount owed by the Prepetition Obligors under the Prepetition Term Loan Documents was not less than $330,457,490 (together with all interest, premiums, if any, costs, fees and other charges or amounts accrued or payable prior to the Petition Date in accordance with the Prepetition Term Loan Documents, and further including all "Obligations" as described in the Prepetition Term Loan Agreement, and all interests, fees, costs and other charges allowable under Section 506(b) of the Bankruptcy Code, the "**Prepetition Term Loan Obligations**;" the Prepetition ABL Obligations and the Prepetition Term Loan Obligations are collectively referred to herein as the "**Prepetition Secured Obligations**").

(v) *Prepetition Senior Liens and Prepetition Intercreditor Agreement*. As more fully set forth in the Prepetition Credit Documents, prior to the Petition Date, the Prepetition Obligors granted security interests in and liens on substantially all of their personal property, including, without limitation, accounts, inventory, equipment, investment property, trademarks, trade names, general intangibles and intellectual property (collectively, the "**Prepetition Collateral**"), to each of the Prepetition ABL Agent and the Prepetition Term Loan Agent (collectively, the "**Prepetition Senior Liens**") to secure repayment of the Prepetition Secured Obligations. Pursuant to that certain ABL/Term Prepetition Intercreditor Agreement dated as of April 15, 2014 (as amended and in effect, the "**Prepetition Intercreditor Agreement**"), by and between the Prepetition ABL Agent and the Prepetition Term Loan Agent and acknowledged and consented to by the Prepetition Obligors, the Prepetition ABL Agent and the Prepetition Term Loan Agent agreed to their respective rights and priorities with respect to the Prepetition Collateral. The Prepetition Intercreditor Agreement is a "subordination agreement" within the meaning of Section 510(a) of the Bankruptcy Code. The Prepetition Secured Creditors' interests in the Prepetition Collateral continue to be governed by the Prepetition Intercreditor Agreement (including, without limitation, (x) the Prepetition ABL Agent's senior rights with respect to the ABL Priority Collateral and junior rights in the Fixed Asset Priority Collateral and (y) the Prepetition Term Loan Agent's senior rights with respect to the Fixed Asset Priority Collateral and junior rights in the ABL Priority Collateral, in each case as such terms are defined in the Prepetition Intercreditor Agreement), except as otherwise expressly provided by this Interim Order.

(vi) *Validity, Perfection and Priority of Prepetition Senior Liens and Prepetition Secured Obligations*. The Debtors (without limiting the rights of other parties in

interest under paragraph 31 of this Interim Order), and the Prepetition Secured Creditors acknowledge and agree that: (a) the Prepetition Senior Liens on substantially all of the Prepetition Collateral are valid, binding, enforceable, non-avoidable and properly perfected, (b) the Prepetition Senior Liens have priority over any and all other liens, if any, on the Prepetition Collateral, subject only to (i) the rights and priorities of the Prepetition ABL Agent and the Prepetition Term Loan Agent set forth in the Prepetition Intercreditor Agreement and (ii) certain other liens otherwise permitted by the Prepetition Credit Documents (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition Senior Liens as of the Petition Date, the "**Prepetition Permitted Liens**") and otherwise with priority over the Prepetition Senior Liens on the Prepetition Collateral, provided that, in no event shall any alleged right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) be deemed or treated hereunder as a Prepetition Permitted Lien;[6] (c) the Prepetition Secured Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Obligors and constitute "allowed claims" within the meaning of section 502 of the Bankruptcy Code; (d) no offsets, challenges, objections, defenses, claims, impairment or counterclaims of any kind or nature to any of the Prepetition Senior Liens or the Prepetition Secured Obligations exist, and no portion of the Prepetition Senior Liens or the Prepetition Secured Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement,

[6] For purposes of this Interim Order, Prepetition Permitted Liens shall include liens that were valid, senior, enforceable, nonavoidable, and perfected under applicable law as of the Petition Date. Nothing herein shall constitute a finding or ruling by this Court that any such Prepetition Permitted Liens are valid, senior, enforceable, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including, but not limited to, the Debtors, the ABL DIP Agent, the Term Loan DIP Agent, the Prepetition Term Loan Agent, and the Prepetition ABL Agent and the Committee, if any, to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Prepetition Permitted Lien and/or security interest.

recharacterization, recoupment, reductions, setoff or subordination (whether equitable, contractual or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of actions, counterclaims, and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code, against any of the Prepetition Secured Creditors or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors or employees arising out of, based upon or related to the Prepetition Credit Documents; (f) as of the Petition Date, the value of the Prepetition Collateral securing the Prepetition Secured Obligations exceeded the amount of those obligations, and accordingly the full amount of the Prepetition Secured Obligations are allowed secured claims within the meaning of Section 506 of the Bankruptcy Code, together with accrued and unpaid and hereafter accruing interest, fees (including, without limitation, attorneys' fees and related expenses), costs and other charges, and further including the Prepetition ABL Escrow and the Prepetition Term Loan Escrow (each as defined herein).

(vii) *Cash Collateral*. The Debtors acknowledge and stipulate that all or substantially all of the Prepetition Obligors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitute Cash Collateral and is Prepetition Collateral of the Prepetition Secured Creditors.

(viii) *Release*. The Debtors (without limiting the rights of other parties in interest under paragraph 31 of this Interim Order) hereby forever, unconditionally and irrevocably release, discharge and acquit, as of the date of the Interim Order, the Prepetition ABL Agent, and the Prepetition Term Loan Agent, the ABL DIP Agent, the ABL DIP Lender Parties and each of the Prepetition Secured Creditors, and each of their respective successors,

assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys and agents, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the "**Releasees**") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to, as applicable, the ABL DIP Facility, the ABL DIP Loan Documents, the Prepetition Credit Documents, the Prepetition Senior Liens and/or the transactions contemplated hereunder or thereunder including, without limitation, (A) any so-called "lender liability" or equitable subordination claims or defenses, (B) any and all claims and causes of action arising under the Bankruptcy Code, and (C) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the DIP Liens (as defined herein), ABL DIP Obligations, Prepetition Credit Documents, Prepetition Secured Obligations or the Prepetition Senior Liens. Subject to paragraph 31, the Debtors further waive and release any defense, right of counterclaim, right of set-off or deduction to the payment of the Prepetition Secured Obligations that the Debtors now have or may claim to have against the Releasees, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to the Bankruptcy Court entering this Interim Order and, if applicable, the Final Order.

G. *Findings Regarding the Postpetition Financing*.

(i) *Request for Postpetition Financing*. The Debtors seek authority to (a) enter into the ABL DIP Facility on the terms described herein and in the ABL DIP Loan Documents and to grant DIP Liens as of the date of the entry of the Interim Order on the DIP Collateral to secure the ABL DIP Obligations, (b) repay the Prepetition ABL Obligations as

set forth herein, (c) enter into the Term Loan DIP Facility on the terms described herein and in the Term Loan DIP Documents, and (d) use Cash Collateral on the terms described herein to administer their Cases and fund their operations. At the Final Hearing, the Debtors will seek final approval of the ABL DIP Facility and the Term Loan DIP Facility (including the authority to borrow under the Term Loan DIP Facility and repay in full the Prepetition Term Loan Obligations) and use of Cash Collateral arrangements pursuant to a proposed final order (the "**Final Order**"), which shall be in form and substance reasonably acceptable to the ABL DIP Agent, the Term Loan DIP Agent, and the Required Lenders (as defined in the Prepetition Term Loan Credit Agreement (the "**Prepetition Term Loan Required Lenders**") and in form and substance acceptable to the Term DIP Agent. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) *Priming of the Prepetition Senior Liens*. The priming of each of the Prepetition Senior Liens on the ABL Priority Collateral by the DIP Liens of the ABL DIP Agent thereon as set forth in this Interim Order will enable the Debtors to obtain the Interim Financing under the ABL DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors.[7] Each Prepetition Secured Creditor has consented (or is deemed to have consented) on an interim basis to the terms and conditions of the ABL DIP Facility (including, without limitation, such priming liens on the ABL Priority Collateral under the terms and conditions set forth in this Interim Order and subject to (a) the rights of the Prepetition Term Loan Agent provided for in the Prepetition Intercreditor Agreement and (b) the priority waterfall described on **Exhibit C** hereto with respect to this Interim Order and the initial order to be entered in the Canadian Proceedings (the "***Priority Waterfall***") and is entitled to receive

[7] In the event of any inconsistency between the terms and conditions of the Prepetition Intercreditor Agreement or this Interim Order and the Priority Waterfall, the Priority Waterfall shall govern and control.

adequate protection of its interests therein as more fully described below, it being understood that the Prepetition Senior Liens of the Prepetition Term Loan Agent in the Fixed Asset Priority Collateral shall not be primed under this Interim Order by the DIP Term Loan Facility, the DIP ABL Facility or the Adequate Protection Liens of the Prepetition ABL Agent thereon.

(iii) *Immediate Need for Interim Financing and Use of Cash Collateral*. The Debtors' need to use Cash Collateral and to obtain the Interim Financing pursuant to the ABL DIP Facility is immediate and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, maintain business relationships, pay their employees, protect the value of their assets and otherwise finance their operations requires the availability of working capital from the Interim Financing and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, their creditors and equity holders, and the possibility for a successful administration of these Cases. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or to maintain their properties in the ordinary course of business without the Interim Financing and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms*. Given their current financial condition, financing arrangements and capital structure, the Debtors were unable to obtain financing from sources other than the ABL DIP Lender Parties and the Term Loan DIP Lender Parties on terms more favorable than the respective terms of the ABL DIP Facility and the Term Loan DIP Facility. The Debtors have been unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain credit: (a) having priority over that of administrative expenses of

the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. The ABL DIP Facility is not otherwise available without granting the ABL DIP Agent upon entry of this Interim Order, for the benefit of the ABL DIP Lender Parties, (1) perfected security interests in and liens on (each as provided herein) all of the DIP Collateral (as defined herein) with the priorities set forth herein, (2) a superpriority claim and (3) the other protections set forth in this Interim Order. The Term Loan DIP Facility will not be available until entry of the Final Order and without granting the Term Loan DIP Agent, upon entry of the Final Order, for the benefit of the Term Loan DIP Lender Parties, (1) perfected security interests in and liens on (each as provided herein) all of the DIP Collateral (as defined herein) with the priorities set forth herein as of the date of the Interim Order, (2) a superpriority claim and (3) the other protections contemplated under the Term Loan DIP Loan Documents.

(v) *Use of Proceeds of the Interim Financing*. As a condition to entry into the ABL DIP Credit Agreement, the extensions of credit under the ABL DIP Facility and the authorization to use Cash Collateral, the ABL DIP Lender Parties require, and the Debtors have agreed, that proceeds of the Interim Financing to be provided pursuant to the ABL DIP Facility shall be used in a manner consistent with the terms and conditions of the DIP Loan Documents and in accordance with the budget (a copy of which is attached as **Exhibit D** hereto, as the same may be modified from time to time consistent with the terms of the DIP Loan Documents, and subject to such variances as may be permitted thereby, the "**Budget**"), solely for (a) postpetition operating expenses and other working capital, (b) certain transaction fees and expenses, (c) permitted payment of costs of administration of the Cases, including professional fees,

(d) adequate protection payments to the Prepetition Secured Creditors as set forth herein and payment of amounts due to the ABL DIP Lender Parties and the Term Loan DIP Parties, (e) payments of amounts authorized to be paid under other "first" or "second" day orders in accordance with the Budget; and (f) as otherwise permitted under each of the Term Loan DIP Loan Documents and ABL DIP Loan Documents, as applicable. The repayment of the Prepetition ABL Obligations in accordance with this Interim Order and the ABL DIP Credit Agreement is a necessary condition of the Prepetition ABL Creditors consenting to the use of Cash Collateral and to the subordination of the Prepetition ABL Agent's liens to the DIP Liens as provided herein and in the Priority Waterfall.

(vi) *Application of Proceeds of DIP Collateral; Integrated Transaction*. As a condition to entry into the ABL DIP Loan Documents, the extension of credit under the ABL DIP Facility, and the authorization to use Cash Collateral, the Debtors and the ABL DIP Agent have agreed that the proceeds of DIP Collateral (other than net identifiable proceeds of Fixed Asset Priority Collateral, including collateral identified as Fixed Asset Priority Collateral in the Priority Waterfall) shall be applied toward the Prepetition ABL Obligations in accordance with paragraph 18 of this Interim Order. The extension of the ABL DIP Facility and the repayment of the Prepetition ABL Obligations are part of an integrated transaction. Such payments will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraph 31 herein.

H. *Adequate Protection*. As a result of the grant of the DIP Liens, the use, sale or lease of property of the Debtors' estates authorized herein, including Cash Collateral, and the imposition of the automatic stay, the Prepetition Secured Creditors are entitled to receive adequate protection pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code and as

set forth in paragraphs 12 and 13 of this Interim Order to the extent of any diminution in value of their interests in the Prepetition Collateral (collectively, to the extent of any such diminution in value resulting from the grant of the DIP Liens, the use, sale or lease of property of the Debtors' estates authorized herein, including Cash Collateral, or the imposition of the automatic stay, the "**Diminution in Value**"). As adequate protection, the Prepetition Secured Creditors shall receive, among other things, (i) the Adequate Protection Liens (as defined herein) to secure the Prepetition Secured Obligations and Adequate Protection Superpriority Claims (as defined herein) with respect to the Prepetition Secured Obligations in accordance with the priorities set forth herein, and (ii) additional adequate protection in the form of payments of interest (including default interest), fees, costs, expenses (including reasonable attorneys' fees and expenses), indemnities and other amounts with respect to the Prepetition Secured Obligations in accordance with the Prepetition Credit Documents and as described herein.

I. *Sections 506(c) and 552(b)*. In light of (i) the ABL DIP Agent's (and upon entry of the Final Order, the Term Loan DIP Agent's) agreement to subordinate their liens and superpriority claims, as applicable, to the Carve-Out (as defined herein); and (ii) each Prepetition Secured Creditor's agreement to subordinate the Adequate Protection Superpriority Claims and the Adequate Protection Liens to the Carve-Out, the DIP Liens, and the DIP Superpriority Claims (as defined below), in each case subject to the Priority Waterfall, the Prepetition Intercreditor Agreement and the Post-Petition Intercreditor Arrangements (as defined in the DIP Documents), upon entry of the Final Order, each of the ABL DIP Lender Parties, the Term Loan DIP Lender Parties and each Prepetition Secured Creditor shall be entitled to the benefits of, and shall receive, a waiver of (a) the provisions of Section 506(c) of the Bankruptcy Code, and (b) any "equities of the case" claims under Section 552(b) of the Bankruptcy Code.

J. *Good Faith of the DIP Lender Parties*.

(i) *Willingness to Provide Interim Financing*. Each of the ABL DIP Lender Parties has indicated a willingness to provide the Interim Financing to the Debtors subject to: (a) the entry of this Interim Order and, following the period covered by the Interim Order, the Final Order; (b) approval of the terms and conditions of the ABL DIP Facility and the ABL DIP Loan Documents and the repayment of the Prepetition ABL Obligations to the extent set forth in this Interim Order; and (c) entry of findings by this Court that such financing is essential to the Debtors' estates, that each of the ABL DIP Lender Parties is extending credit to the Debtors pursuant to the ABL DIP Loan Documents in good faith, and that each of the DIP Lender Parties' claims, superpriority claims, security interests, liens, rights, and other protections granted pursuant to this Interim Order and the ABL DIP Loan Documents will have the protections provided in Section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this Interim Order or any other order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. Extension of the ABL DIP Facility and entry into the Term Loan DIP Facility, including the incurrence of the Interim Term Loan DIP Obligations and any ABL DIP Obligations, reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and is supported by reasonably equivalent value and consideration. The ABL DIP Facility, the Term Loan DIP Facility, and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Lender Parties, and the Prepetition Secured Creditors. The use of Cash Collateral and the Interim Financing to be extended under the ABL DIP Loan Documents shall be deemed to have been so allowed, advanced, made, used or extended in good

faith, and for valid business purposes and uses, within the meaning of Section 364(e) of the Bankruptcy Code, and each of the ABL DIP Lender Parties and the Prepetition Secured Creditors is therefore entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code and this Interim Order to the maximum extent set forth herein in such Section.

K. *Notice*. The Debtors have represented that they provided notice of the Interim Hearing and the emergency relief requested in the Motion, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: ((i) the U.S. Trustee; (ii) holders of the forty (40) largest unsecured claims on a consolidated basis against the Debtors; (iii) counsel for the ABL DIP Agent; (iv) counsel for the Prepetition ABL Agent; (v) counsel for the Prepetition Term Loan Agent; (vi) counsel for the steering committee of certain Prepetition Term Loan Lenders (the "**Steering Committee**"); (vii) counsel to the Term Loan DIP Agent; (viii) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002; (ix) the monitor selected in the Canadian Proceedings (the "**Monitor**"); and (x) the United States Securities and Exchange Commission. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the interim relief set forth in this Interim Order, and no other or further notice is or shall be required.

L. *Immediate Entry*. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Interim Financing Approved. The Motion is granted on an interim basis, the Interim Financing is authorized and approved on an interim basis, and the use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order.

2. Objections Overruled. All objections to the Interim Financing, to the extent not withdrawn or resolved, are hereby overruled.

**DIP Facility Authorization**

3. Authorization of the DIP Financing and DIP Loan Documents.

(a) The Debtors are expressly and immediately authorized and empowered (i) to execute and deliver the DIP Loan Documents, (ii) to incur and to perform the ABL DIP Obligations in accordance with, and subject to, the terms of this Interim Order, and the ABL DIP Loan Documents, (iii) to deliver all instruments and documents that may be necessary or required for performance by the Debtors under the ABL DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order, as of the date of this Interim Order, and the applicable DIP Loan Documents, (iv) to repay the Prepetition ABL Obligations in accordance with paragraph 18 of this Interim Order, and (v) subject to the rights of third parties pursuant to paragraph 31 below, to pay and perform all obligations under the Prepetition Credit Documents in accordance with the terms set forth herein and therein, including to provide for (x) the releases in favor of each of the Prepetition Secured Creditors and their related parties and (y) subject to the entry of the Final Order, to pay in full in cash the Prepetition Term Loan Obligations. The Debtors are hereby authorized to pay the principal, interest, fees, expenses and other amounts described in the ABL DIP Loan Documents as such become due and without need to obtain further Court approval, including, without limitation, commitment fees, closing fees, administrative fees, any additional fees set forth in the ABL DIP Loan Documents,

and the reasonable fees and disbursements of the ABL DIP Lender Parties' attorneys, advisers, accountants, and other consultants, whether or not the transactions contemplated hereby are consummated, all to the extent provided in the ABL DIP Loan Documents, with invoices to be provided in accordance with paragraph 26 below. All collections and proceeds, whether from ordinary course collections, asset sales, debt issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Interim Order and the ABL DIP Loan Documents. Upon execution and delivery, the ABL DIP Loan Documents shall represent valid and binding, and joint and several, obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

(b) The Debtors are expressly and immediately authorized and empowered to execute and deliver the Term Loan DIP Loan Documents, provided that until entry of the Final Order no liens or claims will be granted hereunder or under the Term Loan DIP Loan Documents and no loans shall be requested by or made to the Debtors under the Term Loan DIP Credit Agreement, in each case, prior to the entry of the Final Order. Subject to entry of the Final Order, the Debtors are hereby authorized to pay the Interim Term Loan DIP Obligations as such become due, including, without limitation, the reasonable fees and disbursements of the Term Loan DIP Lender Parties' attorneys, advisers, accountants, and other consultants, whether or not the transactions contemplated hereby are consummated, all to the extent provided in the Term Loan DIP Loan Documents, with invoices to be provided in accordance with paragraph 26 below.

(c) Subject to this Court's approval of Centerview's application to be retained as investment banker to the Debtors, the Debtors are authorized to pay financing fees owed to Centerview pursuant to that certain engagement letter dated August 19, 2016, in an amount not

to exceed $3,500,000, with such fees being earned as of the date of this Interim Order. Such fees shall be reduced by any retainer held by Centerview as of the Petition Date in respect of any financing fee, and the remainder of the fee shall be payable as follows: (i) $1,650,000 payable upon entry of the Final Order, and (ii) any remaining amounts to be paid upon consummation of the Asset Sale (as defined in the DIP Motion).

4. Authorization to Borrow. Until the date of the earlier to occur of (i) the issuance of a Termination Declaration (as defined below) and (ii) the entry of the Final Order (such date, the "**Interim Order Termination Date**"), and subject to the terms, conditions, limitations on availability and reserves set forth in the ABL DIP Loan Documents and this Interim Order, and in order to prevent immediate and irreparable harm to the Debtors' estates, the Debtors are hereby authorized to request extensions of credit under the ABL DIP Facility up to an aggregate principal amount of $200,000,000 (consisting of revolving credit loans and new and outstanding letters of credit) at any one time outstanding.

5. ABL DIP Obligations. The ABL DIP Loan Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtors' ABL DIP Obligations, which ABL DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee, other estate representative or liquidating or creditor trust appointed in any Successor Cases. Upon entry of this Interim Order, the ABL DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to any of the ABL DIP Lender Parties under the ABL DIP Loan Documents or this Interim Order, including, without limitation, all principal, accrued interest, costs, fees, expenses and other

amounts owed pursuant to the ABL DIP Loan Documents, and shall be joint and several obligations of the Debtors in all respects.

6. Postpetition Liens and Collateral.

(a) Effective immediately upon the entry of this Interim Order, pursuant to Sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the ABL DIP Agent (for the benefit of itself and the other ABL DIP Lender Parties under the ABL DIP Loan Documents) is hereby granted, continuing valid, binding, enforceable, non-avoidable and automatically and properly perfected postpetition security interests in and liens on (collectively, the "**DIP Liens**") any and all presently owned and hereafter acquired assets and real and personal property of the Debtors, including, without limitation, all Collateral (as defined the ABL DIP Loan Documents) (but excluding any "Excluded Property" as defined in the ABL DIP Loan Documents) (the "**DIP Collateral**"), in each case in accordance with the "Grant of Security" provisions of the ABL DIP Loan Documents; provided that the grant of security in the proceeds of Avoidance Actions shall be subject to entry of the Final Order.

(b) Effective upon the entry of the Interim Order, all DIP Liens of the ABL DIP Agent shall be and remain at all times senior to the Prepetition Senior Liens on the ABL Priority Collateral but junior to the Prepetition Senior Liens of the Prepetition Term Loan Agent in the Fixed Asset Priority Collateral, including collateral identified as Fixed Asset Priority Collateral in the Priority Waterfall, in accordance with the Prepetition Intercreditor Agreement and the Priority Waterfall.[8] The DIP Liens are and shall be subject to the terms and conditions of the Prepetition Intercreditor Agreement for so long as any Prepetition Obligations remain outstanding and, except as expressly set forth in this Interim Order, nothing in this Interim Order

[8] For the purposes of this Interim Order, any DIP Collateral unencumbered by the Prepetition Senior Liens shall be treated as Fixed Asset Priority Collateral to the extent the collateral is in the character of Fixed Asset Priority Collateral, otherwise it will be treated as ABL Priority Collateral.

shall be deemed to impair or otherwise modify the rights of the Prepetition ABL Agent, on the one hand, and the Prepetition Term Loan Agent, on the other, under any such agreements or documents as in effect prior to the date hereof. For the avoidance of doubt, as concerns the application or interpretation of the Prepetition Intercreditor Agreement, (i) the Prepetition Intercreditor Agreement shall apply to the ABL DIP Credit Agreement (including, without limitation, to the ABL DIP Agent, ABL DIP Lenders and ABL DIP Obligations thereunder), on the one hand, and the Prepetition Term Loan Agreement and the Prepetition Term Loan Obligations, on the other, and the transactions contemplated by this Interim Order shall constitute a "DIP Financing" (as defined in the Prepetition Intercreditor Agreement); and (ii) until payment in full in cash of the Prepetition Term Loan Obligations, the Prepetition Intercreditor Agreement shall remain valid and effective.

7. DIP Lien Priority.

(a) *DIP Liens*. The DIP Liens shall be junior to the (i) Carve-Out and (ii) the Prepetition Permitted Liens, and shall otherwise have the priority set forth in the Priority Waterfall. Other than as set forth herein, the DIP Liens shall not be made subject to or be *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases or any claim for reclamation or return (whether asserted pursuant to Section 546(c) of the Bankruptcy Code or otherwise), except as otherwise expressly permitted under the DIP Loan Documents. The DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to cases under Chapter 7 of the Bankruptcy Code (or in any other Successor Cases), and/or upon the dismissal of any of the Cases or Successor Cases. The DIP Liens shall not be subject to challenge under Sections 510, 546, 549, or 550 of the Bankruptcy Code. No lien or

interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

(b) *Prepetition Senior Liens*. For the avoidance of doubt, the Prepetition Senior Liens shall have the priority set forth in the Priority Waterfall.

8. DIP Superpriority Claims.

(a) *DIP Superpriority Claim.* Upon entry of this Interim Order, the ABL DIP Agent (for the benefit of itself and the other ABL DIP Lender Parties under the ABL DIP Loan Documents) is hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (collectively, the "**DIP Superpriority Claim**") for all ABL DIP Obligations.

(b) *Priority of DIP Superpriority Claim.* The DIP Superpriority Claim shall be payable from and have recourse to all pre- and postpetition property of the Debtors and all proceeds thereof, subject to the priorities set forth herein. The DIP Superpriority Claim shall be subordinate to the Carve-Out and shall otherwise have priority over any and all administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (upon entry of the Final Order), 507(a), 507(b),[9] 546(c), 546(d), 726 and 1114 of the Bankruptcy Code. Without limiting the foregoing, subject to entry of the Final Order, the DIP Superpriority Claim shall be payable from the proceeds of Avoidance Actions (other than actions brought under section 549 of the Bankruptcy Code, which shall be approved upon entry of this Interim Order).

[9] Other than section 507(b) claims of the Prepetition Term Lenders as set forth in the Priority Waterfall.

9. No Obligation to Extend Credit. No ABL DIP Credit Party shall have any obligation to make any loan or advance under the ABL DIP Loan Documents unless all of the conditions precedent to the making of such extension of credit or the issuance of such letter of credit under the applicable ABL DIP Loan Documents and this Interim Order have been satisfied in full or waived by the ABL DIP Agent, in its sole discretion.

10. Use of ABL DIP Facility Proceeds. From and after the Petition Date, the Debtors shall use advances of credit under the ABL DIP Facility only for the purposes specifically set forth in this Interim Order and the ABL DIP Loan Documents, and in compliance with the Budget as provided in the ABL DIP Loan Documents (subject to permitted variances), a copy of which has been delivered to the ABL DIP Agent, the Term Loan DIP Agent, the Prepetition ABL Agent and the Prepetition Term Loan Agent and is attached hereto as Exhibit D, as the same may amended or updated in accordance with the DIP Loan Documents.

**Authorization to Use Cash Collateral**

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order and the ABL DIP Loan Documents, and in accordance with the Budget as provided in the ABL DIP Loan Documents, the Debtors are authorized hereunder to use Cash Collateral until the Interim Order Termination Date; provided, however, that during the Remedies Notice Period (as defined herein) the Debtors may use Cash Collateral solely to meet payroll (other than severance), to pay expenses critical to the preservation of the Debtors and their estates as agreed by the ABL DIP Agent in its reasonable discretion, in each case in accordance with the terms and provisions of the Budget (subject to permitted variances), and to pay amounts covered by (or to fund a reserve to pay) the Carve-Out. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business (which shall be subject to further Orders of this Court), or any

Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order and the ABL DIP Loan Documents and in accordance with the Budget as provided in the ABL DIP Loan Documents.

**Adequate Protection Provisions**

12. Adequate Protection Liens; Adequate Protection Payments; Access to Records. Subject in all respects to the Carve-Out, the Prepetition Intercreditor Agreement, the Priority Waterfall and the priorities set forth therein, as adequate protection for any Diminution in Value of the Prepetition Collateral (including Cash Collateral), the Prepetition Secured Creditors shall receive adequate protection as follows:

(a) *Creation of Adequate Protection Liens*. To the extent of any Diminution in Value, each of the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Creditors) and the Prepetition Term Loan Agent (for the benefit of itself and the other Prepetition Term Loan Creditors) is hereby granted, pursuant to Sections 361, 363 and 364(d) of the Bankruptcy Code, valid and perfected replacement and additional security interests in, and liens on all of the Debtors' right, title and interest in, to and under all DIP Collateral (the "**Adequate Protection Liens**"). The Adequate Protection Liens granted to the Prepetition ABL Agent shall secure the Prepetition ABL Obligations and the Adequate Protection Liens granted to the Prepetition Term Loan Agent shall secure the Prepetition Term Loan Obligations (and in each case shall be subject to the relative priorities of the Prepetition Senior Liens of the Prepetition ABL Agent and the Prepetition Term Loan Agent set forth in the Prepetition Intercreditor Agreement and shall be subject to the Priority Waterfall). The Adequate Protection Liens (x) are and shall be valid, binding enforceable and fully perfected as of the date hereof, (y) subordinate and subject to, and in accordance with the Priority Waterfall, (i) the DIP Liens

(solely to the extent provided in the Priority Waterfall), (ii) the Permitted Prior Liens and (iii) the Carve-Out, and (z) in all instances, are subject to the Prepetition Intercreditor Agreement and the relative priorities of the Prepetition Senior Liens of the Prepetition ABL Agent and the Prepetition Term Loan Agent as set forth therein. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to cases under Chapter 7 of the Bankruptcy Code (or in any other Successor Cases), and/or upon the dismissal of any of the Cases or Successor Cases.

(b) *Adequate Protection Payments*. The Prepetition Secured Creditors shall receive additional adequate protection in the form of the following:

(i) in the case of the Prepetition ABL Creditors, (A) subject to the notice and objection provisions set forth in paragraph 26 herein, the current payment of the reasonable and documented out-of-pocket costs, fees and expenses of the financial advisors and attorneys of the Prepetition ABL Agent, (B) until the Prepetition ABL Obligations have been paid in full, the payment of all accrued and unpaid interest at the “Default Rate” as provided in the Prepetition ABL Credit Agreement, (C) payment of the Prepetition ABL Obligations from the proceeds of DIP Collateral as set forth in paragraph 18 below, and (D) upon the entry of the Final Order and subject to the terms thereof, payment to the Prepetition ABL Agent, of $250,000 in escrow to secure contingent indemnification obligations arising under or related to the Prepetition ABL Credit Documents (the “**Prepetition ABL Escrow**”), ; and

(ii) in the case of the Prepetition Term Loan Creditors, (A) subject to the notice and objection provisions set forth in paragraph 26 herein, the current payment of the reasonable and documented out-of-pocket costs, fees and expenses of counsel for the Prepetition

Term Loan Agent and the following financial advisors and attorneys of the Steering Committee: Weil, Gotshal & Manges LLP, Goodmans LLP, FTI Consulting, Inc., and Morris, Nichols, Arsht & Tunnel LLP, (B) until the Prepetition Term Obligations have been paid in full, payment of all accrued and unpaid interest at the "Default Rate" as provided in the Prepetition Term Loan Agreement; and (C) upon entry of the Final Order, payment to the Prepetition Term Loan Agent, for the benefit of the Prepetition Term Loan Creditors, of $250,000 in escrow to secure contingent indemnification obligations arising under or related to the Prepetition Term Loan Credit Documents (the "**Prepetition Term Loan Escrow**"), provided that notwithstanding anything to the contrary contained in this Interim Order or the Prepetition Intercreditor Agreement, following any Prepetition Term Loan Creditor's receipt of any adequate protection payments described in this clause (ii), all proceeds of Fixed Asset Priority Collateral thereafter received shall be applied first to repay the Prepetition ABL Obligations or the ABL DIP Obligations, as applicable, until the amount of such proceeds of Fixed Asset Priority Collateral so applied to the Prepetition ABL Obligations and the ABL DIP Obligations, in the aggregate, is equal to the amount of any adequate protection payments described in this clause (ii) that have been received by the Prepetition Term Loan Creditors and funded with ABL Priority Collateral (as defined in the Prepetition Intercreditor Agreement) or the proceeds thereof or with advances under the ABL DIP Facility or the proceeds thereof (it being understood that the Prepetition ABL Creditors and the ABL DIP Lender Parties shall not receive any such reimbursement payments to the extent that the Prepetition Term Loan Creditors receive adequate protection payments under this clause (ii) from the proceeds of the Fixed Asset Priority Collateral, including collateral identified as Fixed Asset Priority Collateral in the Priority Waterfall).

(c) *Access to Records*. In addition to, and without limiting, whatever rights to access the Prepetition Secured Creditors have under their respective Prepetition Credit Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents and employees of the Prepetition Secured Creditors (i) to have access to and inspect the Debtors' properties, (ii) to examine the Debtors' books and records, (iii) to discuss the Debtors' affairs, finances and condition with the Debtors' officers and financial advisors, and (iv) otherwise have full cooperation of the Debtors in accordance with the terms of the Prepetition Credit Documents. Without limiting the foregoing, the Debtors shall provide copies to each Prepetition ABL Agent and the Prepetition Term Loan Agent of any documents, notices or other materials provided to any DIP Credit Party simultaneously with the delivery of such documents, notices or materials to such DIP Credit Party.

13. Adequate Protection Superpriority Claims.

(a) *Superpriority Claims of Prepetition ABL Agent and Prepetition Term Loan Agent*. As further adequate protection of the interests of (i) the Prepetition ABL Agent and the other Prepetition ABL Creditors with respect to the Prepetition ABL Obligations and (ii) the Prepetition Term Loan Agent and the other Prepetition Term Loan Creditors with respect to the Prepetition Term Loan Obligations, each of the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Creditors) and the Prepetition Term Loan Agent (for the benefit of itself and the other Prepetition Term Loan Creditors) is hereby granted, to the maximum extent set forth in Section 507(b) of the Bankruptcy Code, an allowed administrative claim against the Debtors' estates under Sections 503 and 507(b) of the Bankruptcy Code (the "**Adequate Protection Superpriority Claims**") to the extent that the Adequate Protection Liens do not

adequately protect against any Diminution in Value of the Prepetition ABL Agent's and the Prepetition Term Loan Agent's respective interests in the Prepetition Collateral.

(b) *Priority of Adequate Protection Superpriority Claims*. The Adequate Protection Superpriority Claims granted to each of the Prepetition ABL Agent and the Prepetition Term Loan Agent shall be junior and subordinate to the Carve-Out, the DIP Superpriority Claims and the Adequate Protection Liens to the extent set forth in the Priority Waterfall, and subject in all respects to the Prepetition Intercreditor Agreement, and shall otherwise have priority over administrative expenses of the kinds specified in or ordered pursuant to Sections 503(b), 546 and 507(b) of the Bankruptcy Code.[10]

**<u>Provisions Common to DIP Financing and Use of Cash Collateral Authorizations</u>**

14. <u>Amendments</u>. The DIP Loan Documents may from time to time be amended, modified or supplemented by the parties thereto without notice or a hearing if: (i) in the reasonable judgment of the Debtors and the ABL DIP Agent and/or the Term Loan DIP Agent, as applicable, the amendment, modification, or supplement (A) is in accordance with the relevant DIP Loan Documents, (B) is not prejudicial in any material respect to the rights of third parties, and (C) has been consented to by the ABL DIP Agent and/or the Term Loan DIP Agent, as applicable, and (ii) a copy (which may be provided through electronic mail or facsimile) of the form of amendment, modification or supplement is provided to counsel for the Committee, if any, the Prepetition ABL Agent, the ABL DIP Agent, Term Loan DIP Agent, the Prepetition Term Loan Agent and the U.S. Trustee at least three (3) Business Days prior to the effective date of the amendment, modification or supplement. The Debtors will file all material amendments,

[10] Notwithstanding anything to the contrary set forth in this Interim Order and for the avoidance of doubt, none of the Adequate Protection Liens shall extend to any of the Excluded Property (as defined in the ABL DIP Loan Documents), and any lien on the proceeds of Avoidance Actions shall be subject to entry of the Final Order (other than Avoidance Actions under section 549 of the Bankruptcy Code, which shall be effective upon entry of the Interim Order).

modifications and supplements with the Court at least three (3) Business Days prior to the effective date of the same.

15. Budget Maintenance. The Budget and any modification to, or amendment or update of, the Budget shall be in form and substance reasonably acceptable to the ABL DIP Agent, and approved by the ABL DIP Agent in its Permitted Discretion. The Debtors shall comply with and update the Budget from time to time in accordance with the ABL DIP Loan Documents (provided that any update shall be in form and substance reasonably acceptable to the ABL DIP Agent in its Permitted Discretion).

16. Modification of Automatic Stay. The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, the Adequate Protection Liens, the DIP Superpriority Claims and the Adequate Protection Superpriority Claims; and (b) authorize the Debtors to pay, and the ABL DIP Lender Parties and Prepetition Secured Creditors to retain and apply, payments made in accordance with the terms of this Interim Order.

17. Perfection of DIP Liens and Adequate Protection Liens.

(a) *Automatic Perfection of Liens*. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, collateral access agreement, customs broker agreement or freight forwarding agreement) to

validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the ABL DIP Lender Parties or the Prepetition Secured Creditors to the priorities granted herein. Notwithstanding the foregoing, the ABL DIP Agent is authorized to file, in its Permitted Discretion as it may deem necessary, such financing statements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence any of the DIP Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create, perfect or enforce the DIP Liens or the Adequate Protection Liens. The Debtors are authorized to execute and deliver promptly upon demand to the ABL DIP Agent all such financing statements, mortgages, control agreements, notices and other documents as the ABL DIP Agent may reasonably request. The ABL DIP Agent, in its Permitted Discretion (as defined in the DIP ABL Credit Agreement), may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

18. Repayment of Prepetition ABL Obligations.

(a) Prior to the occurrence of the Interim Order Termination Date, the proceeds of DIP Collateral (other than net identifiable proceeds of the Fixed Asset Priority Collateral, including collateral identified as Fixed Asset Priority Collateral in the Priority Waterfall) received by the ABL DIP Agent, including such funds transferred and credited to the "Concentration Account" maintained at Bank of America, N.A. shall be applied as follows: *first*, to payment of the Prepetition ABL Obligations in accordance with the terms of the Prepetition

ABL Credit Documents, *second*, to payment of fees, costs and expenses, payable and reimbursable by the Debtors under the ABL DIP Credit Agreement and the other ABL DIP Loan Documents; *third*, to payment of all ABL DIP Obligations in accordance with the ABL DIP Loan Documents; *fourth*, to cash collateralize Letters of Credit in accordance with the ABL DIP Loan Documents; *fifth* to the payment of the Prepetition Term Loan Obligations in accordance with the Prepetition Term Loan Documents; and *sixth* upon Payment in Full of the Prepetition ABL Obligations and the ABL DIP Obligations, to the Debtors' operating account, or for the account of and paid to whoever may be lawfully entitled thereto.

(b) Notwithstanding the foregoing provisions of paragraph 18(a) of this Interim Order or Article 4 of the Prepetition Intercreditor Agreement, and subject to paragraph 12(b)(ii) of this Interim Order, the Debtors shall segregate proceeds of Fixed Asset Priority Collateral, including collateral identified as Fixed Asset Priority Collateral in the Priority Waterfall, and upon the receipt of any net identifiable proceeds thereof, pay over such proceeds to the Prepetition Term Loan Agent for application to the Prepetition Term Loan Obligations.

(c) As among the ABL DIP Agent, the ABL DIP Lenders and the other ABL DIP Lender Parties, nothing provided herein shall be deemed to modify the allocation of the proceeds of DIP Collateral set forth in the Prepetition ABL Credit Documents and ABL DIP Loan Documents.

(d) The Debtors shall not, directly or indirectly, voluntarily purchase, redeem, defease, or prepay any principal, premium, if any, interest or other amount payable in respect of any indebtedness prior to its scheduled maturity, other than the ABL DIP Obligations, the Prepetition ABL Obligations and, with the net identifiable proceeds of Fixed Asset Priority Collateral, including collateral identified as Fixed Asset Priority Collateral in the Priority

Waterfall, the Prepetition Term Loan Obligations (each in accordance with the ABL DIP Loan Documents and this Interim Order), the Interim Term Loan DIP Obligations and obligations authorized to be paid under the ABL DIP Loan Documents by an order of the Court, including pursuant to the Budget.

19. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in these Cases or any Successor Cases shall obtain credit or incur debt pursuant to Sections 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the ABL DIP Loan Documents at any time prior to the payment in full of all Prepetition ABL Obligations and all ABL DIP Obligations, all Interim Term Loan DIP Obligations and the termination of the ABL DIP Lender Parties' obligations to extend credit under the ABL DIP Facility, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to any or all of the Debtors and the Debtors' estates, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the ABL DIP Agent or the Prepetition Term Loan Agent, as applicable, to be applied as set forth in paragraph 18 herein.

20. Maintenance of DIP Collateral. Until the payment in full of all Prepetition ABL Obligations and all ABL DIP Obligations, and the termination of the ABL DIP Lender Parties' obligations to extend credit under the ABL DIP Loan Documents, as provided therein, the Debtors shall (a) insure the DIP Collateral as required under the ABL DIP Facility, and (b) maintain the cash management system which has been agreed to by the ABL DIP Agent or as otherwise required by the ABL DIP Loan Documents.

21. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral except as permitted by the

ABL DIP Loan Documents. Nothing provided herein shall limit the right of any ABL DIP Credit Party or any Prepetition Secured Creditor to object to any proposed disposition of the DIP Collateral.

22. Termination Date. On the Interim Order Termination Date, (i) all ABL DIP Obligations shall be immediately due and payable, (ii) all commitments to extend credit under the ABL DIP Facility will terminate, and (iii) all authority to use Cash Collateral hereunder shall cease, provided, however, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral solely as set forth in paragraph 11 herein. In addition, the Debtors' authority hereunder to use Cash Collateral shall terminate upon the earlier to occur of (such date, the "**Cash Collateral Termination Date**" (a) the date that is 40 days following entry of the Interim Order if the Prepetition Term Obligations have not been repaid in full in cash, (b) the failure of the Debtors to make any adequate protection payment as an when required by the terms of this Interim Order, (c) the date that is 40 days following entry of the Interim Order if a Final Order acceptable to the Term Loan DIP Agent or reasonably acceptable to the Debtors, the ABL DIP Agent, the Prepetition ABL Agent, and the Prepetition Term Loan Required Lenders has not been entered, or (d) the dismissal of any of the Cases, the conversion of any Case to a case under chapter 7 of the Bankruptcy Code, or the appointment of a chapter 11 trustee with expanded powers in any of the Cases; provided, however, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral solely as set forth in paragraph 11 herein.

23. Events of Default. The occurrence of an "Event of Default" under the ABL DIP Credit Agreement shall constitute an event of default under this Interim Order (each, an "**Event of Default**").

24. Rights and Remedies Upon Event of Default.

(a) *ABL DIP Facility Termination.* Immediately upon the occurrence and during the continuance of an Event of Default, or the failure of the Debtors to make any adequate protection payment when due under the terms of this Interim Order, the ABL DIP Agent may in its discretion (or shall in accordance with the DIP Loan Documents) (i) declare the ABL DIP Facility terminated (such declaration, a "**Termination Declaration**") or (ii) with respect to the ABL DIP Facility send a reservation of rights notice to the Debtors, which notice may advise the Debtors that any further advances under the ABL DIP Facility will be made in the sole discretion of the ABL DIP Agent and/or the ABL DIP Lenders. Upon the issuance of a Termination Declaration to the Debtors in accordance with the ABL DIP Credit Agreement: (I) all or any portion of the Commitments of the relevant DIP Lender Parties to make loans or otherwise extend credit may be suspended or terminated in accordance with the applicable DIP Loan Documents (other than, for the avoidance of doubt, to fund the Carve-Out under the ABL DIP Credit Agreement); (II) all ABL DIP Obligations may be deemed immediately due and payable in accordance with the ABL DIP Loan Documents (other than, for the avoidance of doubt, to fund the Carve-Out under the ABL DIP Credit Agreement); (III) after the expiration of the Remedies Notice Period, and unless the Court orders otherwise prior to the expiration thereof, the ABL DIP Agent and the ABL DIP Lenders may exercise all other rights and remedies available to them under the ABL DIP Credit Agreement (subject to the Priority Waterfall and, upon its effectiveness, the Post-Petition Intercreditor Arrangements); and (IV) after expiration of the Remedies Notice Period, and unless the Court orders otherwise prior to the expiration thereof, any right or ability of the Debtors to use any Cash Collateral may be terminated, reduced or restricted by the ABL DIP Agent, provided that, during the Remedies Notice Period, the

Debtors may use Cash Collateral solely to meet payroll (other than severance), to pay expenses critical to the preservation of the Debtors and their estates as agreed by the ABL DIP Agent in its reasonable discretion, and to pay (or fund a reserve for) amounts covered by the Carve-Out, in each case in accordance with the terms and provisions of the Budget. With respect to the DIP Collateral, after expiration of the Remedies Notice Period, and unless the Court orders otherwise prior to the expiration thereof, the ABL DIP Lender Parties may exercise all rights and remedies available to them under the ABL DIP Loan Documents or applicable law against the DIP Collateral (subject to the Priority Waterfall and, upon its effectiveness, the Post-Petition Intercreditor Arrangements) including: (i) entering onto the premises of any Debtor in connection with an orderly liquidation of the DIP Collateral, and/or (ii) exercising any rights and remedies provided under the ABL DIP Loan Documents, or at law or equity, including all remedies provided under the Bankruptcy Code and pursuant to this Interim Order and, if applicable, the Final Order. For the avoidance of doubt, no party-in-interest (other than the ABL DIP Lender Parties) may at any time exercise any rights and remedies available to them against the DIP Collateral that is ABL Priority Collateral until the ABL DIP Obligations (other than contingent indemnification obligations for which a claim has not been asserted) are paid in full in cash. After the expiration of the Remedies Notice Period, and unless the Court orders otherwise prior to the expiration thereof, the ABL DIP Agent may require the Debtors to seek authority from the Court to retain an Approved Liquidator for the purpose of conducting a liquidation or "going out of business" sale and/or the orderly liquidation of the DIP Collateral and, if the Debtors refuse to seek such authority, the ABL DIP Agent shall be entitled to seek such authority directly from the Court.

(b) *Notice of Termination*. Any Termination Declaration shall be given by facsimile (or other electronic means, including electronic mail) to counsel to the Debtors, counsel to the Prepetition ABL Agent, counsel to the Prepetition Term Loan Agent, counsel to the Term Loan DIP Agent or the ABL DIP Agent, as applicable, counsel to the Prepetition Required Term Lenders, counsel to the Committee, if any, the Monitor and the U.S. Trustee (the first Business Day any such Termination Declaration has been delivered to all of the foregoing parties, the "**Termination Declaration Date**"). The ABL DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the Termination Declaration Date, except as provided in paragraphs 11 and 24 of this Interim Order. The automatic stay otherwise applicable to the ABL DIP Lender Parties is hereby modified so that five (5) Business Days after the Termination Declaration Date or the Cash Collateral Termination Date (the "**Remedies Notice Period**"), unless the Court orders otherwise prior to the expiration thereof, subject to the Prepetition Intercreditor Agreement, the Priority Waterfall and, upon its effectiveness, the Post-Petition Intercreditor Arrangements, the ABL DIP Lender Parties shall be entitled to exercise all rights and remedies against the DIP Collateral in accordance with the ABL DIP Loan Documents or the Prepetition ABL Credit Documents, as applicable, and this Interim Order, and shall be permitted to satisfy the DIP Liens, the Prepetition Senior Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims, subject only to the Carve-Out and Prepetition Permitted Liens and in accordance with the priorities set forth in the Priority Waterfall. During the Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing with the Court for the purpose of contesting whether an Event of Default or Cash Collateral Termination Event, as applicable, has occurred. Unless the Court determines during the Remedies Notice Period that

an Event of Default or Cash Collateral Termination Event, as applicable, has not occurred or otherwise orders that the automatic stay shall not be terminated, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order and the ABL DIP Lender Parties shall be permitted to exercise all remedies set forth herein, in the ABL DIP Credit Agreement and ABL DIP Loan Documents, and as otherwise available at law against the DIP Collateral, without further order of or application or motion to the Court, and without restriction or restraint by any stay under Sections 105 or 362 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the DIP Collateral or any other rights and remedies granted to the ABL DIP Agent with respect thereto pursuant to the ABL DIP Credit Agreement, the other ABL DIP Loan Documents or this Interim Order.

(c) *Access to Leased Premises*. The ABL DIP Agent's exercise of its remedies pursuant to this paragraph 24 shall be subject to: (w) any agreement in writing between the ABL DIP Agent or Prepetition ABL Agent and any applicable landlord, (x) pre-existing rights of the ABL DIP Agent and any applicable landlord under applicable non-bankruptcy law, (y) consent of the applicable landlord, or (z) further order of the Court following notice and a hearing.

25. Good Faith Under Section 364 of the Bankruptcy Code; No Modification or Stay of this Interim Order. The ABL DIP Lender Parties and the Prepetition Secured Creditors have acted in good faith in connection with this Interim Order and their reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with Section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, amended or

vacated by a subsequent order of this Court, or any other court, the ABL DIP Lender Parties and the Prepetition ABL Creditors are entitled to the protections provided in Section 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority authorized or created hereby, provided that with respect to the ABL DIP Lender Parties the Interim Order was not stayed by court order after due notice had been given to the ABL DIP Agent at the time the advances were made or the liens, claims or priorities were authorized and/or created. Any liens or claims granted to the ABL DIP Lender Parties hereunder arising prior to the effective date of any such reversal, modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted herein, provided that with respect to the ABL DIP Lender Parties, the Interim Order was not stayed by court order after due notice had been given to the ABL DIP Agent at the time the advances were made or the liens, claims or priorities were authorized and/or created.

26. DIP and Other Expenses. The Debtors are authorized and directed to pay reasonable and documented out-of-pocket expenses (and the Prepetition ABL Agent, the Prepetition Term Loan Agent or the ABL DIP Agent, as applicable, are authorized to make advances or charges against the applicable loan account to pay such expenses) of (i) the ABL DIP Lender Parties in connection with the ABL DIP Facility (including, without limitation, expenses incurred prior to the Petition Date), as provided in the ABL DIP Loan Documents and (ii) the Prepetition Agents and the Prepetition Required Term Lenders (including, without limitation, expenses incurred prior to the Petition Date) as provided in the Prepetition Credit Documents, including, without limitation, reasonable legal, financial advisory, accounting,

collateral examination, monitoring and appraisal fees, and indemnification and reimbursement of fees and expenses, upon the Debtors' receipt of invoices for the payment thereof, after the expiration of the 10-day review period set forth in this paragraph. Payment of all such fees and expenses shall not be subject to allowance by the Court and professionals for the ABL DIP Lender Parties, the Prepetition Agents, and the Prepetition Required Term Lenders shall not be required to comply with U.S. Trustee fee guidelines. The professionals for the ABL DIP Lender Parties and the Prepetition Agents shall deliver a copy of their respective invoices to counsel for the Committee, if any, and the U.S. Trustee, redacted as necessary with respect to any privileged or confidential information contained therein. Any objections raised by the Debtors, the U.S. Trustee or the Committee, if any, with respect to such invoices within ten (10) days of the receipt thereof will be subject to resolution by the Court. In the event of any objection, the provisions of Section 107 of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure shall apply. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors.

27. Indemnification.

(a) *Generally*. The Debtors shall indemnify and hold harmless the ABL DIP Agent and each other ABL DIP Credit Party, and each of their respective shareholders, members, directors, agents, officers, subsidiaries and affiliates, successors and assigns, attorneys and professional advisors, in their respective capacities as such, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action, whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an indemnified party of every nature and character arising out of or related to the DIP Loan Documents, the DIP Facilities or the transactions contemplated thereby

or by this Interim Order, whether such indemnified party is party thereto, as provided in and pursuant to the terms of the DIP Loan Documents and as further described therein and herein, or in connection with these Cases, any plan, or any action or inaction by the Debtors; provided, that such indemnity shall not, as to any indemnified party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted directly from the gross negligence or willful misconduct of such indemnified party. The indemnity includes indemnification for the ABL DIP Agent's exercise of discretionary rights granted under the applicable DIP Facilities. In all such litigation, or the preparation therefor, each of the ABL DIP Agent and each other ABL DIP Credit Party shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable fees and expenses of such counsel, subject to the same review and objection procedures as set forth in paragraph 26 of this Interim Order.

28. Proofs of Claim. None of the ABL DIP Lender Parties or the Prepetition Secured Creditors will be required to file proofs of claim or requests for approval of administrative expenses in any of the Cases or Successor Cases based upon the ABL DIP Obligations or the Prepetition Secured Obligations, as applicable, and the provisions of this Interim Order relating to the amount of the ABL DIP Obligations, the DIP Superpriority Claims, the Prepetition ABL Obligations and the Prepetition Term Loan Obligations shall constitute timely filed proofs of claim and/or administrative expense requests in each of the Cases.

29. Rights of Access and Information. Without limiting the rights of access and information afforded the ABL DIP Lender Parties under the ABL DIP Loan Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of

the ABL DIP Agent reasonable access to the Debtors' premises and their books and records in accordance with the ABL DIP Loan Documents, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers and consultants to cooperate, consult with, and provide to the ABL DIP Agent all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any Debtor.

30. Carve-Out.

(a) *Carve-Out*. As used in this Interim Order, the "**Carve-Out**" means, collectively, the sum of: (I) all allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6) for statutory fees payable to the Office of the United States Trustee, together with the statutory rate of interest, or by final order of the Court, and 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Court; (II) all reasonable and documented fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (III) to the extent allowed at any time, whether by interim order, procedural order, or otherwise all unpaid fees, costs, and expenses (the "**Professional Fees**") incurred by (x) persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code and (y) the Monitor and Professionals of the Debtors and the Monitor retained, in each case, in connection with the Canadian Proceedings, to the extent such fees are covered by an "Administrative Charges" set forth in the Interim Order entered by the Canadian Court, however the "Administrative Charges" shall be included in the Carve-Out and not duplicative of the Carve-Out (collectively, the "**Debtor Professionals**") and the Committee, if any, appointed in the Chapter 11 Cases pursuant to section 328 or 1103 of the Bankruptcy Code (together with the

Debtor Professionals, the "**Professionals**")[11] at any time on or before the day which the ABL DIP Agent delivers a Carve-Out Trigger Notice (in accordance with and as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (IV) Professional Fees (excluding any success fees, completion fees, or similar compensation) in an aggregate amount not to exceed $7,500,000 (the "**Carve-Out Cap**") incurred after the first business day following delivery by the ABL DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (IV) being the "**Post Carve-Out Trigger Notice Cap**").

(b) *Payment of the Carve-Out*. Any funding of the Carve-Out pursuant to the terms of this Interim Order or the ABL DIP Loan Documents shall be added to and made a part of the DIP Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this Interim Order, the ABL DIP Loan Documents, the Bankruptcy Code, and applicable law.

(c) For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the ABL DIP Agent, to the Debtors, their lead restructuring counsel, the U.S. Trustee, counsel to Prepetition Agents and counsel to the Prepetition Required Term Loan Lenders, as applicable, which notice may be delivered on or after the Interim Order Termination Date or Cash Collateral Termination Date, stating that the Carve-Out Trigger Notice Cap has been invoked. On the day on which a Carve-Out Trigger Notice is given to the Debtors (the "**Carve-Out Trigger Notice Date**"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to

[11] The Carve-Out incorporates relevant "Administrative Charges" set forth in the Interim Order entered by the Canadian Court, however the "Administrative Charges" shall be included in the Carve-Out and not duplicative of the Carve-Out.

the then unpaid amounts of the Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay unpaid Professional Fees described in clauses (I) through (III) of the definition of Carve-Out set forth above (the "**Pre Carve-Out Trigger Notice Reserve**") prior to any and all other claims. On the Carve-Out Trigger Notice Date, the Carve-Out Trigger Notice shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor (or to borrow under the DIP Loan Documents) to fund a reserve in an amount equal to the Post Carve-Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Professional Fees benefiting from the Post Carve-Out Trigger Notice Cap (the "**Post Carve-Out Trigger Notice Reserve**" and, together with the Pre Carve-Out Trigger Notice Reserve, the "**Carve-Out Reserves**") prior to any and all other claims. All funds in the Pre Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (I) through (III) of the definition of Carve-Out set forth above (the "**Pre Carve-Out Amounts**"), but not, for the avoidance of doubt, the Post Carve-Out Trigger Notice Cap, until paid in full, then, to the extent the Pre Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay any outstanding obligations in accordance with their rights and priorities as set forth herein. All funds in the Post Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (IV) of the definition of Carve-Out set forth above (the "**Post Carve-Out Amounts**"), then, to the extent the Post Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay any outstanding ABL DIP Obligations in accordance with the rights and priorities as set forth herein. Notwithstanding anything to the contrary in the DIP Loan Documents, the Prepetition Credit Documents, or this Interim Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this paragraph 30, then, any excess funds in one of the

Carve-Out Reserves following the payment of the Pre Carve-Out Amounts or the Post Carve-Out Amounts, as applicable, shall first be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 30, prior to making any other payments hereunder. Notwithstanding anything to the contrary in the DIP Loan Documents, the Prepetition Credit Documents, or this Interim Order, following delivery of a Carve-Out Trigger Notice, neither the ABL DIP Agent, the Prepetition Term Loan Agent nor the Prepetition ABL Agent shall sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but the ABL DIP Agent shall have a security interest in any residual interest in the Carve-Out Reserves.

(d) Further, notwithstanding anything to the contrary in this Interim Order, (i) the failure of the Carve-Out Reserves to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out, and (ii) in no way shall the Budget, the Carve-Out, the Post Carve-Out Trigger Notice Cap, Carve-Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Professional Fees due and payable by the Debtors or the Committee, if any, or as a limitation on the rights of any party to object to the reasonableness of the Professional Fees. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the Prepetition Credit Documents or DIP Loan Documents, the Carve-Out shall be senior to all liens and claims securing the Prepetition Secured Obligations or DIP Obligations, the Adequate Protection Liens, any 507(b) Claims, any claims under section 506(c) of the Bankruptcy Code and any and all other forms of adequate protection, liens, or claims securing the obligations under the Prepetition Credit Documents or DIP Loan Documents. Any payment or reimbursement made prior to the occurrence of the Carve-Out Trigger Notice Date in respect of any Professional Fees shall not reduce the Carve-Out. Any payment or reimbursement made

on or after the occurrence of the Carve-Out Trigger Notice Date in respect of any Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

(e) Limitations on the ABL DIP Facility, the DIP Collateral, the Cash Collateral and the Carve-Out. The ABL DIP Facility, the DIP Collateral, the Cash Collateral and the Carve-Out may not be used in connection with or to finance in any way: (a) any action, suit, arbitration, proceeding, application, motion or other litigation of any type (including, without limitation, in connection with the assertion of or joinder in any claim, counterclaim, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief) (i) invalidating, setting aside, avoiding or subordinating, in whole or in part, any ABL DIP Obligations, Interim Term Loan DIP Obligations or Prepetition Secured Obligations, (ii) for monetary, injunctive or other affirmative relief against the ABL DIP Lender Parties or the Prepetition Secured Creditors or their respective collateral, (iii) preventing, hindering or otherwise delaying the exercise by the ABL DIP Lender Parties or the Prepetition Secured Creditors of any rights and remedies under this Interim Order or the Final Order, the ABL DIP Loan Documents, the Prepetition Credit Documents, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the ABL DIP Agent upon any of the DIP Collateral or by the Prepetition ABL Agent or the Prepetition Term Loan Agent with respect to its Adequate Protection Liens, (iv) asserting that the value of the Prepetition Collateral is less than the Prepetition Secured Obligations, or (v) pursuing litigation against the ABL DIP Credit Parties or the Prepetition Secured Creditors; (b) objecting to, contesting, or interfering with, in any way, the ABL DIP Lender Parties' or the Prepetition Secured Creditors' enforcement or realization upon any of the DIP Collateral following a Termination Declaration, except as

provided for in this Interim Order and consistent with the Priority Waterfall, or seeking to prevent the ABL DIP Agent or the Prepetition Secured Creditors from credit bidding in connection with any proposed plan or reorganization or liquidation or any proposed transaction pursuant to section 363 of the Bankruptcy Code; (c) using or seeking to use Cash Collateral while the ABL DIP Obligations or the Prepetition Secured Obligations remain outstanding in a manner inconsistent this Interim Order, the Priority Waterfall and the ABL DIP Loan Documents; (d) incurring Indebtedness (as defined in the ABL DIP Credit Agreement) outside the ordinary course of business, except as permitted under the ABL DIP Loan Documents; (e) objecting to or challenging in any way the claims, liens, or interests held by or on behalf of the ABL DIP Lender Parties or the Prepetition Secured Creditors; (f) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, against the ABL DIP Lender Parties or the Prepetition Secured Creditors; or (g) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the ABL DIP Obligations, the Interim Term Loan DIP Obligations (upon entry of the Final Order), the Prepetition Secured Obligations, the DIP Liens or the Prepetition Senior Liens or any other rights or interests of the ABL DIP Lender Parties or the Prepetition Secured Creditors; provided, that the foregoing limitations shall not encompass any investigation of the Prepetition Secured Obligations and the Prepetition Senior Liens conducted by Professionals retained by the Committee, if any, so long as the costs, fees and expenses incurred by such Professionals do not exceed $25,000 in the aggregate.

(f) Payment of Compensation. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any Professionals or shall affect the right

of the ABL DIP Lender Parties, the Prepetition Secured Creditors or any other party in interest, including the U.S. Trustee, to object to the allowance and payment of such fees and expenses.

31. Reservation of Certain Third Party Rights and Bar of Challenges and Claims.

(a) The stipulations, findings, representations and releases contained in this Interim Order with respect to the Prepetition Secured Creditors and the Prepetition Secured Obligations shall be binding upon all parties-in-interest, any trustee appointed in these cases and the Committee, if any, (each, a "**Challenge Party**"), unless and solely to the extent that (i) the Debtors or, subject to clause (b) below, any other Challenge Party initiates an action or adversary proceeding relating to a Challenge (defined below) during the Challenge Period (defined below), and (ii) the Court rules in favor of the Challenge Party in any such timely and properly filed Challenge. For purposes of this paragraph 31: (a) "**Challenge**" means any claim or cause of action against any of the Prepetition Secured Creditors on behalf of the Debtors or the Debtors' creditors and interest holders, or to object to or to challenge the stipulations, findings or Debtors' Stipulations set forth herein, including, but not limited to those in relation to: (i) the validity, extent, priority, or perfection of the mortgage, security interests, and liens of any Prepetition Secured Creditor; (ii) the validity, allowability, priority, or amount of any of the Prepetition Secured Obligations (including any fees included therein); (iii) the secured status of any of the Prepetition Secured Obligations; (iv) any liability of any of the Prepetition Secured Creditors with respect to anything arising from any of the respective Prepetition Credit Documents; or (v) the releases set forth herein and in the DIP Loan Documents; and (b) "**Challenge Period**" means with respect to any party-in-interest (including the Committee and any chapter 7 or 11 trustee appointed in the Cases), the period from the Petition Date until January 16, 2017.

(b) Upon the expiration of the Challenge Period without the filing of a Challenge (the "**Challenge Period Termination Date**"): (i) any and all such Challenges and objections by any party (including, without limitation, the Committee, if any, any Chapter 11 trustee, and/or any examiner or other estate representative appointed in these Cases, and any Chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred, (ii) all findings, Debtors' Stipulations, waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to each Prepetition Secured Creditors' claims, liens, and interests set forth in this Interim Order shall be of full force and effect and forever binding upon the Debtors, the Debtors' bankruptcy estates and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases; and (iii) any and all claims or causes of action against any of the Prepetition Secured Creditors relating in any way to the Prepetition Credit Documents shall be forever waived and released by the Debtors' estates, all creditors, interest holders and other parties in interest in these Cases and any Successor Cases. In the event that no Challenge is filed with respect to the Prepetition ABL Credit Documents, the Prepetition ABL Obligations or the Prepetition ABL Creditors, all amounts held in the Prepetition ABL Escrow shall be released to the Debtors promptly following the expiration of the Challenge Period.

32. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

33. Section 506(c) Claims. Subject to the entry of the Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time (excluding, for the avoidance of doubt, the Carve-Out) shall be charged against the ABL DIP

Lender Parties, the Term Loan DIP Lender Parties or the DIP Collateral or the Prepetition Secured Creditors or the Prepetition Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise.

34. No Marshaling/Applications of Proceeds. Subject to the entry of the Final Order, none of the ABL DIP Lender Parties, the Term Loan DIP Lender Parties or the Prepetition Secured Creditors shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral.

35. Section 552(b). The ABL DIP Agent and the other ABL DIP Lender Parties and, subject to entry of the Final Order, the Term Loan DIP Agent and the other Term Loan DIP Lender Parties shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code. Subject to the entry of the Final Order, the "equities of the case" exception under Section 552(b) of the Bankruptcy Code shall not apply to the ABL DIP Lender Parties, the Term Loan DIP Secured Parties or the Prepetition Secured Creditors with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral.

36. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of the ABL DIP Facility and the ABL DIP Loan Documents.

37. No Superior Rights of Reclamation. Based on the findings and rulings herein concerning the integrated nature of the DIP Facilities and the Prepetition Credit Documents and the relation back of the DIP Liens, in no event shall any alleged right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) be deemed to have priority over the DIP Liens.

38. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the ABL DIP Lender Parties' or the Prepetition Secured Creditors' right to seek any other or supplemental relief in respect of the Debtors (including the right to seek additional adequate protection), and (b) any of the rights of the ABL DIP Lender Parties or the Prepetition Secured Creditors under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of Section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans. Other than as expressly set forth in this Interim Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the ABL DIP Lender Parties and the Prepetition Secured Creditors are preserved.

39. No Waiver by Failure to Seek Relief. The failure of the ABL DIP Lender Parties to seek relief or otherwise exercise rights and remedies under this Interim Order, the ABL DIP Loan Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the ABL DIP Lender Parties.

40. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the ABL DIP Lender Parties, the Term Loan DIP Lender Parties, the Prepetition Secured Creditors, all other creditors of any of the Debtors, the Committee, if any, or any other court-appointed committee appointed in the Cases, and all other parties in interest and their respective successors

and assigns, including any trustee, other fiduciary or liquidating or creditor trust hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case. Notwithstanding anything contained herein with respect to the obligations or limitations when a Final Order is entered, the terms of the Final Order shall be what are binding on all parties.

41. No Modification of Interim Order. Until and unless the DIP Obligations have been paid in full in cash (such payment being without prejudice to any terms or provisions contained in the relevant DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the ABL DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the ABL DIP Agent (i) any reversal, modification, stay, vacatur or amendment to this Interim Order, or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in Sections 503(b), 507(a), 507(b) or 546 of the Bankruptcy Code) in any of the Cases or Successor Cases, equal or superior to the DIP Superpriority Claims, other than the Carve-Out; (b) without the prior written consent of the ABL DIP Agent, any order allowing use of Cash Collateral resulting from DIP Collateral; and (c) without the prior written consent of the ABL DIP Agent, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Interim Order without the prior written consent, as provided in the foregoing, of the ABL DIP Agent, and no such consent shall be implied by any other action, inaction or acquiescence of the ABL DIP Agent.

42. Interim Order Controls. In the event of any inconsistency between the terms and conditions of the ABL DIP Loan Documents and this Interim Order, the provisions of this Interim Order shall govern and control.

43. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization or liquidation in any of the Cases; (b) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; (d) appointment of any liquidation or creditor trust in respect of the Debtors or their assets; or (e) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the ABL DIP Lender Parties and the Prepetition Secured Creditors pursuant to this Interim Order and/or the applicable DIP Loan Documents, notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until all DIP Obligations have been paid in full and all commitments to extend credit under the ABL DIP Facility are terminated. The terms and provisions in this Interim Order concerning the indemnification shall continue in the Cases and in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the ABL DIP Loan Documents and/or the repayment of the ABL DIP Obligations.

44. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the ABL DIP Facility is scheduled for ____________ __, 2016 at ___:__ _.m. (Eastern Time) before the Honorable _____________, United States Bankruptcy Judge,

Courtroom ___, at the United States Bankruptcy Court for the District of Delaware located at 824 Market Street, [__] Floor, Wilmington, Delaware 19801.

45. Notice of Final Hearing. On or before November [●], 2016, the Debtors shall serve, by United States mail, first-class postage prepaid, a copy of the Motion and this Interim Order upon: (i) the U.S. Trustee; (ii) holders of the forty (40) largest unsecured claims on a consolidated basis against the Debtors; (iii) counsel for the ABL DIP Agent; (iv) counsel for the Term Loan DIP Agent; (v) counsel for the Prepetition ABL Agent; (vi) counsel for the Prepetition Term Loan Agent; (vii) any party that has asserted or may assert a lien in the Debtors' assets; (viii) the Debtors' landlords; (ix) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002; (x) applicable state taxing authorities; (xi) the United States Internal Revenue Service; (xii) the Monitor; and (xiii) the United States Securities and Exchange Commission. The Debtors may serve this Motion and the Interim Order without the exhibits attached thereto as such exhibits are voluminous and available, free of charge, at https://cases.primeclerk.com/psg. Such notice is deemed good and sufficient and that no further notice need be given.

46. Objection Deadline. Objections, if any, to the relief sought in the Motion shall be in writing, shall set forth with particularity the grounds for such objections or other statement of position, shall be filed with the clerk of the Court, and personally served upon (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Kelley A. Cornish and Alice Belisle Eaton and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Pauline K. Morgan, Esq., Joel A. Waite, Esq., counsel for the Debtors; (b) the Office of the United States Trustee for the District of Delaware; 844 King Street, Room 2207, Wilmington, DE 19801, Attn:

[_________], (c) counsel to the Committee, if any; (d) Choate, Hall & Stewart LLP, Attn: John F. Ventola, Esq. and Douglas R. Gooding, Esq. and Richards, Layton & Finger, P.A., Attn: Mark D. Collins, Esq. and John H. Knight, Esq., attorneys for the ABL DIP Agent and the Prepetition ABL Agent; (e) Kirkland & Ellis LLP, Attn: Christopher Marcus, attorneys for the Term Loan DIP Agent; (f) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: [____________], attorneys for the Prepetition Term Loan Agent, and (g) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matthew S. Barr, Esq. and Gabriel A. Morgan, Esq. attorneys for the Steering Committee, and (h) Goodmans LLP, Bay Adelaide Centre, 333 Bay Street, Suite 3400, Toronto, ON M5H 2S7, Attn: Joe Latham, attorneys for the Steering Committee so that such objections are filed with the Court and received by said parties on or before __:___ p.m. (Eastern Time) on ____________ ___, 2016 with respect to entry of the Final Order.[12]

47. Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect immediately, notwithstanding anything to the contrary proscribed by applicable law.

48. Waiver of Any Applicable Stay. The Court hereby waives the notice requirements of Bankruptcy Rule 6004(a), if applicable, and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), and/or an order granting relief from the automatic stay under Bankruptcy Rule 4001(a)(3), if applicable.

49. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

[12] To discuss appropriate professionals.

Dated: November ___, 2016
Wilmington, Delaware

_______________________________________

THE HONORABLE [______________________]
UNITED STATES BANKRUPTCY JUDGE

**Exhibit "A"**
**(ABL DIP Credit Agreement)**

**Exhibit "B"**
**(Term Loan DIP Credit Agreement)**

# Exhibit "C"

## Priority Waterfall

**Exhibit "D"**

Budget

# **Exhibit B**

Declaration of Marc D. Puntus

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| BPS US Holdings Inc., *et al.*,[1] | ) | Case No. 16-________ (____) |
| Debtors. | ) | (Joint Administration Requested) |

**DECLARATION OF MARC D. PUNTUS IN SUPPORT OF THE DEBTORS' MOTION: (A) FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SECURED FINANCING PURSUANT TO 11 U.S.C. § 364, (II) AUTHORIZING THE DEBTORS' USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, AND (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED CREDITORS PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; (B) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001; AND (C) GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, I, Marc D. Puntus, hereby declare as follows:

1. I am a Partner and co-head of the Debt Advisory and Restructuring Group at Centerview Partners LLC ("***Centerview***"), investment banker to BPS US Holdings, Inc. and the other above-captioned debtors and debtors-in-possession (collectively, the "***Debtors***"). I submit this declaration in support of the *Debtors' Motion: (A) for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Debtors' Use of Cash Collateral Pursuant to 11 U.S.C. § 363, And (III) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; (B) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001; and (C)*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165) Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors' headquarters are located at 100 Domain Dr., Exeter, NH 03885.

*Granting Related Relief* (the "***DIP Motion***"), which the Debtors filed contemporaneously herewith.

**PROFESSIONAL BACKGROUND**

2. I have over twenty years of experience advising corporations and other constituents in restructuring transactions and chapter 11 cases. I also have considerable experience with mergers, acquisitions and financing transactions. I have prepared various valuation reports and testified as a fact and expert witness on numerous occasions, including in connection with debtor-in-possession and chapter 11 exit financings. Since August 2016, I have been the senior contact at Centerview responsible for day-to-day discussions with the Debtors relating to general restructuring advice, financing efforts, and the Asset Sale (as defined below).

3. Established in 2006, Centerview is a leading independent investment banking firm providing financial advisory services, including mergers and acquisitions and restructuring advice, across a broad range of industries, including consumer products and retail. Centerview serves a diverse set of clients around the world from its offices in New York, Los Angeles, San Francisco, London, and Palo Alto. Centerview's Debt Advisory and Restructuring Group was founded in 2011, and its professionals have extensive experience advising debtors, lenders, committees and acquirors in complex financial restructurings, both out-of-court and in chapter 11 cases.

4. I joined Centerview in 2011 as a Partner and co-head and co-founder of the Debt Advisory and Restructuring Group. Prior to joining Centerview, I was a Managing Director at Miller Buckfire & Co., where I was a founding member and partner for more than ten years. Prior to Miller Buckfire, I was a member of the financial restructuring group at Dresdner Kleinwort Wasserstein, and prior to that, a Partner in the Business, Finance and Restructuring

department of Weil, Gotshal & Manges LLP, a leading global law firm. I have extensive experience in advising troubled companies and their stakeholders. My experience includes a wide range of advisory assignments, including mergers, acquisitions, financings and restructurings, for both public and private companies. My company-side experience includes representing Acterna, Anchor Danly, Autocam, Best Products, BroderBros., Bruno's Supermarkets, Caesars Entertainment Corporation, Clearwire, Cloud Peak Energy, Conversent Communications, CNL Hotels & Resorts, CTC Communications, Dura Automotive, EaglePicher, Edison Brothers, Gate Gourmet, Greatwide Logistics Services, Independence Air, Isola Group, Itronix, J.C. Penney, Keystone Automotive, Magna Entertainment Corp., Mashantucket Pequot Tribal Nation/Foxwoods, MicroWarehouse, OSI Restaurants Partners, Patriot Coal, Pegasus Satellite Communications, Pegasus Broadcast, PlayPower, Progressive Moulded Products, PSINet, Reichhold, Residential Capital, SI Corporation, Sunbeam, Women First Healthcare and Vonage Corporation. I have also represented acquirors, secured lenders and committees in transactions involving, among other companies, AT&T Latin America, Blackhawk Mining, Culligan, DS Waters, EaglePicher, Fairpoint Communications, First Wave Marine, Global Broadcasting, Grove Crane, Heilig-Meyers, Ion Media Networks, Ionica PLC, Lehman Brothers, Linn Energy, Mariner Post-Acute Network, Pacific Exploration and Production, The Pittsburgh Penguins, RDM Sports Group, Rockefeller Center Properties, Safety Components, Seventy Seven Energy, Shared Technologies, Station Casinos, SLI Inc., The Wiz, and XO Communications.

5. As further explained in the *Declaration of Brian J. Fox in Support of Debtors' Chapter 11 Petitions and First-Day Motions* (the "***First Day Declaration***"), since Centerview's engagement in August 2016 by a special committee of Performance Sports Group

Ltd.'s board of directors, formed by the Debtors in August 2016 to address their impending liquidity needs (the "**Special Committee**"), Centerview has worked closely with the Special Committee, Debtors' management, financial staff and other professionals with respect to the Debtors' evaluation of strategic and restructuring alternatives, including, among other things, (i) analyzing the Debtors' liquidity and projected cash flows, (ii) reviewing and analyzing potential debtor-in-possession financing arrangements, (iii) fully acquainting itself with the Debtors' business, operations, properties and finances, and (iv) assisting the Debtors in connection with preparations for commencement of parallel bankruptcy proceedings in the U.S. (the "***Chapter 11 Cases***") and Canada (together with the Chapter 11 Cases, the "***Bankruptcy Proceedings***"), including detailed and significant work relating to the proposed DIP Facilities and Asset Sale (both as defined below).

6. Accordingly, I, along with the other members of the Centerview team, have developed extensive knowledge regarding the Debtors that allows us to provide an assessment of, and demonstrate the need for, the proposed DIP Facilities. Except as otherwise indicated herein, all facts set forth in this Declaration are based on my personal knowledge and experience, and as to information concerning the Debtors, my review of relevant business records and information provided to me by the Debtors and their professionals and Centerview employees working under my supervision.

7. I am not being compensated specifically for this testimony. Centerview, as a professional proposed to be retained by the Debtors, will receive payments in its capacity as financial advisor to the Debtors. If I were called to testify, I could and would testify competently to the matters set forth herein.

**THE DEBTORS' NEED FOR POSTPETITION FINANCING**

8. As more fully explained in the First Day Declaration, the primary focus of these Bankruptcy Proceedings is to facilitate an orderly sale of substantially all of the Debtors' assets as a going concern following a fair and robust sale process (the "***Sale Process***"). The Debtors have already negotiated an asset purchase agreement (the "***Stalking Horse Bid***") with a group of investors led by Sagard Capital Partners, L.P. and Fairfax Financial Holdings Limited (the "***Stalking Horse Bidder***") as a proposed stalking horse purchaser of substantially all of the Debtors' assets (the "***Asset Sale***"). Given the Debtors' challenged operating performance and ongoing accounting investigation, among other factors, leading up to the commencement of the Bankruptcy Proceedings, the Stalking Horse Bid sets an excellent starting point for the Sale Process. It provides for, among other things, (1) the repayment in full of all of the Debtors' secured creditors, (2) the assumption by the Stalking Horse Bidder of certain prepetition unsecured liabilities, (3) the Debtors' trade creditors continuing to receive payments in the ordinary course of business, and (4) the continued operation of the Debtors' business as a going concern under new ownership post-closing.

9. It is critical that the Debtors have access to debtor-in-possession ("***DIP***") financing so they can continue operating their business in the ordinary course to preserve the going-concern value of the Debtors' assets and proceed with the proposed Sale Process. Without DIP financing, the Debtors do not have sufficient unencumbered cash on hand or generate sufficient funds from operations to continue to operate their business or pursue the Sale Process.

10. To assist the Debtors in obtaining DIP financing, the Debtors' financial advisors, Alvarez and Marsal North America, LLC ("***A&M***,"), in consultation with the Debtors and Centerview, have prepared a budget forecasting projected cash flows for the 13-week period

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after the Petition Date (attached to the DIP Motion as ***Exhibit D***) (the "***Approved Budget***"). The Debtors and their advisors have analyzed the use of the Debtors' secured lenders' cash collateral, with or without any additional financing, to fund operations during the Bankruptcy Proceedings. As shown in the Approved Budget, cash collateral, alone, would not be sufficient to fund the Bankruptcy Proceedings and the Debtors' operations between the Petition Date and the projected closing of the Asset Sale. The Approved Budget shows that, absent DIP financing and the use of cash collateral, the Debtors would promptly run out of the liquidity required to operate their businesses following the Petition Date. Without access to the liquidity provided by the DIP Facilities (described below), the Debtors would not be able to proceed with the Sale Process or consummate the Asset Sale and would be forced to curtail operations to the extreme detriment of the Debtors' creditors, customers, vendors, employees, and other parties in interest. Indeed, as with all consumer products and retail businesses, the Debtors' vendor (and customer) relationships are critically important to the value of the enterprise, and maintaining adequate liquidity is essential to continuing these relationships and maximizing the Debtors' future business prospects. Absent the ability to immediately access the liquidity provided under the DIP Facilities, the Debtors would sustain significant diminution in the value of their assets and operations. I therefore believe that the Debtors have an urgent and immediate need to obtain the postpetition financing provided by the DIP Facilities in addition to the use of cash collateral.

## THE DIP FINANCING PROCESS

11. As discussed above, the Special Committee engaged Centerview in August 2016 to act as independent financial advisors to the Special Committee and to assist the Debtors with, among other things, obtaining debt financing, including DIP financing. Accordingly, as more fully described in the First Day Declaration, immediately after being hired

by the Debtors, and at the Special Committee's instruction, Centerview began to work with the Debtors to assess strategic alternatives in the light of, among other things, (1) the Debtors' inability to file audited financial statements which precipitated a default under the Debtors' prepetition secured asset-based loan (the "***Prepetition ABL Facility***") and term loan (the "***Prepetition Term Loan***"), (2) recent challenging operating and financial performance, (3) an ongoing internal accounting investigation, and (4) the Debtors' precarious liquidity position. After careful analysis and consideration, it became apparent that a going concern sale process likely was the optimal path to maximize the value of the Debtors' assets and operations under the Debtors' exigent circumstances. Given the Debtors' liquidity constraints, the Debtors require DIP financing to fund operations and the Sale Process.

12. In view of the Debtors' current circumstances, including the structure of their prepetition capital structure (almost all of which consists of secured indebtedness) and based on preliminary financing indications received from the Stalking Horse Bidder, the Prepetition ABL lenders, and the Prepetition Term Loan lenders, the Debtors determined that obtaining DIP financing from a third party would be extremely challenging, unless such facility was provided either on a junior-lien or unsecured basis, paired with a refinancing of the Debtors' existing indebtedness, or coupled with a potential purchase of the Debtors' assets (with the DIP financing effectively serving as a "down payment" on such purchase). For these reasons, Centerview, together with the Debtors' other professionals, focused their efforts on negotiations with the three parties most likely to provide DIP financing: the Prepetition ABL lenders, the Prepetition Term Loan lenders and the Stalking Horse Bidder. As detailed below, as a result of these efforts, the Debtors received DIP financing proposals from each of the three.

13. The Stalking Horse Bidder indicated early in the process that it would be interested in providing DIP financing and acting as a stalking horse for a sale process to be conducted pursuant to section 363 of the Bankruptcy Code. The Stalking Horse Bidder was not willing to provide DIP financing unless it also secured the role of Stalking Horse Bidder. Nevertheless, the Debtors reviewed and negotiated the Stalking Horse Bidder's proposed DIP financing and asset purchase agreement aggressively and independently so that, if necessary, they could be "de-linked" without any harm to the Debtors' operations or the Sale Process as matters unfold. The Stalking Horse Bid provides tremendous value for the Debtors' estates, and the DIP financing package offered by the Stalking Horse Bidder (the "***Stalking Horse Bidder DIP***") is, for all intents and purposes, junior financing because it provides for repayment of the Prepetition Term Loan in full, thereby producing a par recovery for the Debtors' largest secured creditor class. The economic terms of the Stalking Horse Bidder DIP were subject to significant negotiation, including the interest rate, fees, and other economic and non-economic terms, which are significantly better than those initially proposed by the Stalking Horse Bidder. Notably, the interest rate on the Stalking Horse Bidder DIP is equivalent to the default rate on the Prepetition Term Loan. Moreover, the Stalking Horse Bidder DIP is structured as a delayed draw term loan facility so the Debtors may borrow on the facility and incur concomitant interest expense, only as needed. During negotiations, the Debtors also requested that the Stalking Horse Bidder provide the required financing on a junior basis so that the Prepetition Term Loan would not need to be refinanced early in the case, but the Stalking Horse Bidder would not agree to provide such financing.

14. The Prepetition Term Loan lenders also submitted a DIP proposal, which was explicitly conditioned on the Prepetition Term Loan lenders serving as the Debtors' stalking

horse bidder by credit bidding some of all of their approximately $330 million of secured loans (or a portion thereof). In addition to being tied to a stalking horse credit bid (with a purchase price capped at the principal amount of the outstanding prepetition term loan), the overall economic terms of their initial DIP proposal were less favorable than the combined proposals from the Stalking Horse Bidder and Prepetition ABL lenders (described below), including higher fees and interest rates and tighter case and sale process milestones. As important, the Stalking Horse Bid provides value well in excess of the Debtors' aggregate secured indebtedness and, therefore, by definition well in excess of any potential credit bid offered by the Prepetition Term Loan lenders. For these and other reasons, the Debtors determined in their sound business judgment not to accept the Prepetition Term Loan lenders' DIP proposal. Instead, the Prepetition Term Loan lenders will receive a customary adequate protection package (discussed below) in exchange for the Debtors' continued use of the Prepetition Term Loan lenders' collateral during the period prior to entry of the final DIP order while the Prepetition Term Loan remains outstanding.

15. Simultaneous with evaluating the Prepetition Term Loan lenders' and Stalking Horse Bidder's DIP proposals, Centerview, along with the Debtors' other restructuring advisors, engaged in extensive discussions and good faith, arms' length negotiations with the Prepetition ABL lenders on the terms of a DIP proposal. In view of the Debtors' eligible inventory and receivables levels forecasted throughout these proceedings, the Debtors' borrowing base is not sufficient to support a DIP facility large enough to fund the entirety of these Bankruptcy Proceedings. Nevertheless, given that the Debtors' Prepetition ABL Facility is their lowest cost form of financing, the Debtors negotiated extensively and in good faith on the terms of a DIP facility to be provided by the Prepetition ABL lenders. Through revisions to the

borrowing base and elimination of a liquidity block, the ABL DIP Facility provides approximately $25 million of liquidity. Importantly, it supplements the liquidity to be provided by the Stalking Horse Bidder DIP, reduces the Debtors' overall weighted average cost of DIP financing, and provides liquidity on an interim basis until the Stalking Horse Bidder DIP can be approved at the final DIP hearing. Negotiations with the Prepetition ABL lenders ultimately included the Stalking Horse Bidder and resulted, collectively, in two separate but coordinated facilities (the "***DIP Facilities***") offered by the Prepetition ABL lenders and the Stalking Horse Bidder (collectively, the "***DIP Lenders***").

16. The ABL DIP Facility is to be provided by certain of the Prepetition ABL lenders and liquidity thereunder will be available to the Debtors upon entry of the interim DIP order. The Stalking Horse Bidder DIP, which will be committed financing upon entry of the interim DIP order and payment of related fees, with borrowing on such facility subject to entry of the final DIP order, is to be provided by affiliates of the Stalking Horse Bidder and will provide the Debtors with incremental liquidity for the remainder of these Bankruptcy Proceedings, including through the Sale Process, and will allow the Debtors to, among other things, repay and refinance in full the Debtors' obligations under the Prepetition Term Loan. It is essential that both the ABL DIP Facility and Stalking Horse Bidder DIP are committed to the Debtors upon entry of the interim DIP order, with borrowing on the Stalking Horse Bidder DIP subject to entry of the final DIP order, so that the Debtors may be certain that adequate financing is available from the first day of these Bankruptcy Proceedings to support operation of the business, vendor and customer relationships, and execution of the Sale Process to completion.

17. It is my judgment that the terms of the DIP Facilities, including their structure, collateral required to be pledged, principal amount, pricing and fee structure, and

provision for adequate protection to the Debtors' secured creditors, are more favorable to the Debtors than what could have been achieved with any other potential lenders under the circumstances.

**THE TERMS OF THE DIP FACILITIES ARE FAIR AND REASONABLE AND SHOULD BE APPROVED**

18. Based on my experience and my personal involvement in the negotiation of the DIP Facilities, I believe that the process undertaken by the Debtors was appropriate and produced the most favorable financing available to the Debtors under the circumstances. Moreover, in my opinion, it is essential that the Debtors have committed postpetition financing at the outset of these Bankruptcy Proceedings to retain the confidence of the Debtors' customers, employees, and vendors as the Debtors work towards completing the Sale Process and closing the Asset Sale.

19. As discussed above, the negotiations with the Stalking Horse Bidder and the Prepetition ABL lenders were at arms' length and in good faith. The Company's management team and legal and financial advisors were actively involved throughout the process. Over the course of significant back and forth among the parties, the Stalking Horse Bidder, the Prepetition ABL lenders, and the Company agreed to accommodations that allowed all parties involved, including the Prepetition Term Loan lenders, to become more comfortable with the financing.

20. I believe that the DIP Facilities are the best financing available to the Debtors under the circumstances. In my opinion, based on my experience and the current DIP financing market, the pricing, fees, interest rates, and other terms and conditions of the DIP Facilities are reasonable and are, importantly, generally consistent with those contained in the Debtors' prepetition debt facilities. In addition, in my view, the milestones, covenants, and

restrictions included in the DIP Facilities are reasonable and are not designed to make the Debtors disproportionately susceptible to a breach of such terms.

21. The DIP Facilities provide the Debtors with the necessary liquidity to continue the operation of their businesses during the projected course of the Bankruptcy Proceedings.

22. Prior to entry of the final DIP order and approval of the Stalking Horse Bidder DIP, the Debtors will rely on the ABL DIP Facility to address the Debtors' immediate liquidity requirements. To that end, the ABL DIP Facility provides the Debtors with approximately $25 million of availability upon entry of the interim DIP order.

23. Critically, the ABL DIP Facility also provides that any amounts collected in accounts controlled by the Prepetition ABL Facility, on account of the first lien collateral securing such facility, will be applied to reduce the outstanding amount of the Prepetition ABL Facility. By reducing amounts outstanding under the Prepetition ABL Facility, the Debtors will free up borrowing base availability under the ABL DIP Facility (subject, of course, to the terms of the ABL DIP Facility and borrowing conditions). This structure allows the Debtors to refinance the Prepetition ABL Facility over the duration of the Bankruptcy Proceedings, which was a prerequisite to the Prepetition ABL lenders' agreement to provide approximately $25 million of incremental liquidity under the ABL DIP Facility.

24. The Debtors and their advisors have conducted the necessary diligence to determine that the Prepetition ABL Facility is fully secured by valid, enforceable, perfected liens. Moreover, pursuant to the Stalking Horse Bidder DIP, the Prepetition ABL Facility and the ABL DIP Facility will be paid in full at closing of the Asset Sale. Altogether, I believe that these repayment provisions are a necessary component to the ABL DIP Facility and will ensure

the Debtors' access to sufficient liquidity for working capital and general corporate purposes to proceed with the Sale Process and fund day-to-day operations during the Bankruptcy Proceedings.

25. Repayment of the Prepetition Term Loan Lenders upon entry of the final DIP order with proceeds of the Stalking Horse Bidder DIP is also appropriate and necessary under the circumstances. As noted above, the Debtors and their advisors have concluded that the Prepetition Term Loan, like the Prepetition ABL Facility, is secured by substantially all of the Debtors' assets. The Prepetition Term Loan lenders' collateral, coupled with the proceeds of the Proposed Stalking Horse Bid, will exceed the Debtors' secured debt obligations, and, therefore, supports refinancing the Prepetition Term Loan upon entry of the final DIP order. Having refinanced the Prepetition Term Loan, the Debtors will be able to use the Prepetition Term Loan priority collateral to obtain additional liquidity under the Stalking Horse Bidder DIP after entry of the final DIP order on a non-priming basis. This is critical to the Debtors as the ABL DIP Facility does not satisfy all of the Debtors' projected liquidity needs. The DIP Facilities will collectively allow the Debtors to focus on the Asset Sale for the benefit of the Debtors' remaining constituents.

26. Finally, given the Debtors' current circumstances, including their recent challenged operating and financial performance, ongoing internal audit investigation, inability to deliver audited financial statements and the amount of outstanding prepetition secured indebtedness, the Debtors determined that obtaining an alternative stand-alone DIP financing from a third party on any terms, including a priming facility, would be extremely challenging.

**THE ADEQUATE PROTECTION PACKAGE IS REASONABLE**

27. I believe the Debtors' provision of adequate protection to their Prepetition ABL Lenders and Prepetition Term Loan lenders, including the grant of replacement liens, payment of default rate interest, fees and expenses (including certain reasonable fees and expenses of attorneys and financial advisors, as agreed), and the grant of superpriority claims, is reasonable and appropriate under the circumstances. Absent such a provision, the Prepetition ABL lenders and Prepetition Term loan lenders would not consent to the Debtors' use of cash collateral. Nor would the Prepetition ABL lenders or the Prepetition Term Loan lenders consent to any priming liens under any DIP financing, and I am not aware of any party willing to provide comparable postpetition financing without requiring priming of the prepetition liens. Thus, the Debtors likely would have been required to litigate with the Prepetition ABL lenders and Prepetition Term Loan lenders over the imposition of priming liens required under any alternative postpetition financing. Given the distraction, uncertainty, and costs associated with such a dispute, I believe that the adequate protection agreed to be provided by the Debtors is in the best interest of the Debtors' estates and creditors, and will reduce the Debtors' overall costs and time spent in the Bankruptcy Proceedings.

28. Finally, this adequate protection package was negotiated with certain of the Prepetition Term Loan lenders and the Prepetition ABL agent. I have also been informed by advisors to a steering committee of Prepetition Term Loan lenders (holding a majority of the loans outstanding) that the proposed adequate protection package is acceptable to the requisite holders of the Prepetition Term Loan. I have been informed by advisors to the Prepetition ABL agent that the proposed adequate protection package is acceptable to the requisite Prepetition ABL lenders.

**THE NEED FOR INTERIM RELIEF**

29. The Debtors seek approval of the DIP Facilities on an interim basis. Obtaining interim approval on the first day of these Bankruptcy Proceedings will allow the Company to communicate to its employees, vendors, regulators and customers, as well as potential bidders for the Debtors' assets, that the Debtors are entering chapter 11 on strong financial footing and will continue operating without interruption.

30. In addition, interim relief is critical to prevent any value destruction that could diminish the likelihood of receiving bids in connection with the Sale Process. By approving the DIP Facilities at the outset of these cases, the Debtors will be able to maintain the value of their business during the course of the Sale Process and fund these Bankruptcy Proceedings through the consummation of the Asset Sale.

31. Given the Debtors' current projections, and the absence of meaningful unencumbered assets, immediate access to the DIP Facilities and use of cash collateral is necessary for continued operations, including to fund wages, salaries, and benefits of the Debtors' employees, procure necessary goods and services (and maintain trade terms with the Debtors' vendors), finance the cost of these Bankruptcy Proceedings and meet other working capital needs. Thus, I believe the Debtors would suffer immediate and irreparable harm to the value of their estates if the DIP Facilities are not approved.

32. In the light of the foregoing and the facts and circumstances of these Bankruptcy Proceedings, I believe that the proposed DIP Facilities are the best financing currently available to the Debtors and should be approved in all respects.

[*Signature Page Follows*]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: October 31, 2016
Wilmington, Delaware

*/s/ Marc D. Puntus*
Marc D. Puntus

# **Exhibit C**

Priority Waterfall

## DIP Facilities Priority Waterfall[1]

| | | US | | Canada | |
|---|---|---|---|---|---|
| | | **Interim Order** | **Final Order** | **Interim Order** | **Final Order** |
| **1.** | **ABL Priority Collateral** | 1. Carve-Out<br>2. ABL DIP Facility<br>3. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders<br>4. Prepetition Term Loan Facility / adequate protection liens of Prepetition Term Loan Lenders | 1. Carve-Out<br>2. ABL DIP Facility<br>3. Prepetition ABL Facility / adequate protection liens of Prepetition ABL lenders<br>4. Term Loan DIP Facility<br>5. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any)[2] | 1. Admin Charge (professional fees/Carve-Out)<br>2. ABL DIP Facility Charge<br>3. Prepetition ABL Facility / adequate protection liens of Prepetition ABL lenders[3]<br>4. Prepetition Term Loan / adequate protection liens of Prepetition Term Loan Lenders<br>5. D&O Charge<br>6. Intercompany charge | 1. Admin Charge (professional fees/Carve-Out)<br>2. DIP ABL Facility Charge<br>3. Prepetition ABL Facility / adequate protection liens of Prepetition ABL lenders<br>4. Term Loan DIP Facility Charge<br>5. KERP Charge<br>6. D&O Charge<br>7. Intercompany charge<br>8. Continuing adequate protection liens of Prepetition Term Loan Lenders (if any) |
| **2.** | **Fixed Asset (Term) Priority Collateral** | 1. Carve-Out<br>2. Prepetition Term Loan Facility / adequate protection liens of Prepetition Term Loan Lenders<br>3. ABL DIP Facility<br>4. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders | 1. Carve-Out<br>2. Term Loan DIP Facility<br>3. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any)<br>4. ABL DIP Facility<br>5. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders | 1. Admin Charge (professional fees/Carve-Out)<br>2. Prepetition Term Loan / adequate protection liens of Prepetition Term Loan Lenders<br>3. ABL DIP Charge<br>4. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders<br>5. D&O Charge<br>6. Intercompany charge | 1. Admin Charge (professional fees/Carve-Out)<br>2. Term Loan DIP Facility Charge<br>3. Continuing adequate protection liens of Prepetition Term Loan Lenders (if any)<br>4. ABL DIP Facility Charge<br>5. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders<br>6. KERP Charge<br>7. D&O Charge<br>8. Intercompany charge |

[1] Capitalized terms used in this summary have the same meaning used in the Interim Order.

[2] The Prepetition Term Loan Facility liens are to be released upon entry of the Final Order, subject to continuing adequate protection liens under the Final Order.

[3] In Canada, there are no new charges for prepetition loans; all the subsequent charges merely rank subsequent in priority to their existing liens. This is true for all the adequate protection liens.

| | | US | | Canada | |
|---|---|---|---|---|---|
| | | **Interim Order** | **Final Order** | **Interim Order** | **Final Order** |
| **3.** | **PSG Innovation Corp. and PSG Innovation, Inc. Collateral[4]** | 1. Carve-Out<br>2. Prepetition Term Loan Facility/ adequate protection liens of Prepetition Term Loan Lenders<br>3. ABL DIP Facility<br>4. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders | 1. Carve-Out<br>2. Term Loan DIP Facility<br>3. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any)<br>4. ABL DIP Facility<br>5. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders | 1. Admin Charge (professional fees/Carve-Out)<br>2. ABL DIP Facility Charge<br>3. D&O Charge<br>4. Intercompany charge | 1. Admin Charge (professional fees/Carve-Out)<br>2. Term Loan DIP Facility Charge<br>3. ABL DIP Charge<br>4. KERP Charge<br>5. D&O Charge<br>6. Intercompany charge |
| **4.** | **Other Unencumbered Collateral (other than avoidance actions)[5]** | 1. Professional fees Carve-Out<br>2. Prepetition Term Loan Facility/ adequate protection liens of Prepetition Term Loan Lenders<br>3. ABL DIP Facility<br>4. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders | 1. Professional fees Carve-Out<br>2. Term Loan DIP Facility<br>3. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any)<br>4. ABL DIP Facility<br>5. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders | 1. Admin Charge (professional fees/Carve-Out)<br>2. ABL DIP Facility Charge<br>3. D&O Charge<br>4. Intercompany charge | 1. Admin Charge (professional fees/Carve-Out)<br>2. Term Loan DIP Facility Charge<br>3. ABL DIP Facility Charge<br>4. KERP Charge<br>5. D&O Charge<br>6. Intercompany charge |
| **5.** | **Proceeds of Avoidance Actions[6]** | N/A | 1. Professional fees Carve-Out<br>2. ABL DIP Facility/Term Loan DIP Facility<br>3. Prepetition ABL Facility / Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any) and Prepetition ABL Lenders | N/A | N/A |

[4] To the extent these assets would otherwise constitute ABL Priority Collateral, they shall be treated as such. Otherwise, they shall be treated as Fixed Asset Priority Collateral as reflected above. In addition, these assets will not be available as adequate protection under the CCAA order.

[5] To the extent these assets would otherwise constitute ABL Priority Collateral, they shall be treated as such. Otherwise, they shall be treated as Fixed Asset Priority Collateral as reflected above. In addition, these assets will not be available as adequate protection under the CCAA order.

[6] Liens on proceeds of avoidance actions are subject to entry of the Final Order (other than liens on proceeds of avoidance actions brought under section 549 of the Bankruptcy Code, which are authorized upon entry of the Interim Order).

**Exhibit D**

Approved Budget

**Performance Sports Group**

13-Week Cash Flow Forecast

*($ in 000s)*

| | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 13-Week |
| Week Ended: | 11/4/16 | 11/11/16 | 11/18/16 | 11/25/16 | 12/2/16 | 12/9/16 | 12/16/16 | 12/23/16 | 12/30/16 | 1/6/17 | 1/13/17 | 1/20/17 | 1/27/17 | Forecast Period |
| **Total Receipts** | **$ 5,984** | **$ 7,557** | **$ 9,557** | **$ 8,557** | **$ 13,008** | **$ 13,135** | **$ 14,135** | **$ 14,135** | **$ 14,135** | **$ 11,068** | **$ 8,557** | **$ 8,557** | **$ 8,557** | **$ 136,945** |
| *Cash Disbursements:* | | | | | | | | | | | | | | |
| Payroll, Benefits and Temps. | - | (2,007) | (703) | (1,800) | (1,002) | (1,585) | (1,086) | (1,741) | (1,001) | (1,560) | (1,084) | (1,632) | (996) | (16,196) |
| Vendor Spend | (113) | (5,934) | (5,634) | (6,292) | (4,864) | (5,675) | (5,375) | (5,375) | (6,267) | (5,437) | (4,997) | (4,997) | (4,997) | (65,957) |
| Utilities | - | (41) | (41) | (45) | (33) | (41) | (41) | (41) | (41) | (41) | (41) | (41) | (41) | (486) |
| Insurance | (148) | - | - | - | (148) | - | - | - | - | (148) | - | - | - | (444) |
| Property, Sales and Other Taxes | - | (65) | (300) | (1,460) | (70) | - | (200) | (91) | (625) | (145) | - | (200) | (805) | (3,961) |
| Facilities / Rent / Leases | (531) | - | - | - | (531) | - | - | - | - | (531) | - | - | - | (1,592) |
| Other Operating Disbursements | (149) | (1,039) | (1,039) | (1,133) | (891) | (1,082) | (1,082) | (1,082) | (1,082) | (1,066) | (1,063) | (1,063) | (1,063) | (12,837) |
| **Total Operating Disbursements** | **$ (941)** | **$ (9,087)** | **$ (7,717)** | **$ (10,731)** | **$ (7,539)** | **$ (8,384)** | **$ (7,784)** | **$ (8,331)** | **$ (9,016)** | **$ (8,927)** | **$ (7,184)** | **$ (7,932)** | **$ (7,901)** | **$ (101,473)** |
| **Total Operating Cash Flow** | **$ 5,043** | **$ (1,529)** | **$ 1,840** | **$ (2,173)** | **$ 5,470** | **$ 4,752** | **$ 6,352** | **$ 5,805** | **$ 5,120** | **$ 2,141** | **$ 1,373** | **$ 625** | **$ 656** | **$ 35,473** |
| Capex | $ - | $ (92) | $ (430) | $ (94) | $ (164) | $ (179) | $ (29) | $ (29) | $ (29) | $ (183) | $ (209) | $ (209) | $ (209) | (1,855) |
| Interest Payments | (720) | - | (71) | - | (10,941) | - | (106) | - | (2,061) | (543) | - | - | - | (14,442) |
| Professional Fees | - | - | - | - | - | - | (5,145) | - | - | - | (4,405) | - | - | (9,550) |
| Other Non-Operating Disbursements | - | (114) | (189) | (514) | (106) | (86) | (161) | (86) | (86) | (81) | (80) | (155) | (80) | (1,739) |
| **Total Non-Operating Disbursements** | **$ (720)** | **$ (206)** | **$ (690)** | **$ (608)** | **$ (11,212)** | **$ (265)** | **$ (5,442)** | **$ (115)** | **$ (2,177)** | **$ (806)** | **$ (4,694)** | **$ (364)** | **$ (289)** | **$ (27,586)** |
| **Total Chapter 11 / CCAA Items** | **-** | **(4,450)** | **(4,150)** | **(4,150)** | **(4,150)** | **(4,150)** | **(4,150)** | **(2,500)** | **-** | **-** | **-** | **-** | **-** | **(27,700)** |
| **Total Disbursements** | **$ (1,661)** | **$ (13,743)** | **$ (12,557)** | **$ (15,488)** | **$ (22,900)** | **$ (12,799)** | **$ (17,375)** | **$ (10,946)** | **$ (11,192)** | **$ (9,734)** | **$ (11,878)** | **$ (8,296)** | **$ (8,190)** | **$ (156,759)** |
| **Net Cash Flow** | **$ 4,323** | **$ (6,186)** | **$ (2,999)** | **$ (6,931)** | **$ (9,892)** | **$ 337** | **$ (3,240)** | **$ 3,190** | **$ 2,943** | **$ 1,335** | **$ (3,321)** | **$ 261** | **$ 367** | **$ (19,814)** |

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Beginning Cash Book Balance | $ 0 | $ 7,500 | $ 7,500 | $ 7,500 | $ 7,500 | $ 11,705 | $ 11,705 | $ 7,500 | $ 7,500 | $ 7,500 | $ 7,500 | $ 7,500 | $ 7,500 |
| Net Cash Flow (excl. Draws/Paydowns) | 4,323 | (6,186) | (2,999) | (6,931) | (9,892) | 337 | (3,240) | 3,190 | 2,943 | 1,335 | (3,321) | 261 | 367 |
| Prepetition Revolver Draws/(Paydowns) | (5,984) | (7,557) | (9,557) | (8,557) | (13,008) | (13,135) | (14,135) | (14,135) | (14,135) | (11,068) | (8,557) | (8,557) | (8,557) |
| DIP Revolver Draws/(Paydowns) | 9,161 | 13,743 | 12,557 | 15,488 | 22,900 | 12,799 | 10,141 | 9,145 | 9,145 | 9,046 | 8,482 | 8,296 | 8,190 |
| Delayed Draw DIP Term Loan Draws/(Paydowns) | - | - | - | - | 4,205 | - | 3,029 | 1,801 | 2,048 | 688 | 3,396 | - | - |
| Ending Cash Bank Balance (Excl. Restricted Cash) | $ 7,500 | $ 7,500 | $ 7,500 | $ 7,500 | $ 11,705 | $ 11,705 | $ 7,500 | $ 7,500 | $ 7,500 | $ 7,500 | $ 7,500 | $ 7,500 | $ 7,500 |
| Restricted Cash | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 | $ 4,000 |
| **Ending Cash Bank Balance (incl. Restricted Cash)** | **$ 11,500** | **$ 11,500** | **$ 11,500** | **$ 11,500** | **$ 15,705** | **$ 15,705** | **$ 11,500** | **$ 11,500** | **$ 11,500** | **$ 11,500** | **$ 11,500** | **$ 11,500** | **$ 11,500** |

**Exhibit E**

ABL DIP Credit Agreement

---

# SUPERPRIORITY DEBTOR-IN-POSSESSION
# ABL CREDIT AGREEMENT

dated as of October 31, 2016,

among

PERFORMANCE SPORTS GROUP LTD.,
a debtor and debtor in possession, as Parent,

BAUER HOCKEY CORP.,
and the other Canadian Subsidiaries of Parent from time to time party hereto in their capacities as Subsidiary Borrowers,
debtors and debtors in possession, as Canadian Borrowers,

BAUER HOCKEY, INC.,
and the other U.S. Subsidiaries of Parent from time to time party hereto in their capacities as Subsidiary Borrowers,
debtors and debtors in possession, as U.S. Borrowers,

VARIOUS LENDERS,

and

BANK OF AMERICA, N.A.,
as ADMINISTRATIVE AGENT
and
COLLATERAL AGENT

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THIS SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of October 31, 2016, among PERFORMANCE SPORTS GROUP LTD., a Canadian corporation ("**PSG**"), and debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code and under the Companies' Creditors Arrangement Act (Canada) (the "**Parent**"), BAUER HOCKEY CORP., a Canadian corporation (the "**Lead Canadian Borrower**"), BAUER HOCKEY, INC., a Vermont corporation, (the "**Lead U.S. Borrower**" and, together with the Lead Canadian Borrower, the "**Lead Borrowers**"), each of the other Borrowers (as hereinafter defined), each of the Subsidiary Guarantors (as defined herein) (each of which is or will become a debtor and debtor-in-possession), the Lenders party hereto from time to time, and BANK OF AMERICA, N.A. ("**Bank of America**"), as the Administrative Agent and Collateral Agent. All capitalized terms used herein and defined in Article 1 are used herein as therein defined.

W I T N E S S E T H:

WHEREAS, on October 31, 2016 (the "**Petition Date**"), the Lead U.S. Borrower and each of the other U.S. Debtors filed a voluntary petition for relief (collectively, the "**U.S. Cases**") under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**").

WHEREAS, on October 31, 2016, the Lead Canadian Borrower and each of the other Canadian Debtors brought an application (collectively, the "**Canadian Case**", and together with the U.S. Cases, the "**Cases**") under the Companies' Creditors Arrangement Act (Canada) (the "**CCAA**" with the Ontario Superior Court of Justice (Commercial List), sitting in Toronto, Ontario (the "**Canadian Bankruptcy Court**", and together with the U.S. Bankruptcy Court, the "**Bankruptcy Courts**", and each, a "**Bankruptcy Court**").

WHEREAS, the Debtors are continuing in the possession of their assets and continuing to operate their respective businesses and manage their respective properties as debtors and debtors in possession under Section 1107(a) and 1108 of the Bankruptcy Code, and the CCAA, as applicable.

WHEREAS, the Borrowers have requested that (a) the Lenders provide a post-petition revolving credit facility in an aggregate principal amount at any time outstanding not to exceed $200,000,000, (b) the Issuing Bank issue Letters of Credit and (c) the Swingline Lender extend credit in the form of Swingline Loans up to the maximum amount set forth herein.

WHEREAS, the Lenders are willing to extend such credit to the Borrowers, the Swingline Lender is willing to make Swingline Loans to the Borrowers and the Issuing Bank is willing to issue Letters of Credit for the account of the Borrowers on the terms and subject to the conditions set forth herein and in the Financing Orders.

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

## ARTICLE 1
## DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. *Defined Terms*. As used in this Agreement, the following terms shall have the following meanings:

"**ABL DIP Charge**" shall have the meaning given to that term in the Initial CCAA Order.

"**ABL DIP Facility**" means the facility being provided under this agreement pursuant to which Revolving Commitments will be utilized in making Revolving Loans hereunder and other extensions of credit will be made available including Letters of Credit.

"**ABL Priority Collateral**" shall have the meaning assigned to the term "ABL Priority Collateral" in the Post-Petition Intercreditor Agreement.

"**Accounts**" shall mean all "**accounts,**" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York, in which any Person now or hereafter has rights including, without limitation, the unpaid portion of the obligations of a customer of such Person in respect of Inventory purchased by and shipped to such customer and/or the rendition of services by such Person, as stated on the invoice of such Person, net of any credits, rebates or offsets owed to such customer.

"**Account Debtor**" shall mean any Person who may become obligated to another Person under, with respect to, or on account of, an Account.

"**Acquiror**" means 9938982 Canada Inc., a Canadian corporation.

"**Acquiror Sale Transaction**" shall have the meaning provided in Section 8.15.

"**Additional Security Documents**" shall have the meaning provided in Section 8.11(a).

"**Adjusted Aggregate Commitments**" shall mean, at any time, the Aggregate Commitments *minus* the Carve-Out Reserve *minus* the Indemnity Reserve.

"**Adjustment Date**" shall mean the first day of each fiscal month.

"**Administration Charge**" shall have the meaning given to that term in the Initial CCAA Order.

"**Administrative Agent**" shall mean Bank of America, in its capacity as Administrative Agent for the Lenders hereunder, and shall include any successor to the Administrative Agent appointed pursuant to Section 11.06.

"**Administrative Questionnaire**" means an Administrative Questionnaire in substantially the form of Exhibit D or any other form approved by the Administrative Agent.

"**Advisors**" means Choate, Hall & Stewart LLP, and Norton Rose Fulbright Canada LLP and their respective affiliates (and such other advisors, representatives and agents acting on behalf of the Administrative Agent that have been appointed by the Administrative Agent from time to time).

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; *provided*, *however*,

that neither the Administrative Agent nor any Lender (nor any Affiliate thereof) shall be considered an Affiliate of the Parent or any Subsidiary thereof as a result of this Agreement, the extensions of credit hereunder or its actions in connection therewith.

"**Agents**" shall mean the Administrative Agent, the Collateral Agent, and any other agent with respect to the Credit Documents.

"**Aggregate Commitments**" shall mean, at any time, the aggregate amount of the Revolving Commitments of all Lenders.

"**Aggregate Exposures**" shall mean, at any time, without duplication, the sum of (a) the aggregate Outstanding Amount of all Loans *plus* (b) the LC Exposure, each determined at such time.

"**Agreement**" shall mean this Superpriority Debtor-In-Possession Credit Agreement, as modified, supplemented, amended, restated (including any amendment and restatement hereof), extended or renewed from time to time.

"**Applicable Margin**" shall mean with respect to any Type of Revolving Loan, the per annum margin set forth below:

| U.S. Base Rate/Canadian Prime Rate Loans | LIBO Rate/CDOR Loans |
|---|---|
| 3.50% | 4.50% |

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

"**Asset Sale**" shall mean any sale, transfer or other disposition by the Parent or any of its Subsidiaries to any Person (including by way of redemption by such Person) other than to (x) the Parent or (y) a Wholly-Owned Subsidiary of the Parent that is a Credit Party, of any asset (including, without limitation, any capital stock or other securities of, or Equity Interests in, another Person) pursuant to Section 9.02(c)(y), (e), (l) (solely for this clause (l), to the extent the Net Sale Proceeds thereof exceed $1,500,000 in the aggregate) (m) and/or any Sale Transaction.

"**Assignment and Assumption Agreement**" shall mean an Assignment and Assumption Agreement substantially in the form of Exhibit K (appropriately completed) or such other form as shall be acceptable to the Administrative Agent.

"**Availability**" shall mean, as of any applicable date, the amount by which the Line Cap at such time exceeds the sum of the Aggregate Exposures plus the Prepetition Exposures on such date.

"**Avoidance Actions**" shall have the meaning provided in Section 2.19(a).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bank of America**" shall have the meaning provided in the first paragraph of this Agreement, and shall include, to the extent applicable, any branch thereof.

"**Bank Product**" shall mean any of the following products, services or facilities extended to the Parent or any Credit Parties: (a) Cash Management Services; (b) products under Swap Contracts; (c) commercial credit card and merchant card services; and (d) other banking products or services as may be requested by the Parent or any Credit Parties, other than Letters of Credit.

"**Bank Product Debt**" shall mean the Indebtedness and other obligations of the Parent or any of its Subsidiaries relating to Bank Products.

"**Bank Product Reserve**" shall mean the aggregate amount of reserves established by the Administrative Agent from time to time in its discretion in respect of Secured Bank Product Obligations (which shall at all times include a reserve for the maximum amount of all Noticed Hedges outstanding at that time).

"**Bankruptcy Code**" shall mean the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, *et seq.*), as amended.

"**Bankruptcy Courts**" has the meaning set forth in the recitals hereto.

"**Bid Procedures Order**" shall have the meaning provided in Section 8.15.

"**Bidding Procedures Motion**" shall have the meaning provided in Section 8.15.

"**Bid Protections**" shall have the meaning provided in Section 8.15.

"**Biscuit Acquisition Agreement**" shall mean that certain Asset Purchase Agreement, dated as of October 31, 2016, by and among PSG, the other entities identified therein as sellers and the Acquiror in connection with the Acquiror Sale Transaction.

"**Borrower Materials**" shall have the meaning provided in Section 8.01.

"**Borrowers**" shall mean (i) the Lead Borrowers and (ii) the Subsidiary Borrowers.

"**Borrowing**" shall mean the borrowing of the same Type of Revolving Loan by the Borrowers from all the Lenders having Commitments on a given date (or resulting from a conversion or conversions on such date), having in the case of LIBO Rate Loans or CDOR Loans, the same Interest Period; *provided* that U.S. Base Rate Loans incurred pursuant to Section 3.02 shall be considered part of the related Borrowing of LIBO Rate Loans.

"**Borrowing Base**" shall mean at any time of calculation, an amount equal to the sum of the Dollar Equivalent of the Canadian Borrowing Base and the U.S. Borrowing Base less the Carve-Out Reserve, less the Indemnity Reserve.

The Administrative Agent shall (i) promptly notify the Lead Borrowers in writing (including via e-mail) whenever it determines that the Borrowing Base set forth on a Borrowing Base Certificate differs from the Borrowing Base, (ii) discuss the basis for any such deviation and any changes proposed by the Lead Borrowers, including the reasons for any impositions of or changes in Reserves (in the Administrative Agent's Permitted Discretion and subject to the definition thereof), with the Lead Borrowers, (iii) consider, in the exercise of its Permitted Discretion, any additional factual information provided by the Lead Borrowers relating to the determination of the Borrowing Base and (iv) promptly notify the Lead Borrowers of its decision with respect to any changes proposed by the Lead Borrowers. Pending a decision by the Administrative Agent to make any requested change, the initial determination of the Borrowing Base by the Administrative Agent shall continue to constitute the Borrowing Base.

"**Borrowing Base Certificate**" shall mean a certificate of a Responsible Officer of the Lead Canadian Borrower with respect to the Canadian Borrowing Base or the Lead U.S. Borrower with respect to the U.S. Borrowing Base, in each case in form and substance satisfactory to the Administrative Agent.

"**Budget**" means (a) initially, the Initial Budget and (b) following the delivery of any budget pursuant to Section 8.01(h), the budget in effect from time to time after the Closing Date pursuant to Section 8.01(h).

"**Business Day**" shall mean (i) for all purposes other than as covered by clauses (ii) or (iii) below, any day except Saturday, Sunday and any day that shall be in New York City a legal holiday or a day on which banking institutions in New York City are authorized or required by law or other government action to close, (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBO Rate Loans, any day that is a Business Day described in clause (i) above and that is also a day for trading by and between banks in the New York or London interbank market and (iii) with respect to all notices and determinations in connection with, and payments of principal and interest on, Loans to any Canadian Borrower, any day that is a Business Day described in clause (i) above and that is also not a legal holiday on which banks are authorized or required to be closed in Toronto, Ontario.

"**Canadian AML Acts**" shall mean applicable Canadian law regarding anti-money laundering, anti-terrorist financing, government sanctions and "know your client" matters, including the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).

"**Canadian Bankruptcy Court**" shall have the meaning provided in the recitals hereto.

"**Canadian Borrowers**" shall mean KBAU Holdings Canada, Inc., Bauer Hockey Corp, Easton Baseball / Softball Corp., BPS Diamond Sports Corp., Performance Lacrosse Group Corp., Bauer Performance Sports Uniforms Corp., BPS Canada Intermediate Corp., Bauer Hockey Retail Corp.

"**Canadian Borrowing Base**" shall mean the sum, without duplication, of the following as set forth in the most recently delivered Borrowing Base Certificate:

(a) the book value of Eligible Accounts of the Canadian Borrowers *multiplied by* the advance rate of 85%; *plus*

(b) the book value of Eligible Foreign Accounts of the Canadian Borrowers *multiplied by* the advance rate of 85%; *plus*

(c) the lesser of (x) the Cost of Eligible Inventory of the Canadian Borrowers *multiplied by* the advance rate of 70% and (y) the Net Recovery Cost Percentage *multiplied by* the Cost of Eligible Inventory of the Canadian Borrowers *multiplied by* the advance rate of 85%; *plus*

(d) the Cost of Eligible In-Transit Inventory of the Canadian Borrowers *multiplied by* the advance rate of 30%; *minus*

(e) any Reserves established from time to time by the Administrative Agent in accordance herewith.

"**Canadian Case**" has the meaning set forth in the recitals hereto.

"**Canadian Debtors**" means the Parent and the Canadian Borrowers, and each other Domestic Subsidiary of the Parent that are debtors under the Canadian Case.

"**Canadian Defined Benefit Plan**" shall mean a Canadian Pension Plan that contains a "defined benefit provision" as defined in subsection 147.1(1) of the ITA.

"**Canadian Dollar Denominated LC Disbursements**" shall mean LC Disbursements denominated in Canadian Dollars.

"**Canadian Dollar Denominated Loans**" shall means Loans denominated in Canadian Dollars at the time of the incurrence thereof.

"**Canadian Dollar Revolving Note**" shall mean each revolving note substantially in the form of Exhibit B-2 hereto.

"**Canadian Dollars**" and the sign "**Can.$**" shall each mean freely transferable lawful money (expressed in Canadian Dollars) of Canada.

"**Canadian Dominion Account**" shall mean a special Concentration Account established by the Lead Canadian Borrower at Bank of America or another bank reasonably acceptable to the Administrative Agent, over which the Administrative Agent has exclusive control for withdrawal purposes pursuant to the terms and provisions of this Agreement and the other Credit Documents.

"**Canadian Employee Plan**" shall mean a Canadian Pension Plan, a Canadian Welfare Plan or both.

"**Canadian Pension Plan**" shall mean a pension plan or plan that is subject to the Pension Benefits Act (Ontario) or any other similar legislation in any other jurisdiction of Canada for employees in Canada and former employees in Canada of the Parent or any Subsidiary of the Parent.

"**Canadian Prime Rate**" shall mean for any day a fluctuating rate per annum equal to the greater of (a) the per annum rate of interest quoted or established as the Canadian Dollar "prime rate" of Bank of America, N.A. (acting through its Canada branch) which it quotes or establishes for such day as its reference rate of interest in order to determine interest rates for commercial loans in Canadian Dollars in Canada to its Canadian borrowers; and (b) the average CDOR Rate for a 30-day term plus ½ of 1% per annum adjusted automatically with each quoted or established change in either such rate, all without the necessity of any notice to any Borrower or any other Person; *provided* that, in no event shall the Canadian Prime Rate be less than zero.

The "prime rate" is a rate set by Bank of America, N.A. (acting through its Canada branch) based upon various factors including Bank of America, N.A.'s (acting through its Canada branch) costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America, N.A. (acting through its Canada branch) shall take effect at the opening of business on the day specified in the public announcement of such change.

"**Canadian Prime Rate Loan**" shall mean each Revolving Loan that is designated or deemed designated as such by the Lead Canadian Borrower at the time of the incurrence thereof or conversion thereto.

"**Canadian Priority Payables**" shall mean, at any time the amount payable by any Canadian Borrower or any other Canadian Subsidiary, or the accrued amount for which each of the Canadian Borrowers or any other Canadian Subsidiary has an obligation to remit to a governmental authority or other Person pursuant to any applicable law, in respect of (i) pension fund obligations; (ii) employment insurance; (iii) goods and services taxes, sales taxes, harmonized taxes, excise taxes, value added taxes, employee income taxes and other taxes or governmental royalties payable or to be remitted or withheld and tax payable pursuant to Part IX of the Excise Tax Act (Canada) (net of input credits); (iv) workers' compensation; (v) wages, commissions, severance pay, employee deductions, vacation pay and amounts payable under the *Wage Earner Protection Program Act (Canada)* or secured by Section 81.3 or 81.4 of the *Bankruptcy and Insolvency Act (Canada)* and (vi) other like charges and demands; in each case, in respect of which any governmental authority or other Person may claim a security interest, hypothec, prior claim, lien, trust (statutory or deemed) or other claim or Lien ranking or capable of ranking in priority to or *pari passu* with one or more of the Liens granted in the Security Documents.

"**Canadian Priority Payables Reserves**" shall mean, on any date of determination for the Canadian Borrowing Base, a reserve established by the Administrative Agent in its reasonable discretion in such amount as the Agent may determine reflects the unpaid or unremitted Canadian Priority Payables of the Canadian Credit Parties, which would give rise to a Lien under applicable laws with priority over, or *pari passu* with, the Liens of the Administrative Agent for the benefit of the Secured Parties.

**"Canadian Security Agreement"** shall mean, collectively, the security agreement and hypothec, delivered pursuant to the terms of this Agreement, as amended, amended and restated or otherwise modified or supplemented from time to time.

"**Canadian Securities Laws**" means, collectively, the securities laws of each province and territory of Canada and the respective regulations, rules, blanket rulings, orders and notices made thereunder and the national, multilateral and local instruments and published policies adopted by the Canadian Securities Regulators.

"**Canadian Securities Regulators**" means, collectively, the securities commission or securities regulatory authority in each of the provinces and territories of Canada.

"**Canadian Statutory Plan**" shall mean any benefit plan that the Parent or any Subsidiary of the Parent is required by statute to participate in or contribute to in respect of any current or former employee, director, officer, consultant or independent contractor in Canada of that Person, or any dependent of any of them, including the Canada Pension Plan, the Quebec

Pension Plan and plans administered pursuant to applicable legislation regarding healthcare, workers' compensation insurance and employment insurance.

"**Canadian Welfare Plan**" shall mean any deferred compensation, bonus, share option or purchase, savings, retirement savings, retirement benefit, profit sharing, medical, health, hospitalization, insurance or any other benefit, program, agreement or arrangement, funded or unfunded, formal or informal, written or unwritten, that is applicable to any current or former employee, director, officer, consultant or independent contractor in Canada of the Parent or any Subsidiary of the Parent, or any dependent of any of them, other than a Canadian Pension Plan or a Canadian Statutory Plan.

"**Capitalized Lease Obligations**" shall mean, with respect to any Person, all rental obligations of such Person which, under GAAP, are or will be required to be capitalized on the books of such Person, in each case taken at the amount thereof accounted for as indebtedness in accordance with GAAP.

"**Carve-Out**" has the meaning specified in the Financing Orders and includes the Administration Charge created pursuant to Section 11.52 of the CCAA, which in any case, for the period after a carve-out trigger event specified in the Financing Orders, shall not exceed $7,500,000 in the aggregate before entry of the Final Financing Orders, and with respect to ABL Priority Collateral, $3,750,000 thereafter.

"**Carve-Out Reserve**" shall mean (a) from the date of entry of the Interim Financing Order until the time of the entry of the Final Financing Order, a reserve in the amount of $7,500,000, and (b) from and after the time of the entry of the Final Financing Order, a reserve in the amount of $3,750,000.

"**Cases**" has the meaning set forth in the recitals hereto.

"**Cash Collateral Account**" shall mean a non-interest bearing cash collateral account maintained with, and in the sole dominion and control of, the Collateral Agent for the benefit of the Secured Parties.

"**Cash Collateralize**" shall mean to pledge and deposit with or deliver to the Administrative Agent for deposit into the LC Collateral Accounts, for the benefit of the Administrative Agent, the Issuing Bank or the Swingline Lender (as applicable) and the Lenders, cash as collateral for the LC Exposure, Obligations in respect of Swingline Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), in accordance with Section 2.13(j).

"**Cash Collateral**" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"**Cash Disbursements**" means disbursements made in cash by or on behalf of the Parent and its Subsidiaries, including, without limitation, for investments, capital expenditures and repayments of Indebtedness, but excluding any checks (or similar instruments) outstanding on the Petition Date that are reissued in accordance with Orders of the Bankruptcy Courts.

"**Cash Equivalents**" shall mean:

(i) U.S. Dollars, Canadian Dollars, pounds sterling, euros, the national currency of any participating member state of the European Union or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(ii) readily marketable direct obligations of any member of the European Economic Area, Switzerland, or Japan, or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of such country, and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody's or Aa3 by S&P;

(iii) marketable general obligations issued by any state of the United States or any province or territory of Canada or any political subdivision thereof or any instrumentality thereof that are guaranteed by the full faith and credit of such state, province or territory and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody's or Aa3 by S&P;

(iv) securities or any other evidence of Indebtedness or readily marketable direct obligations issued or directly and fully guaranteed or insured by the United States or Canadian government or any agency or instrumentality of the United States or Canadian government (*provided* that the full faith and credit of the United States or Canada is pledged in support of those securities), in such case having maturities of not more than twelve (12) months from the date of acquisition;

(v) certificates of deposit and eurodollar time deposits with maturities of twelve (12) months or less from the date of acquisition, bankers' acceptances with maturities not exceeding twelve (12) months and overnight bank deposits, in each case, with any Lender party to this Agreement or any commercial bank or trust company having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least "A" or the equivalent thereof from S&P or "A2" or the equivalent thereof from Moody's and a combined capital and surplus greater than $500,000,000;

(vi) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clauses (iv) and (v) above entered into with any financial institution meeting the qualifications specified in clause (v) above;

(vii) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within twelve (12) months after the date of acquisition; and

(viii) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (vii) of this definition.

"**Cash Management Order**" shall mean an order of the U.S. Bankruptcy Court entered in the U.S. Case, and the corresponding provisions of the Initial CCAA Order made in the Canadian Case, together with all extensions, modifications and amendments that are in form and substance acceptable to the Administrative Agent in its Permitted Discretion, which, among other matters, authorizes the Loan Parties to use their cash management system, substantially in the form of Exhibit O or another form satisfactory to the Administrative Agent.

"**Cash Management Services**" shall mean any services provided from time to time to the Parent or any of its Subsidiaries in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

"**Cash Receipts**" means receipts of cash by or on behalf of the Parent and its Subsidiaries from third parties, excluding, except to the extent forecasted in the Budget, tax refunds, proceeds from non-ordinary course asset sales (including the sale of the "Inaria" division), or other extraordinary or non-ordinary course cash receipts.

"**CCAA**" shall mean the Companies' Creditors Arrangement Act (Canada).

"**CDOR Loan**" shall mean each Revolving Loan designated as such by the Lead Canadian Borrower at the time of the incurrence thereof or conversion thereto.

"**CDOR Rate**" shall mean the rate per annum equal to the average of the annual yield rates applicable to Canadian Dollar banker's acceptances for the respective Interest Period at or about 10:00 a.m. (Toronto, Ontario time) on the first day of such Interest Period as reported on the "CDOR Page" (or any display substituted therefor) of Reuters Monitor Money Rates Service (or such other page or commercially available source displaying Canadian interbank bid rates for Canadian Dollar bankers' acceptances as may be designated by the Administrative Agent from time to time) for a term equivalent to such Interest Period; *provided*, that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice and, with respect to the Borrowers, other similarly situated borrowers; *provided*, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and consistent with determinations for other similarly situated borrowers; *provided* that, in no event shall the CDOR Rate be less than zero.

"**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same has been amended and may hereafter be amended from time to time, 42 U.S.C. § 9601 et seq.

"**CFC**" shall mean a Subsidiary of the Parent that is a "controlled foreign corporation" for purposes of Section 957 of the Code.

"**Change in Law**" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States, Canadian or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued but only to the extent a Lender is imposing applicable increased costs or costs in connection with capital

adequacy requirements similar to those described in clauses (i) and (ii) of Section 3.01(a) generally on other borrowers of loans under United States and/or Canadian asset-based revolving credit facilities.

"**Chattel Paper**" shall mean "chattel paper" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York. Without limiting the foregoing, the term "Chattel Paper" shall in any event include all Tangible Chattel Paper and all Electronic Chattel Paper.

"**Closing Date**" shall mean the first Business Day on which all of the conditions precedent in Article V are satisfied or waived in accordance with Section 12.04.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" shall have the meaning provided in Section 14.01.

"**Collateral Agent**" shall mean the party acting as collateral agent for the Secured Parties pursuant to this Agreement or to the Security Documents.

"**Collection Account**" means a Deposit Account that is used by a Borrower for the collection of proceeds of Accounts of such Borrower and maintained in the United States or Canada other than a Deposit Account: (i) which is used exclusively for the purpose of making payroll and withholding tax payments related thereto and other employee wage and benefit payments and accrued and unpaid employee compensation (including salaries, wages, benefits and expense reimbursements), (ii) which is exclusively used for paying taxes, including sales taxes, (iii) which is exclusively an escrow account fiduciary or trust account or (iv) that is a zero balance Deposit Account.

"**Commercial Tort Claims**" shall mean "commercial tort claims" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Commitment**" shall mean, with respect to any Lender, such Lender's Revolving Commitment, LC Commitment or Swingline Commitment.

"**Commitment Fee**" shall have the meaning assigned to such term in Section 2.05(a).

"**Commitment Fee Percentage**" shall mean 0.50% per annum on the average daily unused Availability, calculated based upon the actual number of days elapsed over a 360-day year payable monthly in arrears.

"**Compliance Certificate**" shall mean a certificate of the Responsible Officer of the Parent substantially in the form of Exhibit J hereto, or otherwise, in form and substance reasonably satisfactory to the Administrative Agent.

"**Concentration Account**" means a Collection Account that is used by a Borrower as a primary concentration account for proceeds of Accounts of such Borrower and that is maintained in the United States or Canada.

"**Connection Income Taxes**" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes, capital Taxes or branch profits Taxes.

"**Contingent Obligation**" shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including, without limitation, any such obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (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 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 or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided*, *however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent 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.

"**Contract Rights**" shall mean all rights of any Credit Party under each Contract, including, without limitation, (i) any and all rights to receive and demand payments under any or all Contracts, (ii) any and all rights to receive and compel performance under any or all Contracts and (iii) any and all other rights, interests and claims now existing or in the future arising in connection with any or all Contracts.

"**Contracts**" shall mean all contracts between any Credit Party and one or more additional parties (including, without limitation, any Swap Contracts, contracts for Bank Products, licensing agreements and any partnership agreements, joint venture agreements and limited liability company agreements, and settlement agreements).

"**Copyrights**" shall mean all: (a) copyrights (whether statutory or common law, whether registered or unregistered and whether published or unpublished), and all copyright registrations and applications therefor, including, without limitation, the copyright registrations and applications in the United States Copyright Office and the Canadian Intellectual Property Office; (b) rights and privileges arising under applicable law with respect to such copyrights; and (c) renewals and extensions thereof and amendments thereto.

"**Cost**" shall mean, as reasonably determined by the Administrative Agent in good faith, with respect to Inventory, the lower of (a) cost or (b) market value; *provided* that for purposes of the calculation of Borrowing Base, the Cost of Inventory shall not include (A) the portion of the cost of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Borrower, or (B) write ups or write downs in cost with respect to currency exchange rates.

"**Credit Documents**" shall mean this Agreement and, after the execution and delivery thereof pursuant to the terms of this Agreement, each Note and each Security Document, the Post-Petition Intercreditor Agreement and the Fee Letter.

"**Credit Event**" shall mean the making of any Loan.

"**Credit Extension**" shall mean, as the context may require, (i) a Credit Event or (ii) the issuance, extension or renewal of any Letter of Credit by the Issuing Bank or the extension or renewal of any Existing Letter of Credit; *provided* that "***Credit Extensions***" shall not include conversions and continuations of outstanding Loans.

"**Credit Party**" shall mean the collective reference to the Parent, each Borrower and each Subsidiary Guarantor.

"**Cumulative Net Cash Flow**" means, with respect to any Variance Period, an amount (which amount may be negative) equal to (a) cumulative Cash Receipts (excluding the proceeds of any Loans and any proceeds of the Term Loan DIP Credit Agreement) attributable to the Parent and its Subsidiaries in such Variance Period less (b) cumulative Cash Disbursements (other than interest on and the repayment of Loans and amounts outstanding under the Term Loan DIP Credit Agreement or the Prepetition ABL Facility and the refinancing of the Prepetition Term Loan Credit Agreement and excluding professional fees actually paid during the Variance Period) attributable to the Parent and its Subsidiaries in such Variance Period.

"**Debtors**" means the Canadian Debtors and the U.S. Debtors, collectively.

"**Debtor Credit Parties**" means the Parent and each other Credit Party that is a Debtor.

"**Debtor Relief Laws**" shall mean the Bankruptcy Code, the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), the Winding-Up and Restructuring Act (Canada) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors or debt security holders, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect.

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

"**Default Rate**" shall have the meaning assigned to such term in Section 2.06(c).

"**Defaulting Lender**" shall mean, subject to Section 2.11(c), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Parent in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank, any Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Parent, the Administrative Agent, any Issuing Bank or any Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Parent, to confirm in writing to the Administrative Agent and the Parent that it will comply with its prospective funding obligations hereunder (provided that

such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Parent), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) becomes subject to a Bail-In Action or (iii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation, the Canada Deposit Insurance Corporation or any other state, provincial or federal regulatory authority acting in such a capacity; *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 so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and as of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.11(c)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Lead Borrowers, the Issuing Banks, the Swingline Lender and each other Lender promptly following such determination.

"**Deposit Account**" shall have the meaning assigned thereto in Article 9 of the UCC, and shall include any deposit , demand, time, savings, cash management, passbook or other similar accounts with a bank, credit union, trust company, similar financial institution or other Person and all accounts and sub-accounts relating to any of the foregoing accounts.

"**Dilution**" shall mean for any period with respect to any Borrower, the fraction, expressed as a percentage, the numerator of which is the aggregate amount of reductions in the Accounts of such Borrower for such period other than by reason of dollar for dollar cash payment and the denominator of which is the aggregate dollar amount of the sales of such Borrower for such period.

"**Dilution Reserve**" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by 1 percentage point (or fraction thereof, rounding to the nearest one-tenth of 1 percentage point) for each percentage point (or fraction thereof, rounding to the nearest one-tenth of 1 percentage point) by which Dilution is in excess of 5%; provided, that until the completion of the initial field examination, the Dilution Reserve shall be $0.

"**DIP Cash Collateral**" shall mean "Cash Collateral" as defined in the Final Financing Orders.

"**DIP Superpriority Claim**" has the meaning set forth in Section 2.19.

"**D&O Charge**" shall have the meaning given to that term in the Initial CCAA Order.

"**Disqualified Stock**" shall mean any preferred Equity Interests of the Parent.

"**Dividend**" shall mean, with respect to any Person, that such Person has declared or paid a dividend, distribution or returned any equity capital to its stockholders, partners or members or

authorized or made any other distribution, payment or delivery of property (other than common equity of such Person) or cash to its stockholders, partners or members as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for a consideration any shares of any class of its Equity Interests outstanding on or after the Closing Date (or any options or warrants issued by such Person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes.

"**Documents**" shall mean "documents" as such term is defined in the UCC as in effect on the date hereof in the State of New York or, as applicable, Documents of Title as such term is defined in the PPSA as in effect on the date hereof in the Province of Ontario.

"**Dollar Equivalent**" means, at any time, (a) with respect to any amount denominated in U.S. Dollars, such amount, and (b) with respect to any amount denominated in any other currency (including Canadian Dollars), the equivalent amount thereof as determined by the Administrative Agent or the Issuing Bank, as the case may be, at such time on the basis of the Spot Rate in accordance with Section 1.03.

"**Domestic Subsidiary**" shall mean, as to any Person, any Subsidiary of such Person incorporated or organized under the laws of (i) the United States, any state thereof or the District of Columbia (a "**U.S. Subsidiary**") or (ii) Canada or any province or territory thereof (a "**Canadian Subsidiary**").

"**Dominion Account**" shall mean a Canadian Dominion Account or a U.S. Dominion Account.

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Electronic Chattel Paper**" shall mean "electronic chattel paper" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Eligible Accounts**" shall mean, on any date of determination of the Borrowing Base, all of the Accounts owned by all Borrowers and reflected in the most recent Borrowing Base Certificate delivered by the Lead Borrowers to the Administrative Agent, except any Account to which any of the exclusionary criteria set forth below applies. Eligible Accounts shall not include any of the following Accounts:

(i) any Account in which the Collateral Agent, on behalf of the Secured Parties, does not have a first priority perfected Lien (unless the reason for not having a first priority perfected Lien is solely due to the failure of the Collateral Agent to make the

required filings after having received all documentation and information from the applicable Borrower on a timely basis reasonably requested by the Collateral Agent to permit it to maintain such first priority perfection; *provided however*, that the applicable Borrower shall cooperate with the Collateral Agent to effectuate and preserve such first priority perfection) (except such Liens as are permitted by Section 9.01(a) hereof);

(ii) any Account that is not owned by a Borrower;

(iii) any Account due from an Account Debtor that is not domiciled in the United States or Canada and (if not a natural person) organized under the laws of the United States or Canada or any political subdivision thereof in the aggregate unless, in each case, such Account is backed by a letter of credit or bank guaranty acceptable to the Administrative Agent which is (as applicable) in the possession of and is directly drawable by the Administrative Agent and, with respect to which the Administrative Agent has "control" as defined in Article 9-107 of the Uniform Commercial Code;

(iv) any Account that is payable in any currency other than U.S. Dollars or Canadian Dollars unless backed by a letter of credit or bank guarantee acceptable to the Administrative Agent;

(v) any Account that does not arise from the sale of goods or the performance of services by such Borrower in the ordinary course of its business;

(vi) any Account that does not comply in all material respects with all applicable legal requirements, including, without limitation, all laws, rules, regulations and orders of any Governmental Authority;

(vii) any Account (A) as to which a Borrower's right to receive payment is contingent upon the fulfillment of any condition whatsoever unless such condition is satisfied, (B) as to which a Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial or administrative process, (C) that represents a progress billing consisting of an invoice for goods sold or used or services rendered pursuant to a contract under which the Account Debtor's obligation to pay that invoice is subject to a Borrower's completion of further performance under such contract or is subject to the equitable lien of a surety bond issuer, or (D) that arises with respect to goods that are delivered on a bill-and-hold, cash-on-delivery basis or placed on consignment, guaranteed sale or other terms by reason of which the payment by the Account Debtor is or may be conditional except that Accounts arising from sales which are on a cash-on-delivery basis (to the extent such cash-on-delivery is in the ordinary course of business) shall not be deemed ineligible pursuant to this definition until 14 days after the shipment of the goods relating thereto;

(viii) to the extent that any defense, counterclaim or dispute arises, or the Account is, or is reasonably likely to become, subject to any right of set-off by the Account Debtor, to the extent of the amount of such set-off, it being understood that the remaining balance of the Account shall be eligible;

(ix) any Account that is not a true and correct statement of bona fide indebtedness incurred in the amount of the Account for merchandise sold to or services rendered and accepted by the applicable Account Debtor;

(x) any Account with respect to which an invoice or other electronic transmission constituting a request for payment, reasonably acceptable to the Administrative Agent in form and substance, has not been sent on a timely basis to the applicable Account Debtor according to the normal invoicing and timing procedures of the Borrowers;

(xi) any Account that arises from a sale to any director, officer, other employee or Affiliate of a Borrower;

(xii) any Account that is in default; *provided* that, without limiting the generality of the foregoing, an Account shall be deemed in default at any time upon the occurrence of any of the following; *provided further* that, in calculating delinquent portions of Accounts under clause (xii)(A)(i) below, credit balances will be excluded:

(A) (i) such Account is unpaid for more than 60 days after the original due date shown on the invoice provided that up to $15,000,000 of invoices that would otherwise be deemed in default as a result of being unpaid for more than 60 days after the original due date shall not be deemed to be in default if such invoices are less than 90 days past due or (ii) such Account has dated terms of more than 270 days; *provided*, that only the portion of that invoice that has dated terms greater than 270 days shall be deemed in default, or (iii) such Account has dated terms of 181 days to 270 days if and to the extent that, all such Accounts with dated terms of 181 days to 270 days would otherwise exceed 25% of Eligible Accounts Receivable as of the applicable date of determination; or

(B) the Account Debtor obligated upon such Account suspends business, makes a general assignment for the benefit of creditors, fails to pay its debts generally as they come due, or is classified by the Parent and its Subsidiaries as "cash only, bad check," as determined by the Parent and its Subsidiaries in the ordinary course of business consistent with past-practice; or

(C) a petition is filed by or against any Account Debtor obligated upon such Account under any Debtor Relief Law or any other federal, state or foreign (including any provincial) receivership, insolvency relief or other law or laws for the relief of debtors; *provided* that so long as an order exists permitting payment of trade creditors specifically with respect to such Account Debtor and such Account Debtor has obtained adequate post-petition financing to pay such Accounts, the Accounts of such Account Debtor shall not be deemed ineligible under the provisions of this clause (C) to the extent the order permitting such financing allows the payment of the applicable Account;

(xiii) any Account that is the obligation of an Account Debtor (other than an individual) if 50% or more of the dollar amount of all Accounts owing by such Account Debtor are ineligible under the criteria set forth in clause (xii) above;

(xiv) any Account as to which any of the representations or warranties in the Credit Documents are untrue in any material respect (to the extent such materiality relates to the amount owing on such Account);

(xv) any Account which is evidenced by a judgment, Instrument or Chattel Paper and such Instrument or Chattel Paper is not pledged and delivered to the Administrative Agent under the Security Documents;

(xvi) any Account on which the Account Debtor is the United States or a Governmental Authority in the United States, unless the applicable Borrower has assigned its rights to payment of such Account to the Administrative Agent pursuant to the Assignment of Claims Act of 1940, as amended, in the case of a federal Governmental Authority, and pursuant to applicable law, if any, in the case of any other Governmental Authority, and such assignment has been accepted and acknowledged by the appropriate government officers;

(xvii) any Account on which the Account Debtor is Canada or a Governmental Authority in Canada, unless the applicable Borrower has assigned its rights to payment of such Account to the Administrative Agent in compliance with the Financial Administration Act (Canada) in the case of a federal Governmental Authority, and pursuant to applicable law, if any, in the case of any other Governmental Authority, and such assignment has been accepted and acknowledged by the appropriate government officers;

(xviii) any Account which is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to the Borrowers exceeds, in the case of Canadian Tire Corp. and its Subsidiaries, 40%, and in the case of all other Account Debtors, 15% of the aggregate Eligible Accounts of all Borrowers;

(xix) any Account which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Borrower;

(xx) any Account which is owing in respect of interest and late charges or fees in respect of Indebtedness; or

(xxi) any Account as to which the contract or agreement underlying such Account is governed by (or, if no governing law is expressed therein, is deemed to be governed by) the laws of any jurisdiction other than the United States, any state thereof, the District of Columbia, Canada or any province thereof.

"**Eligible Foreign Account Debtor Jurisdiction**" shall mean Australia, New Zealand, Norway, any member state of the European Union prior to May 2004, Switzerland and such other jurisdictions determined by the Administrative Agent in its discretion, in each case together with any state or province thereof (as applicable); provided, that the Administrative Agent may from time to time, in its Permitted Discretion, designate any of the foregoing jurisdictions, including any jurisdiction previously determined by the Administrative Agent in its Permitted Discretion to be an Eligible Foreign Account Debtor Jurisdiction, to no longer be an eligible jurisdiction for Account Debtors (other than Australia, the United Kingdom); provided, further, that the Administrative Agent may, in its discretion and as a condition to such jurisdiction remaining an Eligible Foreign Account Debtor Jurisdiction, require that the Borrowers use commercially reasonable efforts to provide local law security documentation in respect of Accounts of Account Debtors organized outside of the jurisdiction of organization of such Canadian Borrowers to

ensure that the Administrative Agent or a Security Trustee has a duly perfected and enforceable Lien under the Applicable Law of such jurisdiction.

"**Eligible Foreign Account**" shall mean Accounts of the Canadian Borrowers owed by Account Debtors domiciled in an Eligible Foreign Account Debtor Jurisdiction, if such Accounts would otherwise qualify as "Eligible Accounts" (other than clause (iii) thereof).

"**Eligible In-Transit Inventory**" shall mean Inventory owned by a Borrower that would be Eligible Inventory if it were not subject to a negotiable document of title and in transit from a foreign location to a location of the Borrower within the United States, and that the Administrative Agent, in its Permitted Discretion, deems to be Eligible In-Transit Inventory. Without limiting the foregoing, no Inventory shall be Eligible In-Transit Inventory unless (a) it is fully insured in a manner reasonably satisfactory to the Administrative Agent; (b) it is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, reserve title or otherwise enjoy Lien rights against the Inventory, or with respect to whom any Borrower is in default of any material obligations; (c) it is subject to purchase orders and other sale documentation reasonably satisfactory to the Administrative Agent, and title has passed to the relevant Borrower; (d) it is shipped by a common carrier that is not affiliated with the vendor and is not subject to any Sanction or on any specially designated nationals list maintained by OFAC; and (e) it is being handled by a customs broker, freight-forwarder or other handler that has delivered a Lien Waiver.

"**Eligible Inventory**" shall mean, subject to adjustment as set forth below, items of Inventory of any Borrower held for sale in the ordinary course (excluding packing or shipping materials or maintenance supplies). Eligible Inventory shall exclude any Inventory to which any of the exclusionary criteria set forth below applies. The Administrative Agent shall have the right to establish, modify or eliminate Reserves against Eligible Inventory from time to time in its Permitted Discretion. Eligible Inventory shall not include any Inventory of the Borrowers that:

(i) is not solely owned by a Borrower, or is leased by or is on consignment to a Borrower, or the Borrowers do not have title thereto;

(ii) the Collateral Agent, on behalf of the Secured Parties, does not have a first priority (unless the reason for not having a first priority perfected Lien is solely due to the failure of the Collateral Agent to make the required filings after having received all documentation and information from the applicable Borrower on a timely basis reasonably requested by the Collateral Agent to permit it to maintain such first priority perfection; *provided however* that the applicable Borrower shall cooperate with the Collateral Agent to effectuate and preserve such first priority perfection) (except such Liens as permitted by Section 9.01(a) hereof) perfected Lien upon;

(iii) (A) is stored at a location not owned by a Borrower unless (x) the Administrative Agent has given its prior consent thereto, (y) a reasonably satisfactory Landlord Lien Waiver and Access Agreement has been delivered to the Administrative Agent, or (z) Landlord Lien Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto, or (B) is stored with a bailee or warehouseman unless either (x) a reasonably satisfactory acknowledged bailee waiver letter has been received by the Administrative Agent, or (y) Landlord Lien Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto, it being understood that in each case, during the 90 day period immediately following the Closing Date (or such longer period as the Administrative Agent in its

Permitted Discretion), such location or warehouse need not be subject to a Landlord Lien Waiver and Access Agreement or bailee waiver letter, and the lack thereof shall not otherwise deem the applicable inventory to be ineligible;

(iv) (A) is placed on consignment, unless a valid consignment agreement which is reasonably satisfactory to Administrative Agent is in place with respect to such Inventory or (B) is in transit (except to the extent such Inventory (x) is purchased under documentary letters of credit (other than Letters of Credit) and is in transit from any location in the United States or Canada for receipt by a Borrower within fifteen (15) days of the date of determination, or (y) is in transit between locations leased, owned or occupied by a Borrower);

(v) is covered by a negotiable document of title;

(vi) is unsalable, shopworn, seconds, damaged or unfit for sale, in each case, as determined in the ordinary course of business by the Borrowers;

(vii) consists of display items or packing or shipping materials, manufacturing supplies, work-in-process Inventory (other than Work-In-Process) or parts (other than Parts);

(viii) is not of a type held for sale in the ordinary course of the Borrowers', as applicable, business;

(ix) except as otherwise agreed by the Administrative Agent, does not conform in all material respects to the representations or warranties pertaining to Inventory set forth in the Credit Documents;

(x) is subject to any licensing arrangement or any other Intellectual Property or other proprietary rights of any Person, the effect of which would be to limit the ability of the Administrative Agent, or any Person selling the Inventory on behalf of the Administrative Agent, to sell such Inventory in enforcement of the Administrative Agent's Liens without further consent or payment to the licensor or such other Person (unless such consent has then been obtained);

(xi) is not covered by casualty insurance maintained as required by Section 8.03;

(xii) is acquired by a Borrower after the Closing Date (other than from another Borrower) and has a fair market value (a) taken together with all other assets concurrently acquired, of $20 million or more, or (b) taken together with all other assets acquired after the Closing Date and to become eligible pursuant to this clause (xii), of $40 million or more, unless and until such time as the Administrative Agent shall have received or conducted (1) appraisals, from appraisers reasonably satisfactory to the Administrative Agent, of such Inventory acquired in such acquisition and (2) a commercial finance examination and such other due diligence as the Administrative Agent may reasonably require in order to determine the appropriate advance rate against such Inventory, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent; *provided*, that for the avoidance of doubt, the Borrowers shall be allowed to utilize any increase in the Borrowing Base resulting from the inclusion of such assets for the purpose of funding the purchase of such assets;

(xiii) which is located at any location where the aggregate value of all Eligible Inventory of the Borrowers at such location is less than $100,000;

(xiv) is Inventory of another type deemed ineligible per the initial inventory appraisal; or

(xv) except as otherwise contemplated by clause (iv)(B)(2) above, is, (a) with respect to the U.S. Borrowing Base, located outside the United States and (b) with respect to the Canadian Borrowing Base, located outside of Canada.

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

"**Environment**" shall mean ambient air, indoor air, surface water, groundwater, drinking water, land surface and sub-surface strata and natural resources such as wetlands, flora and fauna.

"**Environmental Claims**" shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, orders, directives, claims, liens, notices of liability, noncompliance or violation, penalties, investigations and/or proceedings relating in any way to any Environmental Law or any permit or license issued, or any approval given, under any such Environmental Law (hereafter, "**Claims**"), including, without limitation, (a) any and all Claims by governmental or regulatory authorities for enforcement, investigation, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation, injunctive or other equitable relief or other actions arising out of or relating to any Environmental Law or an alleged injury or threat of injury to human health, safety or the Environment due to the presence of Hazardous Materials, including any Release or threat of Release of any Hazardous Materials.

"**Environmental Law**" shall mean any Federal, state, provincial, foreign or local statute, law, rule, regulation, by-law, restriction, ordinance, code, permit, binding guideline, agreement and rule of common law, now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order or direction, consent decree or judgment, relating to the Environment, human health and safety or Hazardous Materials, including, without limitation, in the United States: CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 5101 et seq.; the Clean Water Act, 33 U.S.C. § 1251 *et seq*.; in Canada: the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C., 1985, c. F-14; *Species at Risk Act*, S.C. 2002, c. 29; *Transportation of Dangerous Goods Act*, 1992, S.C. 1992, c. 34; and any state, provincial and local or foreign counterparts or equivalents, in each case as amended from time to time.

"**Equipment**" shall mean any "equipment" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York, and in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings, fixtures and vehicles now or hereafter owned by any Credit Party and any and all additions, substitutions and replacements of

any of the foregoing and all accessions thereto, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

"**Equity Interests**" of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and, unless the context indicates otherwise, the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any successor section thereof.

"**ERISA Affiliate**" shall mean each person (as defined in Section 3(9) of ERISA) which together with the Parent or a Subsidiary of the Parent would be deemed to be a "single employer" within the meaning of Section 414(b) or (c) of the Code and solely with respect to Section 412 of the Code, Sections 414(b), (c), (m) or (o) of the Code.

"**ERISA Event**" shall mean (a) any "reportable event," as defined in Section 4043 of ERISA or the regulations issued thereunder, but excluding any event for which the 30-day notice period is waived with respect to a Plan, (b) any failure to make a required contribution to any Plan that would result in the imposition of a Lien or other encumbrance or the failure to satisfy the minimum funding standards set forth in Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, or the arising of such a Lien or encumbrance, with respect to a Plan, (c) the incurrence by the Parent, a Subsidiary of the Parent, or an ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal (including under Section 4062(e) of ERISA) of any of the Parent, a Subsidiary of the Parent, or an ERISA Affiliate from any Plan or Multiemployer Plan, (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 of ERISA, or the receipt by the Parent, a Subsidiary of the Parent, or an ERISA Affiliate from the PBGC or a plan administrator of any notice of intent to terminate any Plan or Multiemployer Plan or to appoint a trustee to administer any Plan, (e) the adoption of any amendment to a Plan that would require the provision of security pursuant to the Code, ERISA or other applicable law, (f) the receipt by the Parent, a Subsidiary of the Parent, or an ERISA Affiliate of any notice concerning statutory liability arising from the withdrawal or partial withdrawal of the Parent, a Subsidiary of the Parent, or an ERISA Affiliate from a Multiemployer Plan or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA, (g) the occurrence of any non-exempt "prohibited transaction" (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to which the Parent or any Subsidiary is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which the Parent or any Subsidiary could reasonably be expected to have liability, (h) the occurrence of any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of any Plan or the appointment of a trustee to administer any Plan, (i) the filing of any request for or receipt of a minimum funding waiver under Section 412(c) of the Code with respect to any Plan or Multiemployer Plan, (j) a determination that any Plan is in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (k) the receipt by the Parent, a Subsidiary of the Parent or any ERISA Affiliate of any notice, that a Multiemployer Plan is, or is expected to be, in endangered or critical status under Section 305 of ERISA or, (l) any other extraordinary event or condition with respect to a Plan or Multiemployer Plan which could reasonably be expected to result in a Lien or any acceleration of

any statutory requirement to fund all or a substantial portion of the unfunded accrued benefit liabilities of such plan.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Event of Default**" shall have the meaning provided in Article 10.

"**Excluded Agreements**" shall have the meaning provided in "Excluded Property".

"**Excluded Property**" shall mean:

(a) any leases, licenses, Instruments, Contracts, Chattel Paper, Intangibles, Permits, governmental licenses, provincial, territorial or local franchises, charters or authorizations or other contracts or agreements (other than an Account or Chattel Paper) with or issued by Persons other than the Borrower or Subsidiaries of the Borrower or an Affiliate thereof (collectively, "**Excluded Agreements**") that would otherwise be included in the Collateral (and such Excluded Agreements shall not be deemed to constitute a part of the Collateral) for so long as, and to the extent that, the granting of such a security interest or hypothec pursuant hereto would invalidate or result in a violation, breach, default or termination of such Excluded Agreements or create a right of termination in favour of, or require the consent of, any party thereto (in each case other than the Borrower or a Subsidiary Guarantor) (in each case, except to the extent any such violation, breach, default, termination, right or consent would be rendered ineffective under the Bankruptcy Code, the UCC, the PPSA or other applicable law); provided, however, that a security interest or hypothec in an Excluded Agreement in favour of the Secured Parties shall attach immediately (i) at such time as Credit Party's grant of a security interest or hypothec in such Excluded Agreement no longer results in a violation, breach, default or termination thereof or thereunder or no longer creates such right of termination or such right has been waived or requires such consent or such consent has been obtained, (ii) to the extent severable, to any portion of such Excluded Agreement that does not result in a respective violation, breach, default, termination or right or consent thereof or thereunder and (iii) to any proceeds or receivables of such Excluded Agreement that are not Excluded Property;

(b) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest or hypothec therein would impair the validity or enforceability of such intent-to-use trademark application under applicable United States federal law;

(c) any Margin Stock;

(d) cash that is segregated for utility deposits under any order of the Bankruptcy Court or that secures any letters of credit outstanding and permitted to be outstanding and secured pursuant to the terms of this Agreement;

(e) those assets as to which the Administrative Agent and the Lead Borrower reasonably agree in a writing to the Collateral Agent that the cost of obtaining a security interest therein is excessive in relation to the value of the security to be afforded thereby;

(f) any Avoidance Actions; and

(g) any of the following:

(i) any Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods that would otherwise be included in the Collateral (and such Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods shall not be deemed to constitute a part of the Collateral) if such Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods have been sold or otherwise transferred in connection with a sale-leaseback transaction permitted under Section 9.02(xi), or are subject to any Liens permitted under Section 9.01(vii), or constitute the Proceeds or products of any Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods that have been so sold or otherwise transferred, in each case in accordance with the terms of this Agreement, so long as such Proceeds or products remain subject to the Liens referenced above in this clause (i); and

(ii) any property or asset that would otherwise be included in the Collateral (and such property or asset shall not be deemed to constitute a part of the Collateral) if such property or assets is subject to a Lien permitted by Section 9.01(xiv);

in each case pursuant to preceding clauses (g)(i) through (ii), for so long as, and to the extent that, the granting or existence of such a security interest or hypothec pursuant hereto would result in a breach, default or termination of any agreement relating to the respective Lien or obligations secured thereby (in each case, except to the extent any such breach, default or termination would be rendered ineffective under the UCC, the PPSA or other applicable law); provided that immediately upon repayment of the Indebtedness and/or other monetary obligation secured by a Lien referenced in clauses (g)(i) through (ii), the relevant Credit Party shall be deemed to have granted a security interest or hypothec in all of its rights, title and interests under or in such Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods that are the subject of such Lien; provided, however, that Excluded Property shall not include any Proceeds, substitutions or replacements of any Excluded Property referred to in any of clauses (a) through (g) (unless such Proceeds, substitutions or replacements would constitute Excluded Property referred to in any of clauses (a) through (g)).

"**Excluded Subsidiary**" shall mean any Subsidiary of the Parent (other than a Borrower) that is (a) a Foreign Subsidiary that is (i) a direct or indirect Subsidiary of a U.S. Subsidiary and (ii) a CFC, (b) a FSHCO, (c) a U.S. Subsidiary of a Foreign Subsidiary, (d) prohibited by applicable Law from guaranteeing the Facilities and (e) any other Subsidiary where the Parent and the Administrative Agent reasonably agree (in writing by the Administrative Agent and confirmed by the Lead Borrowers), that the cost or other consequences (including any adverse tax consequences) of guaranteeing the Obligations shall be excessive in view of the value to be afforded thereby; *provided* that, notwithstanding the above, (x) if a Subsidiary executes a joinder hereto to become a "Subsidiary Guarantor" then it shall not constitute an "Excluded Subsidiary" (unless released from its obligations under Article 13 as a "Subsidiary Guarantor" in accordance with the terms hereof), (y) if a Subsidiary serves as a guarantor under the Prepetition ABL Facility and/or the Term Facilities, then it shall not constitute an "Excluded Subsidiary" (unless released from its obligations under Article 13 as a "Subsidiary Guarantor" in accordance with the terms hereof and thereof) and (z) no U.S. Subsidiary or Canadian Subsidiary of the Parent existing on the Closing Date will be an Excluded Subsidiary.

"**Excluded Taxes**" shall mean, with respect to any Recipient of any payment to be made by or on account of any obligation of any Credit Party under any Credit Document, (a) Taxes imposed on (or measured by) its net income and franchise (and similar) Taxes imposed on it in

lieu of income Taxes, in each case, either pursuant to the laws of the jurisdiction in which such Recipient is organized or in which the principal office or applicable lending office of such Recipient is located (or any political subdivision thereof) or that are Other Connection Taxes, (b) any branch profits Taxes under Section 884(a) of the Code, Section 219 of the ITA or any similar Tax imposed by any jurisdiction described in clause (a) above, (c) in the case of a Lender, any U.S. federal or Canadian withholding Tax that (i) is imposed on amounts payable to such Lender pursuant to a Law in effect at the time such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Recipient (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 Credit Parties with respect to such withholding tax pursuant to Section 4.01(a) or (ii) is attributable to such Recipient's failure to comply with Section 4.01(b) or Section 4.01(c), (d) any U.S. federal withholding Taxes under FATCA, (e) any Taxes imposed on a payment by or on account of any obligation of a Credit Party under any Credit Document: (A) (i) to a Person with which the Credit Party does not deal at arm's length (for the purposes of the ITA) at the time of making such payment or (ii) in respect of a debt or other obligation to pay an amount to a Person with whom the payer is not dealing at arm's length (for the purposes of the ITA) at the time of such payment and (B) on which the Tax is imposed by reason of such non-arm's length relationship and (f) any Taxes imposed on a Recipient by reason of such Recipient: (i) being a "specified shareholder" (as defined in subsection 18(5) of the ITA) of any Credit Party, or (ii) not dealing at arm's length (for the purposes of the ITA) with a "specified shareholder" (as defined in subsection 18(5) of the ITA) of any Credit Party.

"**Existing Letters of Credit**" shall mean those Letters of Credit issued and outstanding on the Closing Date under the Prepetition ABL Credit Agreement and described on Schedule 1.01(a) hereto.

"**FATCA**" shall mean Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date of this Agreement (or any such amended or successor version), any intergovernmental agreement entered into in connection with the foregoing or any fiscal or regulatory legislation or rules adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

"**FCPA**" shall have the meaning provided in Section 7.15(d).

"**Federal Funds Rate**" shall mean, for any day, (a) the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System on the applicable Business Day (or on the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if no such rate is published on the next Business Day, the average rate (rounded up, if necessary, to the nearest 1/8 of 1%) charged to the members of the Federal Reserve System and other financial institutions on the applicable day on such transactions, as determined by the Administrative Agent; *provided* that, in no event shall the Federal Funds Rate be less than zero.

"**Fees**" shall mean all amounts payable pursuant to or referred to in Section 2.05.

"**Fee Letter**" shall mean the letter agreement, dated as of the Closing Date, between the Borrowers and the Administrative Agent.

"**Final Financing Orders**" shall mean collectively a final order of the U.S. Bankruptcy Court approving the Term Loan DIP Credit Agreement, with a similar order being rendered by the Canadian Bankruptcy Court as part of any "comeback hearing", which final orders shall reduce the amount of the Post Carve-Out Amounts (as defined in the Interim Financing Order) applicable to the ABL Priority Collateral to an aggregate amount not to exceed $3,750,000, both of which shall be in form and substance reasonably acceptable to the Required Lenders (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof in form and substance reasonably acceptable to the Required Lenders).

"**Final Financing Order Date**" shall mean the latest of the dates upon which entry of a Final Financing Order is made.

"**Financing Orders**" shall mean the Interim Financing Order, the Final Financing Orders and any other order of the Bankruptcy Courts in relation to the ABL DIP Facility.

"**Fixtures**" shall mean "fixtures" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York.

"**Flood Insurance Laws**" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

"**Foreign Pension Plan**" shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States or Canada by the Parent or any one or more of its Subsidiaries primarily for the benefit of employees of the Parent or such Subsidiaries residing outside the United States or Canada, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"**Foreign Subsidiaries**" shall mean each Subsidiary of the Parent that is not a Domestic Subsidiary.

"**Fronting Exposure**" means a Defaulting Lender's Pro Rata Share of LC Exposure or Swingline Loans, as applicable, except to the extent allocated to other Lenders under Section 2.11.

"**FSHCO**" shall mean any U.S. Subsidiary that has no material assets other than the Equity Interests in one or more CFCs.

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

"**GAAP**" shall mean generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial

Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" shall mean "general intangibles" as such term is defined in the UCC as in effect on the date hereof in the State of New York or shall mean "intangibles" as defined in the PPSA.

"**Goods**" shall mean "goods" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York.

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

"**Guaranteed Obligations**" shall have the meaning provided in Section 13.01.

"**Guaranteed Party**" shall mean the Parent and each of its Subsidiaries that is a primary obligor in respect of any Guaranteed Obligations.

"**Guarantor**" shall mean and include the Parent, each Borrower and each Subsidiary Guarantor.

"Guaranty" shall have the meaning provided in Section 13.01.

"**Guaranty Supplement**" shall have the meaning provided in Section 13.05.

"**Hazardous Materials**" shall mean (a) any petroleum or petroleum products or byproducts, hydrocarbons, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, polychlorinated biphenyls, and radon gas; (b) any chemicals, materials, substances or wastes defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous substances," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material, substance or waste regulated or for which liability may arise under any Environmental Law.

"**Indebtedness**" shall mean, as to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person (A) for borrowed money or (B) for the deferred purchase price of property or services, (ii) the maximum amount available to be drawn under all letters of credit, bankers' acceptances and similar obligations issued for the account of such Person and all unpaid drawings in respect of such letters of credit, bankers' acceptances and similar obligations, (iii) all Indebtedness of the types described in clause (i), (ii), (iv), (v), (vi), (vii) or (viii) of this definition secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person (*provided* that , if the 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 lesser of (x) the aggregate unpaid amount of Indebtedness secured by such Lien and (y) the fair market value of the property to

which such Lien relates as determined in good faith by such Person), (iv) the aggregate amount of all Capitalized Lease Obligations of such Person, (v) all Contingent Obligations of such Person, (vi) all net obligations under any Swap Contracts and any Bank Product Debt or under any similar type of agreement, (vii) all Off-Balance Sheet Liabilities of such Person and (viii) all obligations in respect of Disqualified Stock. Notwithstanding the foregoing, Indebtedness shall not include (a) trade payables and accrued expenses incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person or (b) earn-outs and other contingent payments in respect of acquisitions except to the extent that the liability on account of any such earn-outs or contingent payment becomes fixed and is required by GAAP to be reflected as a liability on the consolidated balance sheet of the Parent and its Subsidiaries.

"**Indemnified Person**" shall have the meaning provided in Section 12.01.

"**Indemnified Taxes**" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Credit Parties under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Indemnity Reserve**" shall mean an indemnity reserve in an amount equal to $250,000.

"**Ineligible Transferee**" shall mean (i) certain Persons identified as "Ineligible Transferees" in writing to the Administrative Agent by the Borrower on or prior to the date of this Agreement and (ii) operating companies which are bona fide competitors of the Borrowers and such competitors' subsidiaries and controlling equity holders (other than bona fide debt funds) as may be identified by name in writing to the Administrative Agent prior to the date of this Agreement (but only with the consent of the Administrative Agent, not to be unreasonably withheld, by delivery of notice to the Administrative Agent setting forth such person or persons.

"**Initial Budget**" has the meaning specified in Section 5.07.

**"Initial CCAA Order"** means the Order of the Canadian Bankruptcy Court in the Canadian Case, granting the Canadian Debtors the protection of the CCAA, and shall be in form and substance reasonably acceptable to the Required Lenders.

"**Instrument**" shall mean "instruments" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York.

"**Intellectual Property**" shall mean all: (a) intellectual property of every kind and nature in any jurisdiction throughout the world, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, Software, Trade Secrets, confidential or proprietary technical and business information and other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing; (b) rights, priorities and privileges corresponding to any of the foregoing throughout the world, including as provided by international treaties or conventions, and all other rights of any kind whatsoever accruing thereunder or pertaining thereto; (c) Proceeds, income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect to any of the foregoing, including damages and payments for past and future infringements, misappropriations, or other violations thereof; and (d) rights to sue for past, present, and future infringements, misappropriations, or other violations of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing.

"**Intercompany Charge**" shall have the meaning given to that term in the Initial CCAA Order.

"**Interest Period**" shall mean as to any Borrowing of a LIBO Rate Loan or CDOR Loan, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two, three or six months (or twelve months if agreed by all Lenders) thereafter, as the applicable Lead Borrower may elect, or the date any Borrowing of a LIBO Rate Loan or CDOR Loan is converted to a Borrowing of a U.S. Base Rate Loan or Canadian Prime Rate Loan (as applicable) in accordance with Section 2.08 or repaid or prepaid in accordance with Section 2.07 or Section 2.09; *provided*, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"**Interim Financing Order**" has the meaning specified in Section 5.10, and for purposes hereof shall be deemed to include the Initial CCAA Order.

"**Interim Financing Order Date**" shall mean the date of entry of the Interim Financing Order.

"**Inventory**" shall mean merchandise, inventory and goods, and all additions, substitutions and replacements thereof and all Accessions thereto, wherever located, together with all goods, supplies, incidentals, packaging materials, labels, materials and any other items used or usable in manufacturing, processing, packaging or shipping same, in all stages of production from raw materials through work in process to finished goods, and all products and proceeds of whatever sort and wherever located any portion thereof which may be returned, rejected, reclaimed or repossessed by the Collateral Agent from any Credit Party's customers, and shall specifically include all "inventory" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York, as applicable.

"**Investment Property**" shall mean "investment property" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York.

"**Investments**" shall have the meaning provided in Section 9.05.

"**Issuing Bank**" shall mean, as the context may require, (a) Bank of America or any Affiliate thereof, with respect to Letters of Credit issued by it under this Credit Agreement; (b) any other Lender that may become an Issuing Bank pursuant to Section 2.13(i) and 2.13(k), with respect to Letters of Credit issued by such Lender under this Credit Agreement; (c) with respect to the Existing Letters of Credit, the Lender that issued each such Letter of Credit or (d) collectively, all of the foregoing.

"**ITA**" shall mean the Income Tax Act (Canada), as amended from time to time.

"**Joint Venture**" shall mean any Person other than an individual or a Subsidiary of the Parent (i) in which the Parent or any of its Subsidiaries holds or acquires an ownership interest

(by way of ownership of Equity Interests or other evidence of ownership) and (ii) which is engaged in a business permitted by Section 9.09.

"**KEIP / KERP Charge**" means the charge provided for in the Final Financing Order or subsequent Order of the Canadian Bankruptcy Court under the Canadian Case which shall not exceed the amount set forth in any such Order to secure the obligations of the Credit Parties pursuant to payments to be made to key employees under a key employee retention plan subject to and in accordance with the terms of the Final Financing Order or subsequent Order of the Canadian Bankruptcy Court under the Canadian Case.

"**Landlord Lien Reserve**" shall mean an amount equal to three months' rent for all of the leased locations of the Borrowers at which Eligible Inventory is stored, other than leased locations with respect to which the Administrative Agent has received a fully executed Landlord Lien Waiver and Access Agreement.

"**Landlord Lien Waiver and Access Agreement**" shall mean a Landlord Lien Waiver and Access Agreement, in a form reasonably approved by the Administrative Agent.

"**Laws**" shall mean, collectively, all international, foreign, federal, state, provincial, territorial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"**LC Collateral Accounts**" shall mean collateral accounts (maintained in Canadian Dollars or U.S. Dollars, as the case may be) in the form of a deposit account established and maintained by the Administrative Agent for the benefit of the Secured Parties, in accordance with the provisions of Section 2.13.

"**LC Commitment**" shall mean the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.13.

"**LC Credit Extension**" shall mean, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"**LC Disbursement**" shall mean a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.

"**LC Documents**" shall mean all documents, instruments and agreements delivered by the applicable Lead Borrower or any other Person to the Issuing Bank or the Administrative Agent in connection with any Letter of Credit.

"**LC Exposure**" shall mean at any time the Dollar Equivalent of the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall mean its Pro Rata Percentage of the aggregate LC Exposure at such time.

"**LC Obligations**" shall mean the sum (without duplication) of (a) all amounts owing by the Borrowers for any drawings under Letters of Credit (including any bankers' acceptances or other payment obligations arising therefrom); and (b) the outstanding stated amount of all outstanding Letters of Credit.

"**LC Participation Fee**" shall have the meaning assigned to such term in Section 2.05(c)(i).

"**LC Request**" shall mean a request by the applicable Lead Borrower in accordance with the terms of Section 2.13(b) in form and substance satisfactory to the Issuing Bank.

"**Lead Borrowers**" shall have the meaning provided in the preamble hereto. Actions to be taken by a Lead Borrower shall be taken by the Lead Canadian Borrower with respect to any Canadian Borrower or the Lead U.S. Borrower with respect to any U.S. Borrower.

"**Lead Canadian Borrower**" shall have the meaning provided in the preamble hereto.

"**Lead U.S. Borrower**" shall have the meaning provided in the preamble hereto.

"**Lending Office**" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Lead Borrowers and the Administrative Agent which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

"**Letter of Credit**" shall mean any documentary or standby letters of credit issued or to be issued, or any foreign guarantee, or documentary bankers acceptance, by an Issuing Bank for the account of the Parent or any of its Subsidiaries pursuant to Section 2.13, including each Existing Letter of Credit.

"**Lender**" shall mean each financial institution listed on Schedule 1.01(b), as well as any Person that becomes a "Lender" hereunder pursuant to Section 12.04(b), and, as the context requires, includes the Swingline Lender and any Issuing Bank.

"**Letter of Credit Expiration Date**" shall mean the date that is five (5) Business Days prior to the Scheduled Maturity Date.

"**LIBO Rate**" shall mean, (i) for any Interest Period, the rate per annum equal to the London Interbank Offered Rate ("LIBOR") or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, on the applicable Interest Determination Date, for U.S. Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; *provided*, that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice and, with respect to the Borrowers, other similarly situated borrowers; *provided*, *further* that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and with determinations for other similarly situated borrowers; and (ii) for any interest rate calculation

with respect to a U.S. Base Rate Loan on any date, the rate per annum equal to the LIBO Rate, at or about 11:00 a.m. (London time) determined two (2) Business Days prior to such date for U.S. Dollar deposits being delivered in the London interbank market with a term of one (1) month commencing that day; *provided* that, in no event shall the LIBO Rate be less than zero.

"**Licenses**" means any and all licenses, agreements and similar arrangements in respect of the licensing or use of any Intellectual Property.

"**Lien**" shall mean any mortgage, pledge, hypothecation, collateral assignment, security deposit arrangement, encumbrance, hypothec, deemed or statutory trust, security conveyance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, and any lease having substantially the same effect as any of the foregoing).

"**Lien Waiver**" shall mean an agreement, in form and substance satisfactory to the Administrative Agent, by which, for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any documents of title in its possession relating to the Collateral as agent for the Collateral Agent, and agrees to deliver the Collateral to the Collateral Agent upon request.

"**Line Cap**" shall mean, at any time, an amount that is equal to the lesser of (a) the Adjusted Aggregate Commitments at such time and (b) the then applicable Borrowing Base.

"**Liquidity**" shall mean the sum of (a) unrestricted cash on the balance sheet of the Borrower and the other Credit Parties which are subject to a perfected first-priority lien of the Administrative Agent (or, after the payment in full of the Obligations and the Prepetition Obligations, the Term Loan Agent) subject to the Carve Out and Administration Charge *plus* (b) the amount of Availability *plus* (c) after the Final Financing Order Date, the aggregate amount of undrawn Delayed Draw Term Loan Commitments (as such term is defined in the Term Loan DIP Credit Agreement) then in effect.

"**Loans**" shall mean advances made to or at the instructions of a Borrower pursuant to Article 2 hereof and may constitute Revolving Loans, Swingline Loans or Overadvance Loans.

"**Margin Stock**" shall have the meaning provided in Regulation U.

"**Material Adverse Effect**" shall mean a material adverse effect on (a) the condition (financial or otherwise), results of operations, business or properties of a Credit Party, (b) the ability of a Credit Party to duly and punctually pay or perform their obligations under this Agreement and/or any other Credit Document in accordance with the terms thereof, or (c) the practical realization of the benefits of the Agent's and each Lender's rights and remedies under this Agreement, the Credit Documents or any of the Financing Orders in each case, excluding the commencement, continuation and prosecution of the Cases and the consequences that would reasonably be expected to occur as a direct result thereof.

"**Maturity Date**" shall mean the earliest to occur of (i) the Scheduled Maturity Date, (ii) the consummation of a Sale Transaction, (iii) the acceleration of the Loans and the termination of all Commitments in accordance with this Agreement, (iv) three (3) Business Days from the Petition Date if the Interim Financing Order from each Bankruptcy Court, in form and substance acceptable to the Required Lenders in their reasonable discretion, is not entered into and/or (v)

thirty (30) days from the Interim Financing Order Date if the Final Financing Orders, in form and substance acceptable to the Required Lenders in their reasonable discretion, are not issued and entered (or, in each case of the foregoing, a later date that is agreed to in writing by the Lenders in their reasonable discretion).

"**Milestones**" shall have the meaning provided in Section 8.15.

"**Monitor**" means Ernst & Young Inc., the monitor appointed by the Canadian Bankruptcy Court in the Canadian Case.

"**Moody's**" shall mean Moody's Investors Service, Inc.

"**Multiemployer Plan**" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA under which the Parent or a Subsidiary of the Parent has any obligation or liability, including on account of an ERISA Affiliate, or any Canadian Pension Plan that is a Multiemployer Plan as defined under applicable Canadian Law.

"**Net Recovery Cost Percentage**" shall mean the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the blended recovery on the aggregate amount of the Eligible Inventory at such time on a "net orderly liquidation value" basis as set forth in the most recent inventory appraisal received by the Administrative Agent in accordance with Section 8.02(b), net of operating expenses, liquidation expenses and commissions reasonably anticipated in the disposition of such assets, and (b) the denominator of which is the original Cost of the aggregate amount of the Eligible Inventory subject to appraisal.

"**Net Sale Proceeds**" shall mean, with respect to any Asset Sale, an amount in cash equal to the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such sale of assets, net of the reasonable costs of, and expenses associated with, such sale (including fees and commissions, payments of unassumed liabilities relating to the assets sold and required payments of any Indebtedness or other obligations (other than Indebtedness secured pursuant to this Agreement or the Security Documents) which is secured by the assets which were sold), and the incremental taxes paid or payable as a result of such Asset Sale.

"**Non-Consenting Lender**" shall have the meaning provided in Section 12.10(b).

"**Non-Defaulting Lender**" shall mean and include each Lender other than a Defaulting Lender.

"**Note**" shall mean each Revolving Note or Swingline Note, as applicable.

"**Notice of Borrowing**" shall mean a notice substantially in the form of Exhibit A-1 hereto.

"**Notice of Conversion/Continuation**" shall mean a notice substantially in the form of Exhibit A-2 hereto.

"**Notice Office**" shall mean the address for notices set forth on Schedule 1.01(c).

"**Noticed Hedge**" shall mean any Secured Bank Product Obligations arising under a Swap Contract with respect to which the Parent and the Secured Bank Product Provider thereof

have notified the Administrative Agent of the intent to include such Secured Bank Product Obligations as a Noticed Hedge hereunder and with respect to which a Bank Products Reserve has subsequently been established in the maximum amount thereof.

"**Obligations**" shall mean (x) all now existing or hereafter arising debts, obligations, covenants, and duties of payment or performance of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to any Lender, Agent or Indemnified Person by any Credit Party arising out of this Agreement or any other Credit Document (including, without limitation, all obligations to repay principal or interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, to pay any amount owing with respect to any Letters of Credit pursuant to the terms of this Agreement, and to pay interest, fees, costs, charges, expenses, professional fees, and all sums chargeable to the Borrowers or for which any Borrower is liable as indemnitor under the Credit Documents, whether or not evidenced by any note or other instrument and (y) all Secured Bank Product Obligations and any other hedging obligations, commercial credit card, purchase card and merchant card services and Bank Product obligations. Notwithstanding anything to the contrary contained above, (x) obligations of any Credit Party under any Secured Bank Product Obligations or any other hedging obligations, commercial credit card, purchase card and merchant card services and Bank Product obligations shall be secured and guaranteed pursuant to the Credit Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (y) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Secured Bank Product Obligations.

"**OFAC**" shall have the meaning provided in Section 7.15(b).

"**Off-Balance Sheet Liabilities**" of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any Sale-Leaseback Transactions that do not create a liability on the balance sheet of such Person, (iii) any obligation under a Synthetic Lease or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

"**Officers' Certificate**" shall mean, as applied to any Person, a certificate executed on behalf of such Person by a Responsible Officer of such Person.

**"Order"** shall mean an issued and entered order of the U.S. Bankruptcy Court or the Canadian Bankruptcy Court.

"**OSC Investigation**" shall mean the continuous disclosure review commenced by the Ontario Securities Commission on April 1, 2016.

"**Other Connection Taxes**" shall mean, with respect to any Recipient, Taxes that are imposed as a result of any present or former connection between such Recipient and the jurisdiction imposing such Tax (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Loan or Credit Document).

"**Other Taxes**" shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or property Taxes or similar Taxes arising from any payment made under, from the execution, delivery, registration, performance or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"**Outstanding Amount**" shall mean with respect to Loans on any date, the Dollar Equivalent of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

"**Overadvance**" shall have the meaning of such term assigned to such term in Section 2.17.

"**Overadvance Loan**" shall mean a U.S. Base Rate Loan or Canadian Prime Rate Loan made when an Overadvance exists or is caused by the funding thereof.

"**Parent**" shall have the meaning of such term in the first paragraph of this Agreement.

"**Participant**" shall have the meaning provided in Section 12.04(d).

"**Participant Register**" shall have the meaning provided in Section 12.04(d).

"**Parts**" shall mean work-in-process consisting of parts that would otherwise constitute Eligible Inventory other than on account of being parts, and that Administrative Agent determines in its reasonable judgment are readily saleable in their current state of manufacturing, and only to the extent similarly situated parts were included in the initial asset appraisal provided to the Administrative Agent in connection herewith.

"**Patents**" shall mean all: (a) industrial designs, letters patent, certificates of inventions, all registrations and recordings thereof, and all applications for letters patent, including registrations, recordings and pending applications in the United States Patent and Trademark Office or the Canadian Intellectual Property Office, and (b) reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein and all improvements thereto.

"**Patriot Act**" shall have the meaning provided in Section 12.14.

"**Payment in Full**" or "**Paid in Full**" means, (a) with respect to the Obligations, (i) the termination of the Commitments of all of the Lenders and (ii) indefeasible payment in full of all Obligations in its currency of payment (other (x) than contingent indemnification obligations and other obligations not then payable which expressly survive termination and (y), as to which no claim has been asserted and (b) with respect to the Prepetition Obligations, (i) the termination of the Commitments (as defined in the Prepetition ABL Credit Agreement) of all of the Lenders (as defined in the Prepetition ABL Credit Agreement) and (ii) indefeasible payment in full of all Prepetition Obligations in its currency of payment (other (x) than contingent indemnification obligations and other obligations not then payable which expressly survive termination and (y), as to which no claim has been asserted and, in the case of clause (y), to the extent arrangements satisfactory to the applicable Lender (as defined in the Prepetition ABL Credit Agreement) shall have been made in respect of any such Prepetition Obligations).

"**Payment Office**" shall mean the office of the Administrative Agent specified on Schedule 1.01(c) or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

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

"**Permits**" shall mean, to the extent permitted to be assigned by the terms thereof or by applicable law, all licenses, permits, rights, orders, variances, franchises or authorizations of or from any governmental authority or agency.

"**Permitted Cash Flow Test**" means, for the Parent and its Subsidiaries, actual Cumulative Net Cash Flow falling below (a) $(18,502,000), with respect to the Variance Period ending November 25, 2016, (b) $(12,664,000), with respect to the Variance Period ending December 23, 2016, (c) $(7,953,000), with respect to the Variance Period ending January 20, 2017 and (b) $(6,923,000), with respect to the Variance Period ending February 17, 2017.

"**Permitted Discretion**" shall mean reasonable credit judgment in accordance with customary business practices for comparable asset-based lending transactions, and as it relates to the establishment or increase of Reserves or modification of any eligibility criteria shall require that (x) such establishment, increase, adjustment or imposition after the Closing Date be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date or are materially different from the facts or events occurring or known to the Administrative Agent on the Closing Date, unless the Lead Borrowers and the Administrative Agent otherwise agree in writing, (y) the contributing factors to the imposition of any Reserves shall not duplicate (i) the exclusionary criteria set forth in the definitions of Eligible Accounts or Eligible Inventory as applicable (and vice versa) or (ii) any Reserves deducted in computing book value and (z) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria shall be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to such contributing factors.

"**Permitted Encumbrance**" shall mean, with respect to any Real Estate of the Parent or any of its Subsidiaries that is encumbered by a mortgage securing the Indebtedness under the Prepetition Term Loan Credit Agreement, such exceptions to title as are set forth in the mortgage title insurance policy delivered with respect thereto.

"**Permitted Liens**" shall have the meaning provided in Section 9.01.

"**Permitted Liquidity Variance**" means, for the Parent and its Subsidiaries, a negative variance in Liquidity compared to the forecasted Liquidity for the applicable week as set forth in the Initial Budget calculated with (a) a $7,500,000 cushion for each week, applicable during the period commencing from the Petition Date through week ending November 25, 2016, (b) a $10,000,000 cushion for each week, applicable during the period commencing from the week ending November 25, 2016 through week ending December 23, 2016 and (c) a $12,500,000 cushion for each week, applicable thereafter.

"**Person**" shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

"**Petition Date**" has the meaning set forth in the recitals hereto.

"**Plan**" shall mean any pension plan as defined in Section 3(2) of ERISA other than a Foreign Pension Plan, a Canadian Employee Plan, a Canadian Statutory Plan or a Multiemployer Plan, which is maintained or contributed to by (or to which there is an obligation to contribute of) the Parent or a Subsidiary of the Parent or with respect to which the Parent, a Subsidiary of the Parent has, or may have, any liability.

"**Platform**" shall have the meaning provided in Section 8.01.

"**Post-Petition Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of the date hereof, by and among the Administrative Agent, as the ABL administrative agent and 9938982 Canada Inc., as the administrative agent under the Term Loan DIP Credit Agreement.

"**PPSA**" shall mean the Personal Property Security Act (Ontario) or the Civil Code of Quebec; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any security interest or hypothec in any Collateral is governed by the PPSA as in effect in a Canadian jurisdiction other than Ontario, "PPSA" shall mean the Personal Property Security Act as in effect from time to time in such other jurisdiction or the Civil Code of Quebec, as applicable, for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Prepetition ABL Credit Agreement**" shall mean that certain ABL Credit Agreement dated as of April 15, 2014, as heretofore modified, supplemented, amended, restated (including any amendment and restatement thereof), extended or renewed to the extent permitted hereunder, by and among, inter alios, the Borrower, each of the other borrowers thereto, the lenders party thereto from time to time and Bank of America, N.A., as the administrative agent and collateral agent.

"**Prepetition ABL Facility**" shall mean the commitments under the Prepetition ABL Credit Agreement utilized in making loans thereunder.

"**Prepetition Exposures**" shall mean, at any time, the aggregate outstanding balance of the Prepetition Obligations.

"**Prepetition Obligations**" means the "Obligations" as defined in the Prepetition ABL Credit Agreement.

"**Prepetition Term Loan Credit Agreement**" shall mean that certain Term Loan Credit Agreement dated as of April 15, 2014, as heretofore modified, supplemented, amended, restated (including any amendment and restatement thereof), extended or renewed to the extent permitted hereunder, by and among the Borrower, the lenders party thereto from time to time and Bank of America, N.A., as the administrative agent and collateral agent.

"**Proceeds**" shall mean all "proceeds" as such term is defined in the PPSA or in the UCC as in effect in the State of New York on the date hereof, as applicable, and, in any event, shall also include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Collateral Agent or any Credit Party from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Credit Party from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental

authority (or any person acting under color of governmental authority) and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"**Professionals**" has the meaning specified in the definition of the term "Carve-Out" in the Financing Orders or, under the Canadian Case, the persons who benefit from the Administration Charge.

"**Projections**" shall mean the detailed projected consolidated financial statements of the Parent and its Subsidiaries (after giving effect to the Transaction) delivered to the Administrative Agent on or prior to the Closing Date.

"**Pro Rata Percentage**" of any Revolving Lender at any time shall mean the percentage of the total Revolving Commitment represented by such Lender's Revolving Commitment.

"**Pro Rata Share**" shall mean, with respect to each Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Revolving Exposure of such Lender at such time and the denominator of which is the aggregate amount of the Aggregate Exposures at such time. The initial Pro Rata Shares of each Lender are set forth opposite the name of such Lender on Schedule 1.01(b) or in the Assignment and Assumption Agreement pursuant to which such Lender becomes a party hereto, as applicable.

"**PSG**" shall have the meanings assigned to such term in the preamble hereto.

"**Public Lender**" shall have the meaning provided in Section 8.01.

"**Real Property**" of any Person shall mean, collectively, the right, title and interest of such Person (including any leasehold, mineral or other estate) in and to any and all land, improvements and fixtures owned, leased or operated by such Person, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"**Recipient**" shall mean (a) the Administrative Agent, (b) any Lender (including any Swingline Lender) and (c) any Issuing Bank, as applicable.

"**Recordable Intellectual Property**" means (i) any Patent issued by or applied for issuance with the United States Patent and Trademark Office or the Canadian Intellectual Property Office, (ii) any Trademark registered or applied for registration with the United States Patent and Trademark Office or the Canadian Intellectual Property Office, and (iii) any Copyright registered or applied for registration with the United States Copyright Office or the Canadian Intellectual Property Office.

"**Recovery Event**" shall mean the receipt by the Parent or any of its Subsidiaries of any cash insurance proceeds or condemnation awards payable (i) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets constituting Collateral of the Parent or any of its Subsidiaries (but not by reason of any loss of revenues or interruption of business or operations caused thereby) and (ii) under any policy of insurance required to be maintained under Section 8.03 in respect of Collateral, in each case to the extent such proceeds or awards do not constitute reimbursement or compensation for amounts previously paid by the Parent or any of its Subsidiaries in respect of any such event.

"**Register**" shall have the meaning provided in Section 12.04(c).

"**Regulation T**" shall mean Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Regulation U**" shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Regulation X**" shall mean Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Related Indemnified Person**" of an Indemnified Person shall mean (1) any controlling Person or controlled Affiliate of such Indemnified Person, (2) the respective directors, officers, or employees of such Indemnified Person or any of its controlling Persons or controlled Affiliates and (3) the respective agents of such Indemnified Person or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnified Person, controlling Person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation or administration of this Agreement or the syndication of the Loans. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

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

"**Release**" shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, into, through or upon the Environment or within, from or into any building, structure, facility or fixture.

"**Required Lenders**" shall mean Non-Defaulting Lenders, the sum of whose outstanding principal of Commitments as of any date of determination represent greater than 50% of the sum of all outstanding principal of Commitments of Non-Defaulting Lenders at such time; *provided* that to the extent that there are only two (2) Lenders, both Lenders shall constitute Required Lenders.

"**Requirement of Law**" shall mean, with respect to any Person, (i) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (ii) any statute, law, treaty, rule, regulation, order, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Reserves**" shall mean, without duplication of any items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent, from time to time determines in its Permitted Discretion, including Dilution Reserves and Landlord Lien Reserves, *plus* any Bank Product Reserves; without limiting the foregoing or the definition of Permitted

Discretion, such Reserves shall include reserves for freight, duty and shipping charges related to any Inventory in transit, any royalty reserves or similar reserves relating to Inventory comprised of goods subject to any licensing arrangements or other Intellectual Property or other proprietary rights of any Person, and additionally, reserves to account for the amount by which the maximum stated amount of any Letters of Credit exceeds the LC Exposure, and in the case of the Canadian Borrowing Base, including, without limitation, the Canadian Priority Payables Reserves.

Notwithstanding anything to the contrary in this Agreement, (i) such Reserves shall not be established or changed except upon not less than three (3) Business Days' prior written notice to the Lead Borrowers, which notice shall include a reasonably detailed description of such Reserve being established (during which period (a) the Administrative Agent shall, if requested, discuss any such Reserve or change with the Lead Borrowers and (b) the applicable Lead Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or change thereto no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent), and (ii) the amount of any Reserve established by the Administrative Agent, and any change in the amount of any Reserve, shall have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or such change. Notwithstanding clause (i) of the preceding sentence, changes to the Reserves solely for purposes of correcting mathematical or clerical errors shall not be subject to such notice period, it being understood that no Default or Event of Default shall be deemed to result therefrom, if applicable, for a period of six (6) Business Days.

"**Responsible Officer**" shall mean, with respect to any Person, its chief executive officer, president, or any vice president, managing director, treasurer, controller or other officer of such Person having substantially the same authority and responsibility; *provided* that , with respect to compliance with financial covenants, "Responsible Officer" shall mean the chief financial officer, treasurer or controller of the Parent, or any other officer of the Parent having substantially the same authority and responsibility.

"**Returns**" shall have the meaning provided in Section 7.09.

"**Revaluation Date**" means (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of a Canadian Dollar Denominated Loan, (ii) each date of continuation of a CDOR Loan that is a Canadian Dollar Denominated Loan and (iii) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in Canadian Dollars, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the Issuing Bank under any Letter of Credit denominated in Canadian Dollars and (iv) such additional dates as the Administrative Agent or the Issuing Bank shall determine or the Required Lenders shall require.

"**Revolving Availability Period**" shall mean the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Commitments.

"**Revolving Borrowing**" shall mean a Borrowing comprised of Revolving Loans.

"**Revolving Commitment**" shall mean, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans hereunder up to the amount set forth on Schedule

1.01(b), or in the Assignment and Assumption Agreement pursuant to which such Lender assumed its Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 12.04. The aggregate amount of the Lenders' Revolving Commitments on the Closing Date is $200,000,000.

"**Revolving Exposure**" shall mean, with respect to any Lender at any time, the Dollar Equivalent of the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender's LC Exposure, *plus* the aggregate amount at such of such Lender's Swingline Exposure.

"**Revolving Lender**" shall mean a Lender with a Revolving Commitment.

"**Revolving Loans**" shall mean advances made to or at the instructions of the Borrower pursuant to Article 2 hereof and may constitute Revolving Loans, Swingline Loans or Overadvance Loans

"**Revolving Note**" means a U.S. Dollar Revolving Note or a Canadian Dollar Revolving Note.

"**RPMRR**" shall mean the Register of Personal and Movable Real Rights (Québec).

"**S&P**" shall mean Standard & Poor's Ratings Services, a division of the McGraw Hill Company, Inc., and any successor owner of such division.

"**Sale Transaction**" shall have the meaning provided in Section 8.15(a).

"**Sale Transaction Restructuring**" shall mean the transactions contemplated by Schedule 5.18 of the Biscuit Acquisition Agreement as in effect as of the date hereof or as otherwise agreed to in writing by the Required Lenders.

"**Sale-Leaseback Transaction**" shall mean any arrangements with any Person providing for the leasing by the Parent or any of its Subsidiaries of real or personal property which has been or is to be sold or transferred by the Parent or such Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person in connection therewith.

"**Scheduled Maturity Date**" shall mean the date that is one hundred twenty (120) days after the Petition Date.

"**SEC**" shall mean the Securities and Exchange Commission or any successor thereto.

"**SEC Investigation**" shall mean the continuous disclosure review commenced by the U.S. Securities and Exchange Commission.

"**Section 8.01 Financials**" shall mean the quarterly and monthly financial statements required to be delivered pursuant to Sections 8.01(a) and (b).

"**Secured Bank Product Obligations**" shall mean Bank Product Debt owing to a Secured Bank Product Provider, up to the maximum amount (in the case of any Secured Bank Product Provider other than Bank of America and its Affiliates) specified by such provider in writing to the Administrative Agent, which amount may be established or increased (by further

written notice by the Lead Borrowers to the Administrative Agent from time to time) as long as no Default or Event of Default then exists and no Overadvance would result from establishment of a Bank Product Reserve for such amount and all other Secured Bank Product Obligations.

"**Secured Bank Product Provider**" means, at the time of entry into a Bank Product (or, if such Bank Product exists on the Closing Date, as of the Closing Date) the Administrative Agent, any Lender or any of their respective Affiliates that is providing a Bank Product; provided such provider delivers written notice to the Administrative Agent, in form and substance satisfactory to the Administrative Agent, by the later of the Closing Date or ten (10) days following creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by Section 11.11.

"**Secured Parties**" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders and each other agent or representative of the Lenders hereunder.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Securities Commission**" shall mean a securities commission or any other securities regulatory authority in Canada.

"**Security Document**" shall mean and include this Agreement, the Canadian Security Agreement and, after the execution and delivery thereof, each Additional Security Document and the Financing Orders.

"**Soccer Sale**" shall have the meaning provided in Section 9.02(l).

"**Software**" shall mean all computer software, programs and databases (including, without limitation, source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all rights related thereto and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing.

"**Specified Event of Default**" shall mean any Event of Default arising under Section 10.01(a), Section 10.01(c)(i) (solely relating to a failure to comply with Section 8.18(c)), Section 10.01(c)(ii) or Section 10.01(e).

"**Spot Rate**" shall have the meaning provided in Section 1.03.

"**Subsidiary**" shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% Equity Interest at the time.

"**Subsidiary Borrower**" shall mean any Domestic Subsidiaries of the Parent that own any assets included in the Borrowing Base and that execute a counterpart hereto and to any other applicable Credit Document as a Borrower.

"**Subsidiary Guarantor**" shall mean each of the Subsidiaries listed on the signature page hereto and each Domestic Subsidiary of the Parent established, created or acquired after the Closing Date which becomes a party to this Agreement in accordance with the requirements of this Agreement.

"**Supermajority Lenders**" shall mean those Non-Defaulting Lenders which would constitute the Required Lenders under, and as defined in, this Agreement if the percentage "50%" contained therein were changed to "66- 2/3%."

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

"**Swingline Commitment**" shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.12, as the same may be reduced from time to time pursuant to Section 2.07 or Section 2.12.

"**Swingline Exposure**" shall mean at any time the aggregate principal amount at such time of all outstanding Swingline Loans. The Swingline Exposure of any Revolving Lender at any time shall equal its Pro Rata Percentage of the aggregate Swingline Exposure at such time.

"**Swingline Lender**" shall mean Bank of America.

"**Swingline Loan**" shall mean any Loan made by the Swingline Lender pursuant to Section 2.12.

"**Swingline Note**" shall mean each swingline note substantially in the form of Exhibit B-3 hereto.

"**Synthetic Lease**" shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an "operating lease" by the lessee and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

"**Tangible Chattel Paper**" shall mean "tangible chattel paper" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Taxes**" shall mean any and all present or future taxes, levies, imposts, duties, deductions (including, without limitation, payroll deductions), charges, fees, assessments, liabilities or withholdings (including backup withholding) imposed by any Governmental Authority in the nature of a tax, including interest, penalties and additions to tax with respect thereto.

"**Term Facilities**" shall mean, collectively, the Prepetition Term Loan Credit Agreement and the Term Loan DIP Credit Agreement.

"**Term Loan Agent**" shall mean the "administrative agent" or "collateral agent" under the Term Loan DIP Credit Agreement (as the context shall require), including any successors thereto.

"**Term Loan DIP Charge**" shall have the meaning to be ascribed thereto in the Final Financing Order of the Canadian Bankruptcy Court.

"**Term Loan DIP Credit Agreement**" shall mean the Superpriority Debtor-in-Possession Credit Agreement entered into as of the Closing Date by and among the Parent, the lenders party thereto in their capacities as lenders thereunder, the Term Loan Agent and the other agents and parties party thereto from time to time.

"**Term Loans**" shall mean the term loans borrowed under the Term Loan DIP Credit Agreement.

"**Term Priority Collateral**" shall have the meaning assigned to the term "Fixed Asset Priority Collateral" in the Post-Petition Intercreditor Agreement.

"**Threshold Amount**" shall mean $500,000.

"**Trade Secrets**" shall mean all confidential and proprietary information, including, without limitation, know-how, show-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information.

"**Trademarks**" shall mean all: (a) trademarks, service marks, certification marks, domain names and associated URLs, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, slogans, other source or business identifiers, all registrations and recordings thereof, and all registrations and applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office and the Canadian Intellectual Property Office that are disclosed as such in the Biscuit Acquisition Agreement as in effect as of the date hereof, (b) all extensions or renewals of any of the foregoing, (c) goodwill associated therewith or symbolized thereby, and (d) rights and privileges arising under applicable law with respect to the use of any of the foregoing.

"**Transaction**" shall mean (i) the execution, delivery and performance by the Credit Parties of each of the Credit Documents to which any of them is an intended party and the transactions contemplated hereby and thereby and (ii) the filing of the Cases and the related Financing Orders.

"**Transaction Costs**" shall mean the fees, premiums and expenses payable by the Parent and its Subsidiaries in connection with the transactions described in clauses (i) and (ii) of the definition of "Transaction;" *provided* that, for the purpose of Section 7.08(a), Transaction Costs shall not include any original issue discount or upfront fees.

"**Type**" shall mean the type of Loan determined with regard to the interest option applicable thereto, i.e., whether a U.S. Base Rate Loan, LIBO Rate Loan, Canadian Prime Rate Loan or CDOR Loan.

"**UCC**" shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

"**Unfunded Pension Liability**" of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets of such Plan.

"**United States**" and "**U.S.**" shall each mean the United States of America.

"**Unrestricted Cash**" means unrestricted cash on hand and Cash Equivalents of the Credit Parties (to the extent such cash or Cash Equivalents are held in an investment account maintained by the Collateral Agent and as to which Collateral Agent shall have a first priority perfected Lien).

"**U.S. Bankruptcy Court**" shall have the meaning provided in the recitals hereto.

"**U.S. Base Rate**" shall mean for any day, a per annum rate equal to the highest of (a) the U.S. Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) LIBOR for a 30 day interest period as of such day, plus 1.0%; *provided* that, in no event shall the U.S. Base Rate be less than zero.

"**U.S. Base Rate Loan**" shall mean each Loan that is designated or deemed designated as a U.S. Base Rate Loan by the applicable Lead Borrower at the time of the incurrence thereof or conversion thereto.

"**U.S. Borrowers**" shall mean BPS US Holdings Inc., Bauer Hockey, Inc., Easton Baseball / Softball Inc., Bauer Performance Sports Uniforms Inc., Performance Lacrosse Group Inc., BPS Diamond Sports Inc. and Bauer Hockey Retail Inc.

"**U.S. Borrowing Base**" shall mean the sum of the following, without duplication, as set forth in the most recently delivered Borrowing Base certificate:

(a) the book value of Eligible Accounts of the U.S. Borrowers *multiplied by* the advance rate of 85%; *plus*

(b) the lesser of (x) the Cost of Eligible Inventory of the U.S. Borrowers *multiplied by* the advance rate of 70% and (y) the Net Recovery Cost Percentage *multiplied by* the Cost of Eligible Inventory of the U.S. Borrowers *multiplied by* the advance rate of 85%; *plus*

(c) the Cost of Eligible In-Transit Inventory of the U.S. Borrowers *multiplied by* the advance rate of 30%; *minus*

(d) any Reserves established from time to time by the Administrative Agent in accordance herewith.

"**U.S. Cases**" has the meaning set forth in the recitals hereto.

"**U.S. Debtors**" shall mean, collectively, the U.S. Borrowers and each Domestic Subsidiary that is a debtor under the U.S. Cases.

"**U.S. Dollar Denominated LC Disbursements**" shall mean LC Disbursements denominated in U.S. Dollars.

"**U.S. Dollar Denominated Loans**" shall mean Loans denominated in U.S. Dollars at the time of the incurrence thereof.

"**U.S. Dollar Revolving Note**" shall mean each revolving note substantially in the form of Exhibit B-1 hereto.

"**U.S. Dollars**" and the sign "**$**" shall each mean freely transferable lawful money (expressed in dollars) of the United States.

"**U.S. Dominion Account**" shall mean a special Concentration Account established by the Lead U.S. Borrower at Bank of America, N.A. or another bank reasonably acceptable to the Administrative Agent, over which the Administrative Agent has exclusive control for withdrawal purposes pursuant to the terms and provisions of this Agreement and the other Credit Documents.

"**U.S. Prime Rate**" the rate of interest announced by Bank of America from time to time as its prime rate. Such rate is set by Bank of America on the basis of various factors, including its costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such rate. Any change in such rate publicly announced by Bank of America shall take effect at the opening of business on the day specified in the announcement.

"**U.S. Tax Compliance Certificate**" shall have the meaning provided in Section 4.01(c).

"**U.S. Trustee**" shall mean the Office of the United States Trustee for the District of Delaware.

"**Variance**" shall mean a difference in the amount contained in the Initial Budget with respect to disbursements, cash requirements, unrestricted and restricted cash balance, the outstanding amount of Loans hereunder and under the Prepetition ABL Credit Agreement and the Delayed Draw Term Loans (as defined in the Term Loan DIP Credit Agreement), net cash flow, Availability, Liquidity, the Borrowing Base or other data therein compared to the actual disbursements, cash requirements, unrestricted and restricted cash balance, the outstanding amount of Loans hereunder and under the Prepetition ABL Credit Agreement and the Delayed Draw Term Loans (as defined in the Term Loan DIP Credit Agreement), net cash flow, Availability, Liquidity, the Borrowing Base and other data, in each case, determined on a cumulative basis from the Petition Date.

"**Variance Period**" means the period commencing with the week in which the Petition Date occurred through and including the most recently ended four-week period thereafter (excluding, for the avoidance of doubt, the week in which the applicable Variance Report for such Variance Period is delivered).

"**Variance Report**" has the meaning specified in Section 8.01(i).

"**Wholly-Owned Domestic Subsidiary**" shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person that is a Domestic Subsidiary of such person.

"**Wholly-Owned Foreign Subsidiary**" shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person that is a Foreign Subsidiary of such Person.

"**Wholly-Owned Subsidiary**" shall mean, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (ii) any partnership, association, joint venture or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person owns 100% of the Equity Interests at such time (other than, in the case of a Foreign Subsidiary with respect to preceding clauses (i) or (ii), director's qualifying shares and/or other nominal amounts of shares required to be held by Persons other than the Parent and its Subsidiaries under applicable law).

"**Work-In-Process**" shall mean work-in-process (other than Parts) that would otherwise constitute Eligible Inventory other than on account of being work-in-process, and that Administrative Agent determines in its reasonable judgment is readily saleable in its current state of manufacturing, and only to the extent similarly situated work-in-process was included in the initial asset appraisal provided to the Administrative Agent in connection herewith.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02. *Terms Generally*. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall"; and the words "asset" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. The words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement unless the context shall otherwise require. All references herein to Articles, Sections, paragraphs, clauses, subclauses, Exhibits and Schedules shall be deemed references to Articles, Sections, paragraphs, clauses and subclauses of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Unless otherwise expressly provided herein, (a) all references to documents, instruments and other agreements (including the Credit Documents and organizational documents) shall be deemed to include all subsequent amendments, restatements, amendments and restatements, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, supplements and other modifications are not prohibited by this Agreement and (b) references to any law, statute, rule or regulation shall include all statutory and regulatory

provisions consolidating, amending, replacing, supplementing or interpreting such law. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). In addition to the definitions in Section 1.01, the following terms shall have the meanings set forth in the PPSA: Accessions, Certificated Security, Consumer Goods, Financial Asset, Futures Account, Futures Contract, Money, Security, Securities Account, Security Entitlement, Security Certificate, and Uncertificated Security.

Section 1.03. *Quebec Interpretation Matters.* For purposes of any assets, liabilities or entities located in the Province of Quebec (Canada) and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) "personal property" shall include "movable property", (ii) "real property" or "real estate" shall include "immovable property", (iii) "tangible property" shall include "corporeal property", (iv) "intangible property" shall include "incorporeal property", (v) "security interest", "mortgage" and "lien" shall include a "hypothec", "right of retention", "prior claim" and a resolutory clause, (vi) all references to filing, perfection, priority, remedies, registering or recording under the PPSA shall include publication under the Civil Code of Quebec, (vii) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or hypothec as against third parties, (viii) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (ix) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall include a "mandatary", (xi) "construction liens" shall include "legal hypothecs", (xii) "joint and several" shall include "solidary", (xiii) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault", (xiv) "beneficial ownership" shall include "ownership on behalf of another as mandatary", (xv) "easement" shall include "servitude", (xvi) "priority" shall include "prior claim", (xvii) "survey" shall include "certificate of location and plan", (xviii) "fee simple title" shall include "absolute ownership", (xix) "accounts" shall include "claims", and (xx) "guarantee" or "guarantor" shall include "suretyship" or "surety". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only.*Currency Equivalents Generally*. Any amount specified in this Agreement (other than in Article 2, which shall be excluded from this Section 1.04 to the extent set forth therein) or any of the other Credit Documents to be in U.S. Dollars shall also include the equivalent of such amount in any currency other than U.S. Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate for the purchase of such currency with U.S. Dollars. For purposes of this Section 1.04, the "Spot Rate" for a currency means the exchange rate, as determined by the Administrative Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source designated by the Agent) as of the end of the preceding business day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding business day in Administrative Agent's principal foreign exchange trading office for the first currency.; *provided* that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

Section 1.05. *Letter of Credit Amounts*. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time.

ARTICLE 2
AMOUNT AND TERMS OF CREDIT

Section 2.01. *Commitments.* Subject to the Financing Orders and upon the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, to make U.S. Dollar Denominated Loans to the U.S. Borrowers and U.S. Dollar Denominated Loans and Canadian Dollar Denominated Loans to the Canadian Borrowers, at any time and from time to time on and after the Closing Date until the earlier of one Business Day prior to the Maturity Date and the termination of the Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in such Lender's Revolving Exposure exceeding the lesser of (a) such Lender's Revolving Commitment, and (b) such Lender's Pro Rata Percentage *multiplied by* the Borrowing Base then in effect. Within the limits set forth above and subject to the terms, conditions and limitations set forth herein, the Borrowers may borrow, pay or prepay and reborrow Revolving Loans. All Borrowers shall be jointly and severally liable as borrowers for all Loans regardless of which Borrower receives the proceeds thereof. Notwithstanding anything to the contrary herein, no Lender shall have any obligation to make a Loan if the Aggregate Exposures *plus* the Prepetition Exposures would exceed the Line Cap, except as expressly set forth in paragraph 30 of the Interim Financing Order (or the equivalent provision in the Final Financing Orders) in respect of the Post Carve-Out Amounts (as defined in the Interim Financing Order).

Section 2.02. *Loans.* (a) Each Loan (other than Swingline Loans) shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Revolving Commitments; *provided* that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(f), Loans (other than Swingline Loans) comprising any Borrowing shall be in an aggregate principal amount that is (i) (A) in the case of U.S. Base Rate Loans or Canadian Prime Rate Loans, not less than $500,000 and (B) in the case of LIBO Rate Loans or CDOR Loans, an integral multiple of $100,000, in the case of U.S. Dollar Denominated Loans, or Can.$100,000, in the case of Canadian Dollar Denominated Loans, and not less than $1,000,000, or (ii) equal to the remaining available balance of the applicable Revolving Commitments.

(b) Subject to Section 3.02, (a) each Borrowing of a U.S. Dollar Denominated Loan shall be comprised entirely of U.S. Base Rate Loans or LIBO Rate Loans as and (b) each Borrowing of a Canadian Dollar Denominated Loans shall be comprised entirely of Canadian Prime Rate Loans or CDOR Loans, in each case as the applicable Lead Borrower may request pursuant to Section 2.03. Each Lender may at its option make any LIBO Rate Loan or CDOR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement or cause the Borrowers to pay additional amounts pursuant to Section 3.01. Borrowings of more than one Type may be outstanding at the same time; *provided further* that the Borrowers shall not be entitled to request any Borrowing that, if made, would result in more than ten (10) Borrowings of LIBO Rate Loans or ten (10) Borrowings of CDOR Loans outstanding hereunder at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Except with respect to Loans made pursuant to Section 2.02(f), each Lender shall make each Loan (other than Swingline Loans) to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 3:00 p.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account as directed by the applicable Lead Borrower in the applicable Notice of Borrowing maintained with the Administrative Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met or waived, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (c) above, and the Administrative Agent may, in reliance upon such assumption, make available to the applicable Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the Lead Borrowers severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to such Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Lead Borrowers, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(e) Notwithstanding any other provision of this Agreement, the Lead U.S. Borrower or Lead Canadian Borrower, as applicable, shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(f) If the Issuing Bank shall not have received from the applicable Lead Borrower the payment required to be made by Section 2.13(e) within the time specified in such Section, the Issuing Bank will promptly notify the Administrative Agent of the LC Disbursement and the Administrative Agent will promptly notify each Revolving Lender of such LC Disbursement and its Pro Rata Percentage thereof. Each Revolving Lender shall pay by wire transfer of immediately available funds to the Administrative Agent on such date (or, if such Revolving Lender shall have received such notice later than 12:00 (noon), New York City time, on any day, not later than 11:00 a.m., New York City time, on the immediately following Business Day), in U.S. Dollars or Canadian Dollars, as applicable, dependent on the denomination of the applicable Letter of Credit, amount equal to such Lender's Pro Rata Percentage of such LC Disbursement (it being understood that such amount shall be deemed to constitute a U.S. Base Rate Loan or Canadian Prime Rate Loan, as applicable, of such Lender, and such payment shall be deemed to have reduced the LC Exposure), and the Administrative Agent will promptly pay to the Issuing Bank amounts so received by it from the Revolving Lenders. The Administrative Agent will promptly pay to the Issuing Bank any amounts received by it from the Lead Borrowers pursuant to Section 2.13(e) prior to the time that any Revolving Lender makes any payment pursuant to this paragraph (f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made such payments and to the

Issuing Bank, as their interests may appear. If any Revolving Lender shall not have made its Pro Rata Percentage of such LC Disbursement available to the Administrative Agent as provided above, such Lender and the applicable Lead Borrower severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this paragraph (f) to but excluding the date such amount is paid, to the Administrative Agent for the account of the Issuing Bank at (i) in the case of a Lead Borrower, a rate per annum equal to the interest rate applicable to Revolving Loans pursuant to Section 2.06(a), and (ii) in the case of such Lender, for the first such day, the Federal Funds Rate or another rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and for each day thereafter, the U.S. Base Rate or another rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, in each case, as applicable.

Section 2.03. *Borrowing Procedure*. To request a Revolving Borrowing, the Lead U.S. Borrower or Lead Canadian Borrower, as applicable, shall notify the Administrative Agent of such request by electronic transmission (i) in the case of a Borrowing of LIBO Rate Loans or CDOR Loans, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (ii) in the case of a Borrowing of U.S. Base Rate Loans or Canadian Prime Rate Loans (other than Swingline Loans), not later than 1:00 p.m., New York City time, on the Business Day of the proposed Borrowing. Each such Notice of Borrowing shall be irrevocable, subject to Sections 2.09 and 3.01, and shall be signed by the Lead U.S. Borrower or Lead Canadian Borrower, as applicable. Each such Notice of Borrowing shall specify the following information in compliance with Section 2.02:

(a) the aggregate amount of such Borrowing;

(b) the date of such Borrowing, which shall be a Business Day;

(c) whether such Borrowing is to be a Borrowing of U.S. Dollar Denominated Loans or Canadian Dollar Denominated Loans;

(d) in the case of U.S. Dollar Denominated Loans, if such Borrowing is to be of U.S. Base Rate Loans or a Borrowing of LIBO Rate Loans;

(e) in the case of Canadian Dollar Denominated Loans, if such Borrowing is to be of Canadian Prime Rate Loans or CDOR Loans;

(f) in the case of a Borrowing of LIBO Rate Loans or CDOR Loans, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(g) the location and number of the account to which funds are to be disbursed, which shall comply with the requirements of Section 2.02; and

(h) that the conditions set forth in Article 5 or Article 6, as applicable, are satisfied or waived as of the date of the notice.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Borrowing of U.S. Base Rate Loans, in the case of U.S. Dollar Denominated Loans, or Canadian Prime Rate Loans, in the case of Canadian Dollar Denominated Loans. If no Interest Period is specified with respect to any requested Borrowing of LIBO Rate Loans or CDOR Loans, then the applicable Lead Borrower shall be deemed to have selected an Interest Period of

one month's duration (subject to the proviso in (f) above). Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04. *Evidence of Debt; Repayment of Loans.* (a) Each Borrower, jointly and severally, hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Revolving Lender, the then unpaid principal amount of each Revolving Loan of such Lender on the Maturity Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. The Lead Borrowers shall be entitled to review records of such accounts with prior reasonable notice during normal business hours.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. The Lead Borrowers shall be entitled to review records of such accounts with prior reasonable notice during normal business hours.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be conclusive evidence of the existence and amounts of the obligations therein recorded absent manifest error; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrowers to repay the Loans in accordance with their terms.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the applicable Borrower shall promptly prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) substantially in the form of Exhibit B-1, Exhibit B-2 or Exhibit B-3, as applicable.

Section 2.05. *Fees.*

(a) *Commitment Fee*. The Borrowers shall, jointly and severally, pay to the Administrative Agent, for the Pro Rata benefit of the Lenders (other than any Defaulting Lender), a fee equal to the Commitment Fee Percentage *multiplied by* the amount by which the Revolving Commitments (other than Revolving Commitments of a Defaulting Lender) exceed the Dollar Equivalent of the average daily balance of outstanding Revolving Loans (other than Swingline Loans) and stated amount of outstanding Letters of Credit during any fiscal month (such fee, the "**Commitment Fee**"). Such fee shall accrue commencing on the Closing Date, and will be payable in arrears on the first calendar day of each fiscal month, commencing on the first such calendar date to occur after the Closing Date. Any Commitment Fee owing at any time that the Commitments are termination shall be immediately due and payable.

(b) *Administrative Agent Fees*. The Borrowers, jointly and severally, agree to pay to the Administrative Agent, for its own account, the fees set forth in the Fee Letter or such other fees payable in the amounts and at the times separately agreed upon between the Lead Borrowers and the Administrative Agent (the "**Administrative Agent Fees**").

(c) *LC and Fronting Fees*. The Borrowers, jointly and severally, agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee ("**LC Participation Fee**") with respect to its participations in Letters of Credit, which shall accrue at a rate equal to the Applicable Margin from time to time used to determine the interest rate on LIBO Rate Loans or CDOR Loans pursuant to Section 2.06, on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee ("**Fronting Fee**"), which shall accrue at the rate of 0.125% per annum on the average outstanding daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder as agreed among the Lead Borrowers and the Issuing Bank from time to time. LC Participation Fees and Fronting Fees will be payable in arrears on the first calendar day of each fiscal month, commencing on the first such calendar date to occur after the Closing Date; *provided* that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand (including documentation reasonably supporting such request). Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable upon receipt of a written demand (together with backup documentation supporting such reimbursement request). All LC Participation Fees and Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (from the first day through the last day of the outstanding Letters of Credit balance).

(d) All fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders (other than Defaulting Lenders), except that the Fronting Fees shall be paid directly to the Issuing Bank. Fees on account of Letters of Credit denominated in Canadian Dollars shall be paid in Canadian Dollars and fees on account of Letters of Credit denominated in U.S. Dollars shall be paid in U.S. Dollars. Once paid, none of the fees shall be refundable under any circumstances.

(e) *Other Fees*. The Borrowers shall pay to the Administrative Agent fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

Section 2.06. *Interest on Loans.* (a) Subject to the provisions of Section 2.06(c), the Loans comprising each Borrowing of U.S. Base Rate Loans or Canadian Prime Rate Loans, including each Swingline Loan, shall bear interest at a rate per annum equal to the U.S. Base Rate or Canadian Prime Rate (as applicable) *plus* the Applicable Margin in effect from time to time.

(b) Subject to the provisions of Section 2.06(c), the Loans comprising each Borrowing of LIBO Rate Loans or CDOR Loans shall bear interest at a rate per annum equal to the LIBO Rate

or the CDOR Rate (as applicable) for the Interest Period in effect for such Borrowing *plus* the Applicable Margin in effect from time to time.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fees or other amount payable by the Borrowers hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of, or interest on, any Loan, two percent (2%) *plus* the rate otherwise applicable to such Loan or (ii) in the case of any other amount, two percent (2%) *plus* the rate applicable to U.S. Base Rate Loans or Canadian Prime Rate (in each case, the "**Default Rate**").

(d) Accrued interest on each Loan shall be payable in arrears on each Adjustment Date, commencing with December 1, 2016, for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments; *provided* that (i) interest accrued pursuant to paragraph (c) of this Section 2.06 shall be payable on demand and, absent demand, on each Adjustment Date and upon termination of the Revolving Commitments, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a U.S. Base Rate Loan or Canadian Prime Rate Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any LIBO Rate Loan or CDOR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 365 days, except that interest computed by reference to LIBO Rate (other than U.S. Base Rate Loans determined by reference to LIBO Rate) and all fees shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable U.S. Base Rate, Canadian Prime Rate, LIBO or CDOR Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall absent manifest error, be final and conclusive and binding on all parties hereto.

For the purposes of the *Interest Act* (Canada), the yearly rate of interest to which any rate calculated on the basis of a period of time different from the actual number of days in the year (three hundred sixty (360) days, for example) is equivalent to the stated rate multiplied by the actual number of days in the year (three hundred sixty-five (365) or three hundred sixty-six (366), as applicable) and divided by the number of days in the shorter period (three hundred sixty (360) days, in the example), and the parties hereto acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest.

Section 2.07. *Termination and Reduction of Commitments.* (a) The Revolving Commitments, the Swingline Commitment, and the LC Commitment shall automatically terminate on the Maturity Date or such earlier date on which they are terminated pursuant to Section 10.02.

(b) The Lead Borrowers may at any time terminate, or from time to time reduce, the Revolving Commitments; *provided* that (i) any such reduction shall be in an amount that is an integral multiple of $1,000,000 and (ii) the Revolving Commitments shall not be terminated or

reduced if after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.09, the Aggregate Exposures plus the Prepetition Exposures would exceed the Line Cap.

(c) The Lead Borrowers shall notify the Administrative Agent of any election to terminate or reduce the Aggregate Commitments under paragraph (b) of this Section 2.07 at least two (2) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Lead Borrowers pursuant to this Section 2.07 shall be irrevocable except that, to the extent delivered in connection with a refinancing of the Obligations, such notice shall not be irrevocable until such refinancing is closed and funded. Any effectuated termination or reduction of the Aggregate Commitments shall be permanent. Each reduction of the Aggregate Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Commitments.

Section 2.08. *Interest Elections.* (a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Notice of Borrowing and, in the case of a Borrowing of LIBO Rate Loans or CDOR Loans, shall have an initial Interest Period as specified in such Notice of Borrowing. Thereafter, the applicable Lead Borrower may elect to convert such Borrowing to a different Type (in the case of a LIBO Rate Loan, to a U.S. Base Rate Loan (or vice versa), and in the case of a CDOR Loan, to a Canadian Prime Rate Loan (or vice versa)) or to continue such Borrowing and, in the case of a Borrowing of LIBO Rate Loans or CDOR Loans, may elect Interest Periods therefor, all as provided in this Section 2.08. The applicable Lead Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, the Lead Borrowers shall not be entitled to request any conversion or continuation that, if made, would result in more than ten (10) Borrowings of LIBO Rate Loans or more than ten (10) Borrowings of CDOR Loans outstanding hereunder at any one time. This Section 2.08 shall not apply to Swingline Loans, which may not be converted or continued.

(b) To make an election pursuant to this Section 2.08, the applicable Lead Borrower shall notify the Administrative Agent of such election by electronic transmission by the time that a Notice of Borrowing would be required under Section 2.03 if the applicable Lead Borrower was requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election, subject to Section 3.06. Each such Notice of Conversion/Continuation shall be substantially in the form of Exhibit A-2, unless otherwise agreed to by the Administrative Agent and the applicable Lead Borrower.

(c) Each Notice of Conversion/Continuation shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Notice of Conversion/Continuation applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Notice of Conversion/Continuation, which shall be a Business Day;

(iii) in the case of a U.S. Dollar Denominated Loan, whether the resulting Borrowing is to be a Borrowing of U.S. Base Rate Loans or a Borrowing of LIBO Rate Loans, and in the case of a Canadian Dollar Denominated Loan, whether the resulting borrowing is to be a Borrowing of Canadian Prime Rate Loans or a Borrowing of CDOR Loans; and

(iv) if the resulting Borrowing is a Borrowing of LIBO Rate Loans or CDOR Loans, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "**Interest Period**".

If any such Notice of Conversion/Continuation requests a Borrowing of LIBO Rate Loans or CDOR Loans but does not specify an Interest Period, then the applicable Lead Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Notice of Conversion/Continuation, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If a Notice of Conversion/Continuation with respect to a Borrowing of LIBO Rate Loans or a Borrowing of CDOR Loans is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Borrowing of U.S. Base Rate Loans, in the case of U.S. Dollar Denominated Loans, or a Borrowing of Canadian Prime Rate Loans, in the case of Canadian Dollar Denominated Loans. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Lead Borrowers, then, after the occurrence and during the continuance of such Event of Default (i) no outstanding Borrowing may be converted to or continued as a Borrowing of LIBO Rate Loans or a Borrowing of CDOR Loans and (ii) unless repaid, at the end of the Interest Period applicable thereto, each Borrowing of LIBO Rate Loans shall be converted to a Borrowing of U.S. Base Rate Loans and each Borrowing of CDOR Loans shall be converted to a Borrowing of Canadian Prime Rate Loans.

Section 2.09. *Optional and Mandatory Prepayments of Loans.*

(a) *Optional Prepayments*. The Lead Borrowers shall have the right at any time and from time to time to prepay, without premium or penalty, any Borrowing, in whole or in part, subject to the requirements of this Section 2.09; *provided* that each partial prepayment shall be in an amount that is an integral multiple of $100,000, in the case of U.S Dollar Denominated Loans, or Can.$100,000, in the case of Canadian Dollar Denominated Loans.

(b) *Revolving Loan Prepayments; Pre-Petition Obligations*.

(i) In the event of the termination of all the Revolving Commitments, the Lead Borrowers shall, on the date of such termination, repay or prepay the Pre-Petition Obligations and the Loans, all the outstanding Revolving Borrowings and all outstanding Swingline Loans and Cash Collateralize or backstop on terms reasonably satisfactory to the Administrative Agent the LC Exposure in accordance with Section 2.13(j).

(ii) In the event of any partial reduction of the Revolving Commitments, then (A) at or prior to the effective date of such reduction, the Administrative Agent shall notify the Lead Borrowers and the Revolving Lenders of the Aggregate Exposures and

the Prepetition Exposures after giving effect thereto and (B) if the Aggregate Exposures *plus* the Prepetition Exposures would exceed the Line Cap then in effect, after giving effect to such reduction, then the Lead Borrowers shall, on the date of such reduction (or, if such reduction is due to the imposition of new Reserves or a change in the methodology of calculating existing Reserves, within five (5) Business Days following such notice), *first*, repay the Permitted Overadvances, *second*, repay all Swingline Loans, *third*, repay or prepay Revolving Borrowings and *fourth*, replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess.

(iii) In the event that the Aggregate Exposures *plus* the Prepetition Exposures at any time (including, without limitation, on any Revaluation Date) exceeds the Line Cap then in effect, the Lead Borrowers shall, immediately after demand (or, if such overadvance is due to the imposition of new Reserves or a change in the methodology of calculating existing Reserves or a change in eligibility standards, within five (5) Business Days following notice), apply an amount equal to such excess to prepay the Loans and any interest accrued thereon, in accordance with this Section 2.09(b)(iii). The Lead Borrowers shall, *first*, repay the Permitted Overadvances, *second*, repay or prepay all Swingline Loans, *third*, repay or prepay Revolving Borrowings, and *fourth*, replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess.

(iv) In the event that the aggregate LC Exposure exceeds the LC Commitment then in effect, the Lead Borrowers shall, without notice or demand, immediately replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess.

(v) Except as provided in Section 10.03, subject to the Post-Petition Intercreditor Agreement, within five (5) Business Days following each date on or after the Closing Date upon which the Parent or any of its Subsidiaries receives any cash proceeds from the Soccer Sale constituting ABL Priority Collateral, an amount equal to 100% of the Net Sale Proceeds shall therefrom be applied as a mandatory repayment in accordance with the requirements of Section 2.09(c)(ii).

(vi) All outstanding Loans shall be Paid in Full on the Maturity Date for such Loans.

(c) *Application of Prepayments*.

(i) Prior to any optional or mandatory prepayment of Borrowings hereunder, the applicable Lead Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (i) of this Section 2.09(c). Except as provided in Section 2.09(b)(iii) hereof, all mandatory prepayments shall be applied as follows: *first*, to repay or prepay the outstanding Prepetition Obligations in accordance with the Prepetition ABL Credit Agreement (other than those obligations arising in connection with purchase cards and Letters of Credit, all of which shall be deemed to be issued under this Agreement as of the Closing Date), *second*, to repay the Permitted Overadvances, *third*, to fees and reimbursable expenses of the Administrative Agent then due and payable pursuant to the Credit Documents; *fourth*, to interest then due and payable on the Borrowers' Swingline Loans; *fifth*, to the principal

balance of the Swingline Loan outstanding until the same has been prepaid in full; *sixth*, to interest then due and payable on the Revolving Loans and other amounts due pursuant to Sections 3.02 and 4.01; *seventh*, to the principal balance of the Revolving Loans until the same have been prepaid in full; *eighth*, to Cash Collateralize all LC Exposure *plus* any accrued and unpaid interest thereon (to be held and applied in accordance with Section 2.13(j) hereof); *ninth*, to all other Obligations pro rata in accordance with the amounts that such Lender certifies is outstanding; and *tenth*, as required by the Post-Petition Intercreditor Agreement or, in the absence of any such requirement, returned to the applicable Lead Borrower or to such party as otherwise required by law.

(ii) Amounts to be applied pursuant to this Section 2.09 to the prepayment of Revolving Loans shall be applied, as applicable, first to reduce outstanding U.S. Base Rate Loans or Canadian Prime Rate Loans, as applicable. Any amounts remaining after each such application shall be applied to prepay LIBO Rate Loans or CDOR Loans, as applicable. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.09 shall be in excess of the amount of the U.S. Base Rate Loans and Canadian Prime Rate Loans at the time outstanding, only the portion of the amount of such prepayment that is equal to the amount of such outstanding U.S. Base Rate Loans and Canadian Prime Rate Loans shall be immediately prepaid and, at the election of the applicable Lead Borrower, the balance of such required prepayment shall be either (A) deposited in the LC Collateral Accounts and applied to the prepayment of LIBO Rate Loans or CDOR Loans on the last day of the then next-expiring Interest Period for LIBO Rate Loans or CDOR Loans (with all interest accruing thereon for the account of the applicable Lead Borrower) or (B) prepaid immediately, together with any amounts owing to the Lenders under Section 2.10. Notwithstanding any such deposit in the LC Collateral Accounts, interest shall continue to accrue on such Loans until prepayment.

(d) *Notice of Prepayment*. The Lead Borrowers shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by electronic transmission of any prepayment hereunder (i) in the case of prepayment of a Borrowing of LIBO Rate Loans or CDOR Loans, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of prepayment, (ii) in the case of prepayment of a Borrowing of U.S. Base Rate Loans or Canadian Prime Rate Loans, not later than 2:00 p.m., New York City time, on the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 1:00 p.m., New York City time, on the date of prepayment. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Each notice of prepayment pursuant to this Section 2.09 shall be irrevocable, except that the applicable Lead Borrower may, by subsequent notice to the Administrative Agent, revoke any such notice of prepayment if such notice of revocation is received not later than 10:00 a.m. (New York City time) on the day on which such prepayment is scheduled to occur and, *provided* that (i) the applicable Lead Borrower reimburses each Lender pursuant to Section 3.03 for any funding losses within five (5) Business Days after receiving written demand therefor and (ii) the amount of Loans as to which such revocation applies shall be deemed converted to (or continued as, as applicable) U.S. Base Rate Loans or Canadian Prime Rate Loans, as applicable, in accordance with the provisions of Section 2.08 as of the date of notice of revocation (subject to subsequent conversion in accordance with the provisions of this Agreement). Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section

2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06.

Section 2.10. *Payments Generally; Pro Rata Treatment; Sharing of Set-Offs.* (a) Each Borrower shall make each payment required to be made by it hereunder or under any other Credit Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 3.01 and 4.01 or otherwise) at or before the time expressly required hereunder or under such other Credit Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the reasonable discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Payment Office, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 3.01, 4.01 and 12.01 shall be made to the Administrative Agent for the benefit of to the Persons entitled thereto and payments pursuant to other Credit Documents shall be made to the Administrative Agent for the benefit of the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Credit Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All Canadian Dollar Denominated Loans shall be paid in Canadian Dollars and all U.S. Dollar Denominated Loans shall be paid in U.S. Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied in the manner as provided in Section 2.09(c) or 10.03 hereof, as applicable, ratably among the parties entitled thereto.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Lead Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Parent or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under

applicable law that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Credit Parties rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of a Credit Party in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the applicable Lead Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the applicable Lead Borrower will not make such payment, the Administrative Agent may assume that the applicable Lead Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the applicable Lead Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(c), 2.02(f), 2.10(d), 2.12(d) or 2.13(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.11. *Defaulting Lenders.*

(a) *Reallocation of Pro Rata Share; Amendments*. For purposes of determining the Lenders' obligations to fund or acquire participations in Loans or Letters of Credit, the Administrative Agent may exclude the Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata Shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Credit Document, except as provided in Section 12.10.

(b) *Payments; Fees*. The Administrative Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Credit Documents, and a Defaulting Lender shall be deemed to have assigned to the Administrative Agent such amounts until all Obligations owing to the Administrative Agent, Non-Defaulting Lenders and other Secured Parties have been paid in full. The Administrative Agent may apply such amounts to the Defaulting Lender's defaulted obligations, use the funds to Cash Collateralize such Lender's Fronting Exposure, or readvance the amounts to the applicable Lead Borrower hereunder. A Lender shall not be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender, and the unfunded portion of its Commitment shall be disregarded for purposes of calculating the Commitment Fee under Section 2.05(a). To the extent any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, LC Participation Fees attributable to such LC Obligations under Section 2.05(c) shall be paid to such other Lenders. The Administrative Agent shall be paid all LC Participation Fees attributable to LC Obligations that are not so reallocated.

(c) *Cure*. The Lead Borrowers, Administrative Agent and Issuing Bank may agree in writing that a Lender is no longer a Defaulting Lender. At such time, Pro Rata Shares shall be

reallocated without exclusion of such Lender's Commitments and Loans, and all outstanding Loans, LC Obligations and other exposures under the Commitments shall be reallocated among Lenders and settled by the Administrative Agent (with appropriate payments by the reinstated Lender) in accordance with the readjusted Pro Rata Shares. Unless expressly agreed by the Lead Borrowers, Administrative Agent and Issuing Bank, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender.

Section 2.12. *Swingline Loans.*

(a) *Swingline Commitment*. Subject to the terms and conditions set forth herein, the Swingline Lender shall make Swingline Loans to the Lead Borrowers from time to time during the Revolving Availability Period, in an aggregate principal amount, the Dollar Equivalent of which, at any time outstanding, will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding $20,000,000 or (ii) the Aggregate Exposures plus the Prepetition Exposures exceeding the Line Cap then in effect; *provided* that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Lead Borrowers may borrow, repay and reborrow Swingline Loans.

(b) *Swingline Loans*. To request a Swingline Loan, the applicable Lead Borrower shall notify the Administrative Agent of such request by electronic transmission, not later than 1:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Lead Borrowers. The Swingline Lender shall make each Swingline Loan available to the applicable Lead Borrower by means of a credit to the general deposit account of the applicable Lead Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.13(e), by remittance to the Issuing Bank) by 5:00 p.m., New York City time, on the requested date of such Swingline Loan. The Lead Borrowers shall not request a Swingline Loan if at the time of and immediately after giving effect to such request a Default has occurred and is continuing. Swingline Loans shall be made in minimum amounts of $100,000, in the case of Swingline Loans denominated in U.S. Dollars, and Can.$100,000 in the case of Swingline Loans denominated in Canadian Dollars.

(c) *Prepayment*. The Lead Borrowers shall have the right at any time and from time to time to repay, without premium or penalty, any Swingline Loan, in whole or in part, upon giving written notice to the Swingline Lender and to the Administrative Agent before 2:00 p.m., New York City time on the date of repayment at the Swingline Lender's address for notices specified in the Swingline Lender's administrative questionnaire. All principal payments of Swingline Loans shall be accompanied by accrued interest on the principal amount being repaid to the date of payment.

(d) *Participations*. The Swingline Lender may by written notice given to the Administrative Agent not later than 2:00 p.m., New York City time, on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the

Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Aggregate Commitments or whether an Overadvance exists or is created thereby, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever (*provided* that such payment shall not cause such Lender's Revolving Exposure to exceed such Lender's Revolving Commitment). Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.02(f) with respect to Loans made by such Lender (and Section 2.02 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders and thereafter, payments by the applicable Borrower in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. The Administrative Agent from time to time, as reasonably requested by the Lead Borrowers, shall notify the Lead Borrowers of participations in any Swingline Loan acquired pursuant to this paragraph. Any amounts received by the Swingline Lender from a Lead Borrower (or other party on behalf of a Lead Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve any Borrower of any default in the payment thereof. Further, in the event any Lender is a Defaulting Lender, to the extent the purchase of participations in accordance with each non-Defaulting Lender's Pro Rata Share, shall not be sufficient to cover the participation exposure attributable to the Defaulting Lender(s), then the Swingline Lender may require the Borrowers to repay such "uncovered" exposure in respect of such Swingline Loan(s) and the Swingline Lender will have no obligation to make new Swingline Loans to the extent such Swingline Loans would exceed the Revolving Commitments of the Non-Defaulting Lenders.

Section 2.13. *Letters of Credit.*

(a) *General*. Subject to the terms and conditions set forth herein, the Lead Borrowers may request the issuance of Letters of Credit for a Lead Borrower's account or the account of the Parent or a Subsidiary of the Parent in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Availability Period. All Existing Letters of Credit shall be deemed, without further action by any party hereto, to have been issued on the Closing Date pursuant to this Agreement, and the Lenders shall thereupon acquire participations in the Existing Letters of Credit as if so issued without further action by any party hereto, to be acquired by the Lenders hereto. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by a Lead Borrower to, or entered into by a Lead Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The Borrowers and the Secured Parties hereby acknowledge and agree that all Existing Letters of Credit shall constitute Letters of Credit under this Agreement on and after the Closing Date with the same effect as if such Existing Letters of Credit were issued by

Issuing Bank at the request of the Borrowers on the Closing Date, and shall cease to be regarded as part of the Prepetition ABL Facility and shall constitute a Letter of Credit for all purposes hereof, and accordingly shall be entitled to all of the benefits and security of this Agreement and the superpriority charges granted pursuant to the Financing Orders. All fees heretofore paid in respect of such Existing Letter of Credit shall be deemed to have been paid on account of Prepetition Obligations, and any unpaid fees in respect of such Existing Letters of Credit accrued as of the Closing Date and accruing subsequent thereto shall be deemed to be part of the Obligations..

(b) *Request for Issuance, Amendment, Renewal, Extension; Certain Conditions*. To request the issuance of a Letter of Credit or the amendment, renewal or extension of an outstanding Letter of Credit, the applicable Lead Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) a LC Request to the Issuing Bank and the Administrative Agent not later than 1:00 p.m. on the second Business Day preceding the requested date of issuance, amendment, renewal or extension (or such later date and time as is reasonably acceptable to the Issuing Bank). A request for an initial issuance of a Letter of Credit shall specify in form and detail reasonably satisfactory to the Issuing Bank: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder, and (vii) such other matters as the Issuing Bank may reasonably require. A request for an amendment, renewal or extension of any outstanding Letter of Credit shall specify in form and detail reasonably satisfactory to the Issuing Bank (w) the Letter of Credit to be amended, renewed or extended; (x) the proposed date of amendment, renewal or extension thereof (which shall be a Business Day), (y) the nature of the proposed amendment, renewal or extension, and (z) such other matters as the Issuing Bank may reasonably require. If requested by the Issuing Bank, the applicable Lead Borrower also shall submit a letter of credit application substantially on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the applicable Lead Borrower shall be deemed to represent and warrant (solely in the case of (w) and (x)) that, after giving effect to such issuance, amendment, renewal or extension (A) the LC Exposure shall not exceed $1,500,000, (B) the sum of the Aggregate Exposures *plus* the Prepetition Exposures shall not exceed the Line Cap and (C) if a Defaulting Lender exists, either such Lender or the applicable Lead Borrower has entered into arrangements satisfactory to the Administrative Agent and Issuing Bank to eliminate any Fronting Exposure associated with such Lender. Unless the Issuing Bank shall otherwise agree, no Letter of Credit shall be denominated in a currency other than U.S. Dollars.

(c) *Expiration Date*. Each newly issued Letter of Credit shall expire at or prior to the close of business on the Letter of Credit Expiration Date.

(d) *Participations*. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Pro Rata Percentage of each LC Disbursement (in the same currency as the underlying Letter of Credit (i.e., Canadian Dollars or U.S. Dollars)) made by the

Issuing Bank and not reimbursed by the applicable Lead Borrower on the date due as provided in paragraph (e) of this Section 2.13, or of any reimbursement payment required to be refunded to the applicable Lead Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Aggregate Commitments or whether or not an Overadvance exists or is created thereby, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) *Reimbursement*. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Lead U.S. Borrower, in the case of an LC Disbursement to on account of a Letter of Credit for which any U.S. Borrower was the co-applicant, or the Lead Canadian Borrower, on account of any Letter of Credit for which any Canadian Borrower was the co-applicant, shall reimburse such LC Disbursement by paying to the Issuing Bank an amount equal to such LC Disbursement not later than 2:00 p.m., New York City time, on the Business Day after receiving notice from the Issuing Bank of such LC Disbursement; *provided* that , whether or not the applicable Lead Borrower submits a Notice of Borrowing, the applicable Lead Borrower shall be deemed to have requested (except to the extent the applicable Lead Borrower makes payment to reimburse such LC Disbursement when due) a Borrowing of U.S. Base Rate Loans, in the case of a U.S. Dollar Denominated LC Disbursement, or Canadian Prime Rate Loans, in the case of a Canadian Dollar LC Disbursement, in an amount necessary to reimburse such LC Disbursement. If the applicable Lead Borrower fails to make such payment when due, the Issuing Bank shall notify the Administrative Agent and the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the applicable Lead Borrower in respect thereof and such Lender's Pro Rata Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Pro Rata Percentage of the unreimbursed LC Disbursement in the same manner as provided in Section 2.02(f) with respect to Loans made by such Lender, and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders (*provided* that such payment shall not cause such Revolving Lender's Exposure to exceed such Revolving Lender's Commitment). Promptly following receipt by the Administrative Agent of any payment from the applicable Lead Borrower pursuant to this paragraph, the Administrative Agent shall, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, distribute such payment to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of U.S. Base Rate Loans, Canadian Prime Rate Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the applicable Lead Borrower of its obligation to reimburse such LC Disbursement.

(f) *Obligations Absolute*.

(i) Subject to the limitations set forth below, the obligations of the Lead Borrowers to reimburse LC Disbursements as provided in paragraph (e) of this Section 2.13 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (A) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (B) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (C) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does

not strictly comply with the terms of such Letter of Credit, (D) the existence of any claim, setoff, defense or other right which the applicable Lead Borrower may have at any time against a beneficiary of any Letter of Credit, or (E) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.13, constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of the applicable Lead Borrower hereunder; *provided* that the applicable Lead Borrower shall have no obligation to reimburse the Issuing Bank to the extent that such payment was made in error due to the gross negligence, bad faith, or willful misconduct of the Issuing Bank (as determined by a court of competent jurisdiction or another independent tribunal having jurisdiction). Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Affiliates, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; *provided* that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Lead Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Lead Borrowers to the extent permitted by applicable law) suffered by the Lead Borrowers that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, willful misconduct, or bad faith on the part of the Issuing Bank (as determined by a court of competent jurisdiction or another independent tribunal having jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(ii) The Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by the Lead Borrowers or other Person of any obligations under any LC Document. The Issuing Bank does not make to the Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, such documents or any Credit Party. The Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Document; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Credit Party.

(iii) No Issuing Bank or any of its Affiliates, and their respective officers, directors, employees, agents and investment advisors shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC

Documents except as a result of its actual gross negligence or willful misconduct as determined by court of competent jurisdiction in a final nonappealable judgment. The Issuing Bank shall not have any liability to any Lender if the Issuing Bank refrains from any action under any Letter of Credit or such LC Documents until it receives written instructions from the Required Lenders.

(g) *Disbursement Procedures*. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the applicable Lead Borrower by electronic transmission of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the applicable Lead Borrower of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement (other than with respect to the timing of such reimbursement obligation set forth in Section 2.13(e)).

(h) *Interim Interest*. If the Issuing Bank shall make any LC Disbursement, then, unless the applicable Lead Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the applicable Lead Borrower reimburses such LC Disbursement, at the rate per annum then applicable to U.S. Base Rate Loans or Canadian Prime Rate Loans, as applicable; *provided* that , if the applicable Lead Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section 2.13, then Section 2.06(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section 2.13 to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) *Resignation or Removal of the Issuing Bank*. The Issuing Bank may resign as Issuing Bank hereunder at any time upon at least 30 days' prior written notice to the Lenders, the Administrative Agent and the Lead Borrowers. The Issuing Bank may be replaced at any time by agreement between the Lead Borrowers and the Administrative Agent, *provided* that so long as no Default or Event of Default exists, such successor Issuing Bank shall be reasonably acceptable to the Lead Borrowers. One or more Lenders may be appointed as additional Issuing Banks in accordance with subsection (k) below. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank or any such additional Issuing Bank. At the time any such resignation or replacement shall become effective, the Lead Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.05(c). From and after the effective date of any such resignation or replacement or addition, as applicable, (i) the successor or additional Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "**Issuing Bank**" shall be deemed to refer to such successor or such addition or to any previous Issuing Bank, or to such successor or such additional Issuing Bank and all previous Issuing Banks, as the context shall require. After the resignation or replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such resignation or replacement, but shall not be required to issue additional Letters of Credit. If at any time there is more than one Issuing Bank hereunder, the Lead Borrowers may, in their discretion, select which Issuing Bank is to issue any particular Letter of Credit.

(j) *Cash Collateralization*.

(i) If any Specified Event of Default shall occur and be continuing, on the Business Day that the Lead Borrowers receive notice from the Administrative Agent (acting at the request of the Required Lenders) demanding the deposit of Cash Collateral pursuant to this paragraph, the Lead Borrowers shall deposit in the LC Collateral Accounts (in Canadian Dollars with respect to Canadian Dollar denominated Letters of Credit and U.S. Dollars with respect to U.S. Dollar denominated Letters of Credit), in the name of the Administrative Agent and for the benefit of the Secured Parties, an amount in cash equal to 102% of the LC Exposure as of such date. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Lead Borrowers under this Agreement, but shall be immediately released and returned to the Lead Borrowers (in no event later than two (2) Business Days) once all Specified Events of Default are cured or waived. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made only in Cash Equivalents and at the direction of the Lead Borrowers and at the Lead Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Lead Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations of the Lead Borrowers.

(ii) The Lead Borrowers shall, on demand by the Issuing Bank or the Administrative Agent from time to time, Cash Collateralize the Fronting Exposure associated with any Defaulting Lender.

(k) *Additional Issuing Banks*. The Lead Borrowers may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld, delayed or conditioned) and such Lender, designate one or more additional Lenders to act as an issuing bank under the terms of this Agreement. Any Lender designated as an issuing bank pursuant to this paragraph (k) shall be deemed (in addition to being a Lender) to be the Issuing Bank with respect to Letters of Credit issued or to be issued by such Lender, and all references herein and in the other Credit Documents to the term "**Issuing Bank**" shall, with respect to such Letters of Credit, be deemed to refer to such Lender in its capacity as Issuing Bank, as the context shall require.

(l) The Issuing Bank shall be under no obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any law applicable to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Bank any

unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Bank in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank.

(m) The Issuing Bank shall be under no obligation to amend any Letter of Credit if (i) the Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (ii) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(n) *LC Collateral Accounts.*

(i) The Administrative Agent is hereby authorized to establish and maintain at the Notice Office, in the name of the Administrative Agent and pursuant to a dominion and control agreement, restricted deposit accounts designated "The Lead Borrowers Canadian LC Collateral Account" and "The Lead Borrowers U.S. LC Collateral Account". Each Credit Party shall deposit into the LC Collateral Accounts from time to time the Cash Collateral required to be deposited under Section 2.13(j) hereof.

(ii) The balance from time to time in such LC Collateral Accounts shall constitute part of the Collateral and shall not constitute payment of the Obligations until applied as hereinafter provided. Notwithstanding any other provision hereof to the contrary, all amounts held in the LC Collateral Accounts shall constitute collateral security first for the liabilities in respect of Letters of Credit outstanding from time to time and second for the other Obligations hereunder until such time as all Letters of Credit shall have been terminated and all of the liabilities in respect of Letters of Credit have been paid in full. All funds in "The Lead Borrowers Canadian LC Collateral Account" and "The Lead Borrowers U.S. LC Collateral Account" may be invested in accordance with the provisions of Section 2.13(j).

Section 2.14. *Settlement Amongst Lenders.* (a) The Swingline Lender may, at any time (but, in any event shall, once every week), on behalf of the Lead Borrowers (which hereby authorize the Swingline Lender to act on its behalf in that regard) request the Administrative Agent to cause the Lenders to make a Revolving Loan (which shall be a U.S. Base Rate Loan or Canadian Prime Rate Loan, as applicable) in an amount equal to such Lender's Pro Rata Percentage of the Outstanding Amount of Swingline Loans, which request may be made regardless of whether the conditions set forth in Article 6 have been satisfied. Upon such request, each Lender shall make available to the Administrative Agent the proceeds of such Revolving Loan for the account of the Swingline Lender. If the Swingline Lender requires a Revolving Loan to be made by the Lenders and the request therefor is received prior to 1:00 p.m. New York City time on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if the request therefor is received after 1:00 p.m. New York City time, then no later than 3:00 p.m. on the next Business Day. The obligation of each such Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent or the Swingline Lender. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand, such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate.

(b) The amount of each Lender's Pro Rata Percentage of outstanding Revolving Loans (including outstanding Swingline Loans) shall be computed weekly (or more frequently in the Administrative Agent's discretion) and shall be adjusted upward or downward based on all Revolving Loans (including Swingline Loans), repayments of Revolving Loans (including Swingline Loans) received by the Administrative Agent as of 3:00 p.m. on the first Business Day (such date, the "**Settlement Date**") following the end of the period specified by the Administrative Agent, and the occurrence of any Revaluation Dates.

(c) The Administrative Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans (including Swingline Loans) for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Lender its applicable Pro Rata Percentage of repayments, and (ii) each Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender with respect to Revolving Loans to the Borrowers (including Swingline Loans) shall be equal to such Lender's applicable Pro Rata Percentage of Revolving Loans (including Swingline Loans) outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Lenders and is received prior to 1:00 p.m. New York City time on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m. New York City time, then no later than 3:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate.

Section 2.15. *[Reserved].*

Section 2.16. *Lead Borrowers*. Each U.S. Borrower hereby designates the Lead U.S. Borrower as its representative and agent and each Canadian Borrower hereby designates the Lead Canadian Borrower as its representative and agent, in each case for all purposes under the Credit Documents, including requests for Revolving Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Credit Documents (including in respect of compliance with covenants), and all other dealings with the Administrative Agent, the Issuing Bank or any Lender. The Lead Borrowers each hereby accept such appointment. The Administrative Agent and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any Notice of Borrowing) delivered by the applicable Lead Borrower on behalf of any Borrower. The Administrative Agent and the Lenders may give any notice or communication with a Borrower hereunder to the applicable Lead Borrower on behalf of such Borrower. Each of the Administrative Agent, the Issuing Bank and the Lenders shall have the right, in its discretion, to deal exclusively with the Lead Borrowers for any or all purposes under the Credit Documents. Each Borrower agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by the applicable Lead Borrower shall be binding upon and enforceable against it.

Section 2.17. *Overadvances*. If the Aggregate Exposure plus the Prepetition Exposures outstanding exceeds the Line Cap (an "**Overadvance**") at any time, the excess amount

shall be payable by the Borrowers on demand by the Administrative Agent, but all such Revolving Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Credit Documents. The Administrative Agent may require the Lenders to honor requests for Overadvance Loans and to forbear from requiring the Borrowers to cure an Overadvance, (a) when no other Event of Default is known to the Administrative Agent, as long as (i) the Overadvance does not continue for more than 30 consecutive days (and no Overadvance may exist for at least five (5) consecutive days thereafter before further Overadvance Loans are required) and (ii) the aggregate amount of all Overadvances and Protective Advances is not known by the Administrative Agent to exceed 10% of the Borrowing Base, (b) regardless of whether an Event of Default exists, if the Administrative Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery the Overadvance (i) is not increased by more than $1,000,000, and (ii) does not continue for more than 30 consecutive days. In no event shall Overadvance Loans be required that would cause the aggregate outstanding Revolving Loans and LC Obligations to exceed the aggregate Revolving Commitments. The making of any Overadvance shall not create nor constitute a Default or Event of Default; it being understood that the making or continuance of an Overadvance shall not constitute a waiver by the Administrative Agent or the Lenders of the then existing Event of Default. In no event shall any Borrower or other Credit Party be permitted to require any Overadvance Loan to be made.

Section 2.18. *Protective Advances*. The Administrative Agent shall be authorized, in its discretion, following notice to and consultation with the Lead Borrowers, at any time, to make U.S. Base Rate Loans or Canadian Prime Rate Loans ("**Protective Advances**") (a) in an aggregate amount, together with the aggregate amount of all Overadvance Loans, the Dollar Equivalent of which shall not exceed 10% of the Borrowing Base, if the Administrative Agent deems such Protective Advances necessary or desirable to preserve and protect the Collateral, or to enhance the collectability or repayment of the Obligations; or (b) to pay any other amounts chargeable to Credit Parties under any Credit Documents, including costs, fees and expenses; *provided* that, the aggregate amount of outstanding Protective Advances *plus* the outstanding amount of Revolving Loans and LC Obligations shall not exceed the aggregate Revolving Commitments. Each Lender shall participate in each Protective Advance in accordance with its Pro Rata Percentage. Required Lenders may at any time revoke the Administrative Agent's authority to make further Protective Advances under clause (a) by written notice to the Administrative Agent. Absent such revocation, the Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. The Administrative Agent may use the proceeds of such Protective Advances to (a) protect, insure, maintain or realize upon any Collateral; or (b) defend or maintain the validity or priority of the Administrative Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien; *provided* that the Administrative Agent shall use reasonable efforts to notify the Lead Borrowers after paying any such amount or taking any such action and shall not make payment of any item that is being Properly Contested.

Section 2.19. *Security and Priority*. Subject to the entry of the Financing Orders and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, all of the Obligations of each Debtor Credit Party shall, subject to the Carve-Out, at all times:

(a) Pursuant to Section 364(c)(1) of the Bankruptcy Code and after entry of the Final Financing Order, constitute allowed superpriority administrative expense claims against the Debtor Credit Parties (without the need to file any proof of claim) with priority over any and all claims against the Debtor Credit Parties, now existing or hereafter arising, of any kind whatsoever,

including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 363, 365, 503(a), 503(b), 506(c) (upon entry of the Final Financing Order by the U.S. Bankruptcy Court, to the extent therein approved), 507(a), 507(b) (other than allowed 507(b) claims of the lenders under the Prepetition ABL Credit Agreement and Prepetition Term Loan Credit Agreement as provided under the Interim Financing Order by the U.S. Bankruptcy Court or the Final Financing Order by the U.S. Bankruptcy Court, as applicable, including adequate protection obligations), 726, 1113 or 1114 of the Bankruptcy Code (including any adequate protection obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "DIP Superpriority Claims") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property, whether existing on the Petition Date or thereafter acquired, of the Debtor Credit Parties and all proceeds thereof (excluding Avoidance Actions, but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof), subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law and (2) the Carve-out and the Administration Charge. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Financing Order by the U.S. Bankruptcy Court (or, after entry thereof, the Final Financing Order by the U.S. Bankruptcy Court) or any provision thereof is vacated, reversed, amended or otherwise modified, on appeal or otherwise. Pursuant to Section 364(c)(2) of the Bankruptcy Code, the Financing Orders and the Security Documents and Post-Petition Intercreditor Agreement be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable first priority security interest and Lien on the Collateral of each Debtor Credit Party (i) to the extent such Collateral is not subject to valid, enforceable, perfected and non-avoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law, with all other Permitted Liens on such Collateral being junior in ranking except as expressly provided in Section 9.01 hereof and (ii) excluding claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (collectively "**Avoidance Actions**"), but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof.

(b) Pursuant to Section 364(d)(1) of the Bankruptcy Code, the Security Documents, the Financing Orders and the Post-Petition Intercreditor Agreement and subject to the terms thereof, be secured by a first lien, senior, valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all ABL Priority Collateral of each Debtor Credit Party (excluding Avoidance Actions, but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof), which security interests and Liens on such Collateral shall in each case be subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable)and/or that have priority after the Petition Date by operation of Law and (2) the Carve-out and the Administration Charge,

with all other Permitted Liens on the ABL Priority Collateral being junior in ranking except as expressly provided in Section 9.01 hereof.

(c) Pursuant to Section 364(c)(3) of the Bankruptcy Code, the Security Documents, the Financing Orders and the Post-Petition Intercreditor Agreement and subject to the terms thereof, be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all Term Priority Collateral of each Debtor Credit Party (excluding Avoidance Actions, but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof), which security interests and Liens on such Collateral shall in each case be subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law, (2) the Permitted Liens of the Term Loan Agent and (3) the Carve-out and the Administration Charge, with all other Permitted Liens on the Term Priority Collateral being junior in ranking except as expressly provided in Section 9.01 hereof.

(d) Pursuant to Section 11.2 of the CCAA, the Security Documents and the Post-Petition Intercreditor Agreement, be secured by a super-priority charge which shall rank in priority to all other security interests, trusts, Liens, hypothecs, charges and encumbrances, claims of secured creditors, statutory or otherwise, in favor of any Person, on the Collateral of each Canadian Debtor Credit Party, subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date the priority of which has not been adversely impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law, (2) with respect to the Term Priority Collateral, the Permitted Liens securing the Term Facilities, and (3) the Carve-Out and the Administration Charge; with all other Permitted Liens on the Collateral being junior in ranking except as expressly provided in Section 9.01 hereof.

Section 2.20. *Collateral Security Perfection*. The Parent agrees to take, and cause each of its Subsidiaries to take, all actions that the Administrative Agent or the Required Lenders may reasonably request as a matter of non-bankruptcy law to perfect and protect the security interests and Liens granted by the Credit Parties for the benefit of the Secured Parties upon the Collateral and for such security interests and Liens to obtain the priority therefor contemplated hereby, including, without limitation, executing and delivering such documents and instruments, financing statements and providing such other instruments and documents in recordable form as the Administrative Agent or the Required Lenders may reasonably request, subject to any applicable limitations set forth in the Credit Documents. Each Credit Party hereby irrevocably authorizes the Administrative Agent at any time and from time to time to file in any filing office in any UCC or PPSA jurisdiction (including the Province of Quebec) any initial financing statements and amendments thereto naming such Credit Party as "debtor" that (a) indicate the Collateral (i) as all assets of such Credit Party or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or the PPSA, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the UCC or similar provisions of the PPSA for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether such Credit Party is an organization, the type of organization and any organization identification number issued to such Credit Party and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Each Credit Party agrees to furnish any such information to the Administrative Agent and the Advisors

promptly upon request. Notwithstanding the provisions of this Section 2.15, the Administrative Agent and the Lenders shall have the benefits of the Interim Financing Order and the Final Financing Orders.

Section 2.21. *Payment of Obligations; No Discharge; Survival of Claims*.

(a) Subject to the provisions of Section 10.02, upon the maturity (whether by acceleration or otherwise) of any of the Obligations of the Credit Parties under this Agreement or any of the other Credit Documents, the Lenders and the other Secured Parties shall be entitled to immediate payment of such Obligations and to exercise of any and all remedies under, but subject to, the Financing Orders.

(b) The Parent agrees that, to the extent that the Obligations have not been Paid in Full, (i) its Obligations arising hereunder shall not be discharged by the entry of any order of the Bankruptcy Courts, including but not limited to an order confirming any chapter 11 plan or plans filed in any or all of the Cases (and the Parent, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the DIP Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Financing Orders and described in Section 2.19 and the Liens on any assets of any Debtor Credit Parties granted to the Administrative Agent pursuant to the Financing Orders and described in Section 2.19 shall not be affected in any manner by the entry of any order of the Bankruptcy Courts confirming any such plan.

Section 2.22. *Canadian Interest Considerations.* The parties hereto intend to comply with applicable law relating to usury. Notwithstanding any other provision of this Agreement or any other Credit Document, in no event shall any Credit Document require the payment or permit the collection of interest or other amounts in an amount or at a rate in excess of the amount or rate that is permitted by applicable law or in an amount or at a rate that would result in the receipt by the Lender or the Agents of interest at a criminal rate, as the terms "interest" and "criminal rate" are defined under the *Criminal Code* (Canada). Where more than one applicable law applies to the Credit Parties, the Credit Parties shall not be obliged to make payment in an amount or at a rate higher than the lowest permitted amount or rate. If from any circumstance whatever, fulfilment of any provision of any Credit Document would result in exceeding the highest rate or amount permitted by applicable law for the collection or charging of interest, the obligation to be fulfilled shall be reduced to reflect the highest permitted rate or amount. If from any circumstance the Agents or the Lenders shall ever receive anything of value as interest or deemed interest under any Credit Document that would result in exceeding the highest lawful rate or amount of interest permitted by applicable law, the amount that would be excessive interest shall be applied to the reduction of the principal amount of the relevant Loan, and not to the payment of interest, or if the excessive interest exceeds the unpaid principal balance of the relevant Loan, the amount exceeding the unpaid balance shall be refunded to the Credit Parties. In determining whether or not the interest paid or payable under any specified contingency exceeds the highest lawful rate, the Credit Parties, the Agents and the Lenders shall, to the maximum extent permitted by applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and their effects, (iii) amortize, prorate, allocate and spread the total amount of interest throughout the term of the applicable Loan so that interest does not exceed the maximum amount permitted by applicable law, and/or (iv) allocate interest between portions of the Obligations to the end that no portion shall bear interest at a rate greater than that permitted by applicable law. For the purposes of the Criminal Code (Canada), if there is any dispute as to the calculation of the effective annual rate of interest, the determination of a Fellow of the Canadian Institute of Actuaries appointed by the Agents shall be conclusive.

## ARTICLE 3
### YIELD PROTECTION, ILLEGALITY AND REPLACEMENT OF LENDERS

Section 3.01. *Increased Costs Generally*. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBO Rate) or any Issuing Bank;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes and (B) Taxes described in clauses (a) through (d) of the definition of Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any Issuing Bank or the London interbank market or the Canadian interbank market for Canadian Dollar bankers' acceptances any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Bank or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Bank or other Recipient, the Parent will pay to such Lender, Issuing Bank or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Bank or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or Issuing Bank determines that any Change in Law affecting such Lender or Issuing Bank or any Lending Office of such Lender or such Lender's or Issuing Bank's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by any Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy), then from time to time the Parent will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Parent, shall be conclusive absent manifest error. The Parent shall pay such Lender or Issuing

Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; *provided* that the Borrowers shall not be required to compensate a Lender or Issuing Bank pursuant to this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.02. *Illegality.* (a) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the LIBO Rate or CDOR Rate, or to determine or charge interest rates based upon the LIBO Rate or CDOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of U.S. Dollars in the London interbank market or Canadian Dollars in the Canadian interbank market for Canadian Dollar bankers' acceptances, then, on notice thereof by such Lender to the Lead Borrowers through the Administrative Agent, (i) any obligation of such Lender to make or continue LIBO Rate Loans or CDOR Loans (as applicable) or to convert, as applicable U.S. Base Rate Loans to LIBO Rate Loans or Canadian Prime Rate Loans to CDOR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining U.S. Base Rate Loans or Canadian Prime Rate Loans (as applicable) the interest rate on which is determined by reference to the LIBO Rate component of the U.S. Base Rate or the CDOR Rate component of the Canadian Prime Rate, the interest rate on which U.S. Base Rate Loans or Canadian Prime Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBO Rate component of the U.S. Base Rate or CDOR Rate component of the Canadian Prime Rate (as applicable), in each case until such Lender notifies the Administrative Agent and the Lead Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBO Rate Loans or CDOR Loans (as applicable) of such Lender to U.S. Base Rate Loans or Canadian Prime Rate Loans (the interest rate on which U.S. Base Rate Loans or CDOR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBO Rate component of the U.S. Base Rate or the CDOR Rate component of the Canadian Prime Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBO Rate Loans or CDOR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBO Rate Loans or CDOR Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBO Rate or CDOR Rate, the Administrative Agent shall during the period of such suspension compute, as applicable, the U.S. Base Rate or Canadian Prime Rate applicable to such Lender without reference to the LIBO Rate component or CDOR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBO Rate or CDOR Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

(b) Any Lender may at its option may make any Credit Extension to any Borrower by causing any domestic or foreign branch or Affiliate of such Lender to make such Credit Extension; provided that any exercise of such option shall not affect the obligation of the relevant Borrower to repay such Credit Extension in accordance with the terms of this Agreement; provided, however, if the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to issue, make, maintain, fund or any interest rate with respect to any Credit Extension to any Borrower who is organized under the laws of a jurisdiction other than the United States, a state thereof or the District of Columbia then, on notice thereof by such Lender to the Parent, and until such notice by such Lender is revoked, any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension shall be suspended. Upon receipt of such notice, the Credit Parties shall, take all reasonable actions requested by such Lender to mitigate or avoid such illegality.

Section 3.03. *Compensation*. Each Borrower, jointly and severally, agrees to compensate each Lender, upon its written request (which request shall set forth in reasonable detail the basis for requesting such compensation and the calculation of the amount of such compensation), for all losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its LIBO Rate Loans or CDOR Loans but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of, or conversion from or into, LIBO Rate Loans or CDOR Loans does not occur on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn by the applicable Borrower or deemed withdrawn pursuant to Section 3.01(a)); (ii) if any prepayment or repayment (including any termination or reduction of Commitments made pursuant to Section 2.07 or as a result of an acceleration of the Loans pursuant to Article 10) or conversion of any of its LIBO Rate Loans or CDOR Loans occurs on a date which is not the last day of an Interest Period with respect thereto; (iii) if any prepayment of any LIBO Rate Loans or CDOR Loans is not made on any date specified in a notice of termination or reduction given by a Lead Borrower; or (iv) as a consequence of (x) any other default by any Borrower to repay its LIBO Rate Loans or CDOR Loans when required by the terms of this Agreement or any Note held by such Lender or (y) any election made pursuant to Section 3.01(b).

Section 3.04. *Change of Lending Office*. If any Lender requests compensation under Section 3.01, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.01, then such Lender shall (at the request of any Borrower) use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or Section 4.01, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 3.05. *[Reserved]*.

Section 3.06. *Inability to Determine Rates*. If the Required Lenders determine in good faith that for any reason (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBO Rate

Loan, (b) Canadian Dollar deposits are not being offered to banks in the Canadian interbank market for Canadian Dollar bankers' acceptances for the applicable amount and Interest Period of such CDOR Loan, (c) adequate and reasonable means do not exist for determining the LIBO Rate or CDOR Loan for any requested Interest Period with respect to a proposed LIBO Rate Loan or CDOR Loan, or (d) that LIBO Rate or CDOR Loan for any requested Interest Period with respect to a proposed LIBO Rate Loan or CDOR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Lead Borrowers and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBO Rate Loans or CDOR Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the LIBO Rate or CDOR Rate component of the U.S. Base Rate or Canadian Prime Rate, the utilization of the LIBO Rate or CDOR Rate component in determining the U.S. Base Rate or Canadian Prime Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the applicable Lead Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Loans or CDOR Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of LIBO Rate Loans or CDOR Loans in the amount specified therein.

## ARTICLE 4
## TAXES

Section 4.01. *Net Payments.* (a) All payments made by or on account of any Credit Party under any Credit Document shall be made free and clear of, and without deduction or withholding for, any Taxes, except as required by applicable law (as determined in the good-faith discretion of the withholding agent). If any Indemnified Taxes or Other Taxes are required to be withheld or deducted from such payments, then the Credit Parties jointly and severally agree that (i) to the extent such deduction or withholding is on account of an Indemnified Tax or Other Tax, the sum payable by the Credit Parties shall be increased as necessary so that after making all required deductions or withholding (including deduction or withholdings applicable to additional sums payable under this Section 4.01), the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent will make such deductions or withholdings, and (iii) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law. In addition, the Credit Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law. As soon as practicable after any payment of Indemnified Taxes or Other Taxes to a Governmental Authority, the Credit Parties will furnish to the Administrative Agent certified copies of tax receipts evidencing such payment by the applicable Credit Party, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent. The Credit Parties jointly and severally agree to indemnify and hold harmless the Administrative Agent and each Lender, and reimburse the Administrative Agent and each Lender, within ten (10) days of written request therefor, for the amount of any Indemnified Taxes (including any Indemnified Taxes imposed on amounts payable under this Section 4.01) payable or paid by the Administrative Agent or such Lender or required to be withheld or deducted from a payment to the Administrative Agent or such Lender, and any Other Taxes, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the Issuing Bank (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

Solely for purposes of determining withholding Taxes imposed under FATCA, from and after the effective date of the Amendment, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(b) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Parent and the Administrative Agent, at the time or times reasonably requested by the Parent or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Parent or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or a reduce rate of, withholding Tax. In addition, each Lender shall deliver to the Parent and the Administrative Agent, at the time or times reasonably requested by the Parent or the Administrative Agent, such other documentation prescribed by applicable law or reasonably requested by the Parent or the Administrative Agent as will enable the Parent or the Administrative Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. Each Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documents required below in Section 4.01(c)) expired, obsolete or inaccurate in any respect, deliver promptly to the Parent and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Parent or the Administrative Agent) or promptly notify the Parent and the Administrative Agent in writing of its inability to do so.

(c) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower: (x) Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall deliver to the Parent and the Administrative Agent on or prior to the Closing Date or, in the case of a Lender that is a Lender to the Parent and that is an assignee or transferee of an interest under this Agreement pursuant to Section 12.04 (unless the relevant Lender was already a Lender hereunder immediately prior to such assignment or transfer), on the date of such assignment or transfer to such Lender, (i) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party or Form W-8ECI (or successor form), or (ii) in the case of a Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," a certificate substantially in the form of Exhibit C (any such certificate, a "**U.S. Tax Compliance Certificate**") and two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or successor form) certifying to such Lender's entitlement as of such date to a complete exemption from U.S. withholding tax with respect to payments of interest to be made under this Agreement and under any Note; or (iii) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), two accurate and complete original signed copies of Internal Revenue Service Form W-8IMY (or successor form) of the Lender, accompanied by Form W-8ECI, Form W-8BEN or W-8BEN-E, U.S. Tax Compliance Certificate, Form W-8IMY, and/or any other required information (or successor or other applicable form) from each beneficial owner that would be required under this Section 4.01(c) if such beneficial owner were a Lender (*provided* that, if the Lender is a partnership for U.S. federal income Tax purposes (and not a participating Lender), and one or more beneficial owners are claiming the portfolio interest exemption), the U.S. Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owners); (y) Each Lender to the Parent that is a United States person, as defined in Section 7701(a)(30) of the Code, shall deliver to the Parent and the Administrative Agent, at the times specified in Section 4.01(b), two accurate and complete original signed copies of Internal Revenue Service Form W-9,

or any successor form that such Person is entitled to provide at such time, in order to qualify for an exemption from U.S. federal backup withholding requirements; and (z) if any payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Parent and the Administrative Agent, at the time or times prescribed by applicable law and at such time or times reasonably requested by the Parent or the Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Parent or the Administrative Agent as may be necessary for the Parent or the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine, if necessary, the amount to deduct and withhold from such payment. Solely for purposes of this Section 4.01(c)(z), "**FATCA**" shall include any amendment made to FATCA after the Closing Date.

Notwithstanding any other provision of this Section 4.01, a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(d) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Credit Parties or with respect to which a Credit Party has paid additional amounts pursuant to Section 4.01(a), it shall pay to the relevant Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under Section 4.01(a) with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including any Taxes) of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the relevant Credit Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Credit Party (*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. Notwithstanding anything to the contrary in this Section 4.04(d), in no event will the Administrative Agent or any Lender be required to pay any amount to any Credit Party pursuant to this Section 4.04(d) the payment of which would place the Administrative Agent or any Lender in a less favorable net after-Tax position than such party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 4.04(d) shall not be construed to require any Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Credit Party or any other Person.

(e) For the avoidance of doubt, for purposes of Section 4.01, the term "**Lender**" shall include any Issuing Bank.

(f) Each party's obligations under this Section 4.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

ARTICLE 5

CONDITIONS PRECEDENT TO CREDIT EVENTS ON THE CLOSING DATE

The obligation of each Lender and Issuing Bank to make Loans or issue a Letter of Credit on the Closing Date, is subject at the time of the making of such Loans or issuance of such Letter of Credit to the satisfaction or waiver of the following conditions:

Section 5.01. *Closing Date; Credit Documents; Notes*. On or prior to the Closing Date, the Parent, each Borrower, each Guarantor, the Administrative Agent and each of the Lenders on the date hereof shall have signed a counterpart of this Agreement in form and substance satisfactory to each Lender and the Administrative Agent (whether the same or different counterparts) and shall have delivered (by electronic transmission or otherwise) the same to the Administrative Agent.

Section 5.02. *Officer's Certificate*. On the Closing Date, the Administrative Agent shall have received an Officer's Certificate, dated the Closing Date and signed on behalf of the Parent (and not in any individual capacity) by a Responsible Officer of the Parent, certifying on behalf of the Parent that the conditions in Section 6.03 have been satisfied on such date.

Section 5.03. *Opinions of Counsel*. On the Closing Date, the Administrative Agent shall have received an opinion addressed to the Administrative Agent and each of the Lenders and dated the Closing Date in form and substance reasonably satisfactory to the Administrative Agent from (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, special counsel to the Credit Parties, (ii) Stikeman Elliott LLP, special Canadian counsel to the Credit Parties and (iii) local counsel to the Credit Parties reasonably satisfactory to the Administrative Agent practicing in those jurisdictions in which the Credit Parties are organized (if organized other than under the laws of any province of Canada, Delaware and New York).

Section 5.04. *Corporate Documents; Proceedings, etc.* (a) On the Closing Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Closing Date, signed by a Responsible Officer of such Credit Party, and attested to by the Secretary or any Assistant Secretary of such Credit Party, together with copies of the certificate or articles of incorporation and by-laws (or equivalent organizational documents), as applicable, of such Credit Party and the resolutions of such Credit Party referred to in such Officer's Certificate, and each of the foregoing shall be in form and substance reasonably satisfactory to the Administrative Agent.

(b) On the Closing Date, the Administrative Agent shall have received good standing certificates and bring-down telegrams or facsimiles, if any, or equivalents, for the Credit Parties which the Administrative Agent reasonably may have requested, certified by proper governmental authorities.

Section 5.05. *Security Matters*. On the Closing Date, each Credit Party shall have duly delivered:

(a) the Canadian Security Agreement;

(b) proper financing statements (Form UCC-1 or the equivalent) authorized for filing under the UCC or other appropriate filing offices of each jurisdiction as may be reasonably necessary or desirable to perfect the security interests purported to be created by this Agreement and/or any Security Document;

(c) certified copies, each of a recent date, of (x) requests for information or copies (Form UCC-1), or equivalent reports as of a recent date, listing all effective financing statements that name the Parent, a Borrower or any other Credit Party as debtor and that are filed in the jurisdictions referred to in clause (a) above, together with copies of such other financing statements that name the Parent, a Borrower or any other Credit Party as debtor (none of which shall cover any of the Collateral except to the extent evidencing Permitted Liens, (y) United States Patent and Trademark Office and the United States Copyright Office searches reasonably requested by the Administrative Agent and (z) reports as of a recent date listing all effective tax and judgment liens with respect to the Parent, the Lead Borrowers or any other Credit Party in each jurisdiction as the Agents may reasonably require;

(d) RPMRR registrations and PPSA financing statements filed under the PPSA of each jurisdiction or other appropriate filing offices as may be reasonably necessary or desirable to perfect the security interests purported to be created by this Agreement and/or any Security Document (including any Additional Security Documents); and

(e) certified copies, each of a recent date, of (x) RPMRR, PPSA, Bank Act (Canada), or equivalent reports as of a recent date, listing all effective financing statements or other registrations that name the Parent, a Borrower or any other Credit Party as debtor and that are filed in the jurisdictions referred to in clause (c) above, together with copies of such other financing statements or other registrations that name the Parent, a Borrower or any other Credit Party as debtor (none of which shall cover any of the Collateral except to the extent evidencing Permitted Liens, (y) Canadian Intellectual Property Office searches reasonably requested by the Administrative Agent and (z) reports as of a recent date listing all effective executions, writs and judgment liens with respect to the Borrower or any other Credit Party in each jurisdiction as the Agents may reasonably require.

Section 5.06. *Financial Statements; Pro Forma Balance Sheets; Projections*. On or prior to the Closing Date, the Agents and the Lenders shall have received (i) the audited consolidated balance sheets and related consolidated statements of operations, cash flows and shareholders' equity for the Parent for the fiscal year ending May 31, 2016 or in lieu thereof, a draft of the consolidated financial statements in form and substance acceptable to the Lenders; (ii) the unaudited consolidated balance sheets and related statements of operations and cash flows of the Parent for the four-week period and fiscal quarter ending May 31, 2016 and for each subsequent four-week period and quarterly period of the Parent, ended at least forty-five (45) days before the Closing Date and (iii) pro forma consolidated balance sheet and related statement of operations of the Parent and its Subsidiaries as of and for the twelve-month period ending with the latest quarterly period of the Parent covered by the financial statements referred to in clause (ii), all of which shall be prepared in accordance with GAAP.

Section 5.07. *Budget*. The Administrative Agent and the Lenders shall have received a cash flow forecast in form and substance reasonably satisfactory to the Lenders depicting on a weekly basis receipts and disbursements, unrestricted and restricted cash balance, the outstanding amount of Loans hereunder and under the Prepetition ABL Credit Agreement and the Delayed Draw Term Loans (as defined in the Term Loan DIP Credit Agreement), net cash flow, Availability, Liquidity and the Borrowing Base for each weekly period through the Scheduled Maturity Date (including the week in which the Petition Date occurred) dated as of the Petition Date and delivered to the Administrative Agent as the "Final Budget" prior to the Closing Date (the "**Initial Budget**"), together with a good faith estimate of all borrowings of Loans to be made within the first week following the Closing Date.

Section 5.08. *Fees, etc*. On the Closing Date, the Parent or the Lead Borrowers shall have paid to the Agents and each Lender all costs, fees and expenses (including, without limitation, legal fees and expenses to the extent invoiced at least two (2) Business Days prior the Closing Date) and other compensation payable to the Agents or such Lender hereunder or otherwise payable in respect of the Transaction to the extent then due.

Section 5.09. *Commencement of Cases; First Day Financing Orders*. On or prior to the Closing Date, the Debtor Credit Parties shall have commenced the Cases, and the Borrower and each of its Subsidiaries identified on Schedule 5.01(i) to be a Debtor shall be a debtor and a debtor-in-possession. All of the "first day orders" or "second day orders" entered by the Bankruptcy Courts on or about the time of commencement of the Cases (and, if any such orders shall not have been entered by the Bankruptcy Courts, the form of such orders submitted to the Bankruptcy Courts for approval) and all payments approved by the Bankruptcy Courts in any such orders, including the Interim Financing Order or otherwise shall be in form and substance reasonably satisfactory to the Lenders.

Section 5.10. *Entry of Interim Financing Order and Cash Management Order*. The Administrative Agent and the Lenders shall have received a signed copy of:

(a) Orders of the Bankruptcy Courts, in form and substance reasonably satisfactory to the Lenders (it being understood and agreed that Orders in the form of the orders attached as Exhibit L shall, if entered by the Bankruptcy Courts, be deemed satisfactory to the Lenders) and such Orders shall have been entered not later than three (3) Business Days following the Petition Date (or such later date as the Lenders may agree in writing) (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms thereof, the "**Interim Financing Order**"), which Interim Financing Orders shall, among other things, (i) authorize the Credit Documents and the Commitments in the amounts and on the terms set forth herein (and therein), (ii) set forth the priorities with respect to the Liens securing the Obligations and the Liens securing the obligations under the Prepetition ABL Facility, including (except in the case of the Canadian Case) adequate protection, (iii) approve the ABL DIP Facility, (iv) authorize the repayment in full of all amounts outstanding under the Prepetition ABL Credit Agreement (including any cash pay interest at the default rate set forth therein), (v) include as part of the Orders of the U.S. Bankruptcy Court a general release by the Borrowers in favor of the Administrative Agent and Lenders party to the Prepetition ABL Credit Agreement, and (vi) grant the DIP Superpriority Claims (in respect of the Interim Financing Order granted by the U.S. Bankruptcy Court) and other Liens on the assets of the Debtor Credit Parties referred to herein and in the other Credit Documents and which Interim Financing Order shall be in full force and effect and shall not have been amended, modified, stayed, vacated, terminated or reversed; provided that (x) if either of such Interim Financing Orders is the subject of a pending appeal in any respect, none of such Interim Financing Order, the initial extensions of credit, or the performance by the Borrower of any of the Obligations shall be the subject of a presently effective stay pending appeal, (y) the Borrower, the Administrative Agent and the Lenders shall be entitled to rely in good faith upon such Interim Financing Order, notwithstanding objection thereto or appeal therefrom by any interested party and (z) the Borrower, the Administrative Agent and the Lenders shall be permitted and required to perform their respective obligations in compliance with this Agreement notwithstanding any such objection or appeal unless the relevant order has been stayed by a court of competent jurisdiction. The Debtors shall be in compliance in all respects with the Interim Financing Orders.

(b) a Cash Management Order.

Section 5.11. *No Appointment of Trustee*. No trustee or responsible officer or examiner (other than a fee examiner) having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1104 of the Bankruptcy Code shall have been appointed or elected, with respect to any of the Credit Parties, any of their Subsidiaries or their respective properties.

Section 5.12. *No Unstayed Actions*. There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Borrower) threatened in any court or before any arbitrator or governmental instrumentality against any Debtor Credit Party, except for (i) the Cases or the consequences that would normally result from the commencement, continuation and prosecution of the Cases, (ii) any objections or pleadings that may have been filed in the Cases relating to authorization to enter into the Credit Documents and incur the Obligations, (iii) as could not reasonably be expected to have a Material Adverse Effect and (iv) the OSC Investigation and the SEC Investigation.

Section 5.13. *Term Loan DIP Credit Agreement.* The Term Loan DIP Credit Agreement shall have been entered into and be in full force and effect.

Section 5.14. *Patriot Act and Canadian AML Acts*. The Agent shall have received at least two (2) days prior to the Closing Date from the Credit Parties, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Canadian AML Acts, in each case to the extent requested in writing at least ten (10) days prior to the Closing Date.

Section 5.15. *Borrowing Notice*. Prior to the making of a Revolving Loan on the Closing Date, the Administrative Agent shall have received a Notice of Borrowing meeting the requirements of Section 2.02(c).

Section 5.16. *Borrowing Base Certificate*. The Lead Borrowers shall have used commercially reasonable efforts to deliver to the Administrative Agent a satisfactory a Borrowing Base Certificate in form and substance reasonably satisfactory to the Administrative Agent.

Section 5.17. *No Material Adverse Effect.* Since the Petition Date, there has been no event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.18. *Most Recent Budget*. The Administrative Agent shall have received the most recent Budget.

Section 5.19. *Milestones.* The Borrower shall be in compliance with Section 8.15 in a manner satisfactory to the Required Lenders.

Without limiting the generality of the provisions of the last paragraph of Section 11.03, for purposes of determining compliance with the conditions specified in this Article 5, each Lender that has signed and delivered this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

## ARTICLE 6
## CONDITIONS PRECEDENT TO ALL CREDIT EVENTS AFTER THE CLOSING DATE

The obligation of each Lender and each Issuing Bank to make any Credit Extension (including the initial Credit Extension) shall be subject to the satisfaction (or waiver) of each of the conditions precedent set forth below:

Section 6.01. *Notice of Borrowing*. The Administrative Agent shall have received a Notice of Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) if Loans are being requested or, in the case of the issuance, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, extension or renewal of such Letter of Credit as required by Section 2.13(b) or, in the case of the Borrowing of a Swingline Loan, the Swingline Lender and the Administrative Agent shall have received a notice requesting such Swingline Loan as required by Section 2.12(b).

Section 6.02. *Availability*. Availability on the proposed date of such Borrowing shall be adequate to cover the amount of such Borrowing.

Section 6.03. *No Default*. No Default or Event of Default shall exist at the time of, or result from, such funding or issuance. For the avoidance of doubt, no Borrowing shall be permitted if any Event of Default or Default exists and is continuing, unless waived in accordance with Section 12.11.

Section 6.04. *Approval by Bankruptcy Courts*. The making of such Borrowing shall not result in the aggregate principal amount of the Loans made under this Agreement outstanding hereunder exceeding the amount authorized at such time by the Interim Financing Order or, after entry thereof, the Final Financing Orders.

Section 6.05. *Effective Financing Orders*. The Interim Financing Orders or, after entry thereof, the Final Financing Orders (which shall be in form and substance reasonably satisfactory to the Required Lenders), shall be in full force and effect and shall not have been (i) vacated, reversed, terminated or stayed or (ii) except as expressly permitted by the Credit Documents, modified or amended in any manner without the prior written consent of the Required Lenders. The Debtors shall be in compliance in all respects with the Interim Financing Order or, after entry thereof, the Final Financing Orders.

Section 6.06. *Representations and Warranties*. Each of the representations and warranties made by any Credit Party set forth in Article 7 hereof or in any other Credit Document shall be true and correct in all material respects (without duplication of any materiality standard set forth in any such representation or warranty) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent 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 date (without duplication of any materiality standard set forth in any such representation or warranty).

The acceptance of the benefits of each Credit Event after the Closing Date shall constitute a representation and warranty by each Borrower to the Administrative Agent and each of the Lenders that all the conditions specified in this Article 6 and applicable to such Credit Event are satisfied as of that time (other than such conditions which are subject to the discretion of the Administrative Agent or the Lenders). All of the Notes, certificates, legal opinions and other

documents and papers referred to in Article 5 and in this Article 6, unless otherwise specified, shall be delivered to the Administrative Agent at the Notice Office for the account of each of the Lenders.

## ARTICLE 7
## REPRESENTATIONS, WARRANTIES AND AGREEMENTS

In order to induce the Lenders to enter into this Agreement, provide the Commitments hereunder and to make the Loans, the Parent and each Borrower, as applicable, makes the following representations, warranties and agreements, in each case after giving effect to the Transaction.

Section 7.01. *Organizational Status*. The Parent and each of its Subsidiaries (a) is a duly organized and validly existing corporation, partnership, limited liability company or unlimited liability company, as the case may be, in good standing under the laws of the jurisdiction of its organization, (b) has the corporate, partnership, limited liability company or unlimited holding company power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage and (c) is, to the extent such concepts are applicable under the laws of the relevant jurisdiction, duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except for failures to be so qualified which, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

Section 7.02. *Power and Authority*. Subject to the entry of the Financing Orders, each Credit Party has the corporate, partnership, limited liability company or unlimited liability company power and authority, as the case may be, to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is party and has taken all necessary corporate, partnership, limited liability company or unlimited liability company action, as the case may be, to authorize the execution, delivery and performance by it of each of such Credit Documents. Subject to the entry of the Financing Orders, each Credit Party thereof has duly executed and delivered each of the Credit Documents to which it is party, and each of such Credit Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

Section 7.03. *No Violation*. Subject to the entry of the Financing Orders, neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions thereof, (a) will contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental instrumentality, (b) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of any Credit Party or any of its respective Subsidiaries pursuant to the terms of, any indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other material agreement, contract or instrument, in each case to which any Credit Party or any of its Subsidiaries is a party or by which it or any of its property or assets is bound or to which it may be subject (except, in the case of preceding clauses (a) and (b), other than in the case of any contravention, breach, default and/or conflict, that would

not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect or that was effective immediately prior to the Petition Date) or (c) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of any Credit Party or any of its respective Subsidiaries.

Section 7.04. *Approvals*. Subject to the entry of the Financing Orders, except to the extent the failure to obtain or make the same would not reasonably be expected to have a Material Adverse Effect, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (x) those that have otherwise been obtained or made on or prior to the Closing Date and which remain in full force and effect on the Closing Date and (y) filings which are necessary to perfect the security interests or hypothecs created under the Security Documents), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, the execution, delivery and performance of any Credit Document.

Section 7.05. *Financial Statements; Financial Condition; Projections.*

(a) The unaudited consolidated financial statements of the Parent as of May 31, 2016 and the consolidated, unaudited financial statements of the Parent and its Subsidiaries as of and for the three months ended August 31, 2016 (including all related notes and schedules) (a) fairly presented in all material respects the consolidated financial position of the Parent and its consolidated Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations, their consolidated cash flows for the respective periods then ended and changes in stockholders' equity for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto, in each case which are not material) and (b) have been prepared in all material respects in conformity with GAAP (except, in the case of the unaudited statements, as permitted by the SEC and Canadian Securities Law) applied on a consistent basis during the periods involved (in each case, except as may be indicated therein or in the notes thereto); provided that The Audit Committee (as defined in the Biscuit Acquisition Agreement as in effect as of the date hereof) has an ongoing investigation in connection with the finalization of the Company's financial statements and the related certification process, so accordingly, the Company's fiscal 2016 annual financial statements have not been audited by KPMG LLP, and Sellers' disclosure with respect to the Company's financial statements is qualified by the information provided to Buyer in respect of such investigation, the lack of an audit in respect of such financial statements and the ongoing investigation.

(b) The Projections and the Initial Budget have been prepared in good faith and are based on assumptions that were believed by the Parent to be reasonable at the time made and at the time delivered to the Administrative Agent.

(c) After giving effect to the Transaction (but for this purpose assuming that the Transaction and the related financing had occurred prior to May 31, 2016), since May 31, 2016 there has been no Material Adverse Effect, and there has been no change, event or occurrence that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 7.06. *Litigation*. Except with respect to the OSC Investigation and the SEC Investigation, there are no actions, suits or proceedings pending or, to the knowledge of any Credit Party, threatened (a) with respect to the Transaction or any Credit Document or (b) that either individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect.

Section 7.07. *True and Complete Disclosure.* (a) All written information (taken as a whole) furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender (including, without limitation, all such written information contained in the Credit Documents) for purposes of or in connection with this Agreement, the other Credit Documents or any transaction contemplated herein or therein does not, and all other such written information (taken as a whole) hereafter furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender will not, on the date as of which such written information is dated or certified, contain any material misstatement of fact or omit to state any material fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such written information was provided.

(b) Notwithstanding anything to the contrary in the foregoing clause (a) of this Section 7.07, none of the Credit Parties makes any representation, warranty or covenant with respect to any information consisting of statements, estimates, forecasts and projections regarding the future performance of the Parent or any of its Subsidiaries, or regarding the future condition of the industries in which they operate other than that such information has been (and in the case of such information furnished after the Closing Date, will be) prepared in good faith based upon assumptions believed to be reasonable at the time of preparation thereof.

Section 7.08. *Use of Proceeds; Margin Regulations.*

(a) The proceeds of all Loans are to be used solely in accordance with the Budget or the Financing Orders.

(b) Subject to the terms of the Budget, the Interim Financing Order and the Final Financing Orders, all proceeds of the Loans shall be used for working capital needs and other general corporate purposes of the Parent and its Subsidiaries (other than, for greater certainty, repayment of the Prepetition Obligations arising in connection with the Prepetition ABL Credit Agreement), including the costs and expenses of administration of the Cases, for purposes set forth in the Budget, permitted hereunder or provided in the Financing Orders and to establish an account for the Indemnity Reserve in an amount equal to $250,000.

(c) No part of any Credit Event (or the proceeds thereof) will be used to, directly or indirectly, and whether immediately, incidentally, or ultimately, purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock or to refund indebtedness originally incurred for such purpose. Neither the making of any Loan nor the use of the proceeds thereof nor the occurrence of any other Credit Event will violate the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 7.09. *Tax Returns and Payments*. Except as would not reasonably be expected to result in a Material Adverse Effect, (i) the Parent and each of its Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all Tax returns, statements, forms and reports for taxes (the "**Returns**") required to be filed by, or with respect to the income, properties or operations of, the Parent and/or any of its Subsidiaries, (ii) the Returns accurately reflect in all material respects all liability for Taxes of the Parent and its Subsidiaries for the

periods covered thereby, and (iii) the Parent and each of its Subsidiaries have paid all Taxes payable by them, other than those that are being contested in good faith by appropriate proceedings and fully provided for as a reserve on the financial statements of the Parent and its Subsidiaries in accordance with GAAP. There is no action, suit, proceeding, investigation, audit or claim now pending or, to the knowledge of the Parent or any of its Subsidiaries, threatened in writing by any authority regarding any material amount of Taxes relating to the Parent or any of its Subsidiaries.

Section 7.10. *ERISA*. (a) No ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a Material Adverse Effect. Each Plan is in compliance in form and operation with its terms and with the applicable provisions of ERISA, the Code and other applicable law, except for such non-compliance that would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is in the form of a prototype document that is the subject of a favorable opinion letter.

(b) There exists no Unfunded Pension Liability with respect to any Plan, except as would not reasonably be expected to have a Material Adverse Effect.

(c) If any of the Parent, Subsidiary of the Parent or ERISA Affiliate were to withdraw from any Multiemployer Plan in a complete withdrawal as of the date this assurance is given, the withdrawal liability that would be incurred would not reasonably be expected to have a Material Adverse Effect.

(d) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Parent, any Subsidiary of the Parent or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(e) The Parent, any Subsidiary of the Parent and any ERISA Affiliate have made all material contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan except where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect or where a Multiemployer Plan is considered, under applicable Laws, as a defined benefit plan.

(f) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Foreign Pension Plan and Canadian Employee Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities; (ii) all contributions required to be made with respect to a Foreign Pension Plan, each Canadian Employee Plan and Canadian Statutory Plan have been timely made; and (iii) neither Parent nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan or Canadian Employee Plan.

(g) Neither the Parent nor any of its Subsidiaries maintains, contributes to, or has any liability or contingent liability with respect to, any Canadian Defined Benefit Plan as of the Closing

Date, and at any time thereafter, neither the Parent nor any of its Subsidiaries will maintain, participate in, contribute to, or have any liability or contingent liability with respect to, any Canadian Defined Benefit Plan.

(h) The Parent and its Subsidiaries are in substantial compliance with all applicable Laws pertaining to their employees.

Section 7.11. *The Security Documents*. (a) Article 14 hereof, together with the Financing Orders, is effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest or hypothec (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law) in all right, title and interest of the Credit Parties in the Collateral, and upon the entry of the Financing Orders, and subject to the terms thereof, the Collateral Agent, for the benefit of the Secured Parties, has (to the extent provided hereunder and in the Financing Orders) a fully perfected security interest or hypothec with the priority set forth in the Financing Orders and the Post-Petition Intercreditor Agreement in all right, title and interest in all of the Collateral, subject to the Post-Petition Intercreditor Agreement and as set forth in the Financing Orders and subject to no other Liens other than Permitted Liens and the Carve-Out. Notwithstanding anything herein to the contrary, the Credit Parties shall not be required to take any action to perfect any security interest in any Collateral consisting of Intellectual Property under the laws of any jurisdiction outside of the United States or Canada or any other Collateral under the laws of any jurisdiction outside of the United States and Canada.

(b) The provisions of the Canadian Security Agreement are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest or hypothec (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law) in all right, title and interest of the Credit Parties in the Collateral (as described therein), upon the timely and proper filing of financing statements (or other local equivalent) listing each applicable Credit Party, as a debtor, and Collateral Agent, as secured party, with the registry of the applicable governmental entity of the jurisdiction of organization of such Credit Party or where the applicable Collateral is located, upon which the security interests or hypothecs created under the Canadian Security Agreement in favor of the Collateral Agent, for the benefit of the Secured Creditors, constitute perfected security interests or hypothecs in the Collateral (as described therein (other than Collateral in which a security interest or hypothec cannot be perfected under the PPSA as in effect at the relevant time in the relevant jurisdiction or by the taking of the foregoing actions) with the priority set forth in the Financing Orders and the Post-Petition Intercreditor Agreement, subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions.

Section 7.12. *Properties*. The Parent and each of its Subsidiaries has good and marketable title or valid leasehold interest in the case of Real Property, and good and valid title in the case of tangible personal property and intangible property, to all material tangible and intangible properties owned by it, including all material property reflected in the most recent historical balance sheets referred to in Section 7.05(a) (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business or as permitted by the terms of this Agreement (or, to the extent disposed or disposed of prior to the Closing Date, the Prepetition ABL Credit Agreement)), free and clear of all Liens, other than Permitted Liens.

Section 7.13. *Capitalization*. All outstanding shares of capital stock of the Parent have been duly and validly issued and are fully paid and non-assessable (other than any assessment on the shareholders of the Parent that may be imposed as a matter of law). All outstanding shares of capital stock of each of the Subsidiary Borrowers are owned directly by the Parent or another Credit Party. The Parent does not have outstanding any capital stock or other securities convertible into or exchangeable for its capital stock or any rights to subscribe for or to purchase, or any options for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its capital stock.

Section 7.14. *Subsidiaries*. On and as of the Closing Date and after giving effect to the consummation of the Transaction, the Parent has no Subsidiaries other than those Subsidiaries listed on Schedule 7.14. Schedule 7.14 correctly sets forth, as of the Closing Date and after giving effect to the Transaction, the percentage ownership (direct and indirect) of the Parent in each class of capital stock of each of its Subsidiaries and also identifies the direct owner thereof.

Section 7.15. *Compliance with Statutes, OFAC Rules and Regulations; Patriot Act and Canadian AML Acts; FCPA*. (a) Each of the Parent and each of its Subsidiaries is in compliance with all applicable statutes, regulations and orders of (including any laws relating to terrorism, money laundering or embargoed persons, the Bank Secrecy Act, as amended by Title III of the PATRIOT Act, and the Canadian AML Acts), and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including, without limitation, applicable statutes, regulations, orders, directions and restrictions relating to environmental standards and controls).

(b) None of the Parent or any Subsidiary is in violation of any of the foreign assets control regulations of the Office of Foreign Assets Control ("**OFAC**") of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or any other relevant sanctions authority applicable in countries where the Borrower or its Subsidiaries do business (collectively, "**Sanctions**"), and none of the Parent or any Subsidiary or any Affiliate thereof is in violation of and shall not violate any of the country or list based economic and trade sanctions.

(c) None of the Parent or any Subsidiary will, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as lender, underwriter, advisor, investor, or otherwise).

(d) The Parent and each Subsidiary is in compliance in all material respects with the Foreign Corrupt Practices Act, 15 U.S.C.§§ 78dd-1, et seq., as amended, and the rules and regulations thereunder ("**FCPA**"), the *Corruption of Foreign Public Officials Act* (Canada) and any foreign counterpart thereto applicable to the Parent or such Subsidiary, and have instituted and maintain policies and procedures designed to ensure continued compliance therewith. Neither the Parent nor, to the knowledge of the Parent or any Subsidiary, any director, officer, agent, employee or other person acting on behalf of the Parent or any of its Subsidiaries, is aware of or has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (i) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (ii) to a foreign official, foreign political party or party official or any candidate for foreign political office,

and (iii) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to the Parent or any Subsidiary or to any other Person, in violation of FCPA or the *Corruption of Foreign Public Officials Act* (Canada). No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity in violation of the FCPA or any other applicable anti-corruption law.

Section 7.16. *Investment Company Act*. None of the Parent or any of its Subsidiaries is an "**investment company**" within the meaning of the Investment Company Act of 1940, as amended, required to be registered as such.

Section 7.17. *Environmental Matters.* (a) The Parent and each of its Subsidiaries are and have been in compliance with all applicable Environmental Laws and the requirements of any permits or certificates of approval issued under such Environmental Laws. There are no pending or, to the knowledge of any Credit Party, threatened Environmental Claims and no liabilities under any applicable Environmental Laws relating to the Parent or any of its Subsidiaries or any Real Property owned, leased or operated by the Parent or any of its Subsidiaries (including any such claim or liability arising out of the ownership, lease or operation by the Parent or any of its Subsidiaries of any Real Property formerly owned, leased or operated by the Parent or any of its Subsidiaries but no longer owned, leased or operated by the Parent or any of its Subsidiaries). There are no facts, circumstances, conditions or occurrences with respect to the business or operations of the Parent or any of its Subsidiaries, or any Real Property owned, leased or operated by the Parent or any of its Subsidiaries (including any Real Property formerly owned, leased or operated by the Parent or any of its Subsidiaries but no longer owned, leased or operated by the Parent or any of its Subsidiaries) that would be reasonably expected (i) to form the basis of an Environmental Claim against the Parent or any of its Subsidiaries, (ii) to cause any Real Property owned, leased or operated by the Parent or any of its Subsidiaries to be subject to any restrictions on the ownership, lease, occupancy or transferability of such Real Property by the Parent or any of its Subsidiaries under any applicable Environmental Law or (iii) to give rise to liability under any applicable Environmental Law.

(b) Hazardous Materials have not at any time been generated, used, treated or stored on, or transported to or from, or Released on or from, any Real Property currently or formerly owned, leased or operated by the Parent or any of its Subsidiaries where such generation, use, treatment, storage, transportation or Release has (i) violated or would be reasonably expected to violate any applicable Environmental Law, (ii) given rise to or would be reasonably expected to give rise to an Environmental Claim or (iii) given rise to or would be reasonably expected to give rise to liability under any applicable Environmental Law.

(c) Notwithstanding anything to the contrary in this Section 7.17, the representations and warranties made in this Section 7.17 shall be untrue only if the effect of any or all conditions, violations, claims, restrictions, failures and noncompliances of the types described above would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

For the purposes of this Section 7.17, the terms "**Parent**" and "**Subsidiary**" shall include any business or business entity (including a corporation) which is, in whole or in part, a predecessor of the Parent or any Subsidiary.

Section 7.18. *Labor Relations*. Except to the extent the same has not, either individually or in the aggregate, had and would not reasonably be expected to have a Material Adverse Effect, (a) there are no strikes, lockouts, slowdowns or other labor disputes pending

against the Parent or any of its Subsidiaries or, to the knowledge of each Credit Party, threatened against the Parent or any of its Subsidiaries, (b) the hours worked by and payments made to employees of the Parent or any of its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, provincial, local, or foreign law dealing with such matters and (c) to the knowledge of each Credit Party, no wage and hour department investigation has been made of the Parent or any of its Subsidiaries.

Section 7.19. *Intellectual Property*.

(a) The Licenses disclosed as such in the Biscuit Acquisition Agreement as in effect as of the date hereof sets forth a complete and accurate list of all material Licenses that each Credit Party owns. Each Grantor represents and warrants that it is the sole owner of all right, title and interest in all Recordable Intellectual Property listed thereto. The Parent and each of its Subsidiaries owns or has the right to use all the Intellectual Property used in, held for use in, or necessary for the present conduct of its respective business, without any conflict with the Intellectual Property rights of any Person, except for such failures to own or have the right to use and/or conflicts as have not had, and would not reasonably be expected to be material to the operations of the Parent and its Subsidiaries taken as a whole. Neither the Parent nor any of its Subsidiaries has infringed upon, misappropriated or otherwise violated any Intellectual Property rights of any Person and no claim or litigation alleging any of the foregoing is pending or, to the knowledge of the Borrower, threatened, except in each case as would not reasonably be expected to be material to the operations of the Parent and its Subsidiaries taken as a whole. No Person has contested any right, title or interest of any the Borrower or any of its Subsidiaries in, or relating to, any Intellectual Property except as would not reasonably be expected to be material to the operations of the Parent and its Subsidiaries taken as a whole. No Person is infringing, misappropriating or otherwise violating any Intellectual Property rights of the Borrower or any of its Subsidiaries and no claim or litigation alleging any of the foregoing is pending, except in each case as would not reasonably be expected to be material to the operations of the Parent and its Subsidiaries taken as a whole. The Parent and each of its Subsidiaries has taken all commercially reasonable actions to maintain and protect all of its Intellectual Property, as deemed necessary in its reasonable business judgment, including making timely filings and payments.

(b) Each Credit Party represents and warrants that all such Recordable Intellectual Property is subsisting and has not been abandoned and, to such Grantor's knowledge, valid and enforceable, and there are no pending or, to such Grantor's knowledge, threatened, third-party claims that (i) any of said registrations of Recordable Intellectual Property are invalid or unenforceable or (ii) seeks to limit the Credit Party's ownership interest in any Recordable Intellectual Property, and such Credit Party is not aware that there is any reason that any of said registrations of Recordable Intellectual Property are invalid or unenforceable, and is not aware that there is any reason that any of said applications of Recordable Intellectual Property will not mature into registrations, other than would not reasonably be expected to be material to the operations of the Credit Parties taken as a whole. To knowledge of each Credit Party, none of the Trade Secrets of any Credit Party has been used, divulged, disclosed or appropriated to the detriment of such Credit Party for the benefit of any other Person other than other Credit Parties, other than would not reasonably be expected to be material to the operations of the Credit Parties taken as a whole.

(c) The Intellectual Property disclosed as such in the Biscuit Acquisition Agreement sets forth a complete and accurate list of all Recordable Intellectual Property that each Credit Party owns. Each Grantor represents and warrants that it is the sole owner of all right, title and interest in all Recordable Intellectual Property listed thereto sets forth a complete and accurate list of all material Licenses to which any Credit Party is a party. No Credit Party is in breach or default

of any License, other than as has not, and would not, reasonably be expected to be material to the operations of the Credit Party taken as a whole.

Section 7.20. *Insurance*. The properties of the Parent and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Parent, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Parent or the applicable Subsidiary operates. Notwithstanding the foregoing, the Parent and its Subsidiaries may self-insure with respect to such risks with respect to which companies of established reputation engaged in similar businesses in the same general area usually self-insure.

Section 7.21. *No Default*. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Credit Document.

Section 7.22. *Financing Orders.*

(a) The Interim Financing Order or, at all times after entry by the U.S. Bankruptcy Court, and the Canadian Bankruptcy Court, the Final Financing Orders, are in full force and effect, and have not been vacated, reversed, terminated, stayed modified or amended in any manner without the reasonable written consent of the Required Lenders.

(b) Upon the occurrence of the Maturity Date (whether by acceleration or otherwise) of any of the Obligations, the Lenders shall, subject to the provisions of Article 10 and the applicable provisions of the applicable Financing Order, be entitled to immediate payment of such Obligations, and to enforce the remedies provided for hereunder in accordance with the terms hereof and such Financing Order, as applicable, without further application to or order by the Bankruptcy Courts.

(c) If any of the Interim Financing Orders or the Final Financing Orders is the subject of a pending appeal in any respect, none of such Financing Order, the making of the Loans or the performance by Borrower or any other Credit Party of any of its obligations under any of the Credit Documents shall be the subject of a presently effective stay pending appeal. The Borrower, the Administrative Agent and the Secured Parties shall be entitled to rely in good faith upon the Financing Orders, notwithstanding objection thereto or appeal therefrom by any interested party. The Borrower, the Administrative Agent and the Lenders shall be permitted and required to perform their respective obligations in compliance with this Agreement notwithstanding any such objection or appeal unless the relevant Financing Order has been stayed by a court of competent jurisdiction.

Section 7.23. *Appointment of Trustee or Examiner; Liquidation*. No order has been entered in any of the Cases (i) for the appointment of a Chapter 11 trustee or a trustee in bankruptcy under the Bankruptcy and Insolvency Act (Canada), (ii) for the appointment of a responsible officer or examiner (other than a fee examiner) having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1104 of the Bankruptcy Code or (iii) to convert any of the Cases to a case under Chapter 7 of the Bankruptcy Code or to a receivership in Canada, or to dismiss any of the Cases.

Section 7.24. *Perfection of Security Interests*. Upon entry of each of the Interim Financing Orders and the Final Financing Orders, as applicable, each such Financing Order shall be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a

legal, valid, enforceable and perfected security interest and hypothec in the Collateral of the Debtor Credit Parties and proceeds thereof as contemplated thereby, as described in Section 2.19.

Section 7.25. *Superpriority Claims; Liens.* Upon the entry of each of the Interim Financing Orders and each of the Final Financing Orders, each such Financing Order and the Credit Documents are sufficient to provide the DIP Superpriority Claims and security interests and Liens on the Collateral of the Debtor Credit Parties described in, and with the priority provided in, Section 2.19.

## ARTICLE 8
## AFFIRMATIVE COVENANTS

The Parent and each of its Subsidiaries hereby covenants and agrees that on and after the Closing Date and so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than (i) any indemnification obligations arising hereunder which are not then due and payable and (ii) Secured Bank Product Obligations) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless Cash Collateralized or backstopped on terms reasonably satisfactory to the Administrative Agent).

Section 8.01. *Information Covenants*. The Parent will furnish to the Administrative Agent for distribution to each Lender:

(a) *Quarterly Financial Statements*. Within forty-five (45) days after the close of each of the first three quarterly accounting periods in each fiscal year of the Parent, (i) the consolidated balance sheet of the Parent and its Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period, in each case setting forth comparative figures for the corresponding quarterly accounting period in the prior fiscal year and comparable forecasted figures for such quarterly accounting period based on the corresponding forecasts delivered pursuant to Section 8.01(j), all of which shall be certified by a Responsible Officer of the Parent that they fairly present in all material respects in accordance with GAAP the financial condition of the Parent and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) management's discussion and analysis of the important operational and financial developments during such quarterly accounting period. If the Parent has filed (within the time period required above) an interim financial report and related management's discussion and analysis with any Securities Commission pursuant to National Instrument 51-102 adopted by the Canadian Securities Administrators ("**NI 51-102**") for any fiscal quarter described above, then to the extent that such interim financial report and related management's discussion and analysis contains any of the foregoing items, the Lenders shall accept such filings in lieu of such items.

(b) *Monthly Financial Statements*. Within fifteen (15) days after the close of each of the first two monthly accounting periods in each fiscal quarter of the Parent (a) the consolidated balance sheet of the Parent and its Subsidiaries as at the end of such monthly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows for such monthly accounting period and for the elapsed portion of the fiscal year ended with the last day of such monthly accounting period, in each case setting forth comparative figures for the corresponding monthly accounting period in the prior fiscal year and comparable forecasted figures for such monthly accounting period based on the corresponding forecasts delivered pursuant to Section 8.01(j), all of which shall be certified by a Responsible Officer of the Borrower

that they fairly present in all material respects in accordance with GAAP the financial condition of the Parent and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (b) management's discussion and analysis of the important operational and financial developments during such monthly accounting period.

(c) *Officer's Certificates*. At the time of the delivery of any Section 8.01 Financials, the delivery of any Budget and the delivery of any Variance Report (and in any case, no less frequently than on a weekly basis), a Compliance Certificate, certifying on behalf of the Parent that no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof.

(d) *Notice of Default, Litigation and Material Adverse Effect*. Promptly after any officer of the Parent or any of its Subsidiaries obtains knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default or an Event of Default or any default or event of default under the Term Loan DIP Credit Agreement and/or any post-petition debt instrument in excess of the Threshold Amount, (ii) any litigation or governmental investigation or proceeding pending against the Parent or any of its Subsidiaries (x) which, either individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect or (y) with respect to any Credit Document, or (iii) any other event, change or circumstance that has had, or would reasonably be expected to have, a Material Adverse Effect.

(e) *Other Reports and Filings*. Promptly after the filing or delivery thereof, copies of all financial information, proxy materials and reports, if any, which the Parent or any of its Subsidiaries shall publicly file with a Securities Commission or the SEC and/or the Bankruptcy Courts.

(f) *Environmental Matters*. Promptly after any officer of the Parent or any of its Subsidiaries obtains knowledge thereof, notice of one or more of the following environmental matters to the extent that such environmental matters, either individually or when aggregated with all other such environmental matters, would reasonably be expected to have a Material Adverse Effect:

(i) any pending or threatened Environmental Claim relating to the Parent or any of its Subsidiaries or any Real Property owned, leased or operated by the Parent or any of its Subsidiaries;

(ii) any condition or occurrence on or arising from any Real Property owned, leased or operated by the Parent or any of its Subsidiaries that (A) results in noncompliance by the Parent or any of its Subsidiaries with any applicable Environmental Law or (B) would reasonably be expected to form the basis of an Environmental Claim against or give rise to liability under any applicable Environmental Law of the Parent or any of its Subsidiaries or any such Real Property;

(iii) any condition or occurrence on any Real Property owned, leased or operated by the Parent or any of its Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any restrictions on the ownership, lease, occupancy, use or transferability by the Parent or any of its Subsidiaries of such Real Property under any Environmental Law; and

(iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property owned, leased or operated by the Parent or any of its Subsidiaries as required by any Environmental Law or any governmental or other administrative agency and all notices received by the Parent or any of its Subsidiaries from any government or governmental agency under, or pursuant to, Environmental Law which identify the Parent or any of its Subsidiaries as potentially responsible parties for remediation costs or which otherwise notify the Parent or any of its Subsidiaries of potential liability under Environmental Law.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the Parent's or such Subsidiary's response thereto.

(g) *Notices to Holders of Other Material Debt*. Contemporaneously with the sending or filing thereof, the Parent will provide to the Administrative Agent for distribution to each of the Lenders, any notices provided to, or received from, holders of the Term Facilities and/or the Prepetition ABL Facility.

(h) *Budget*. (i) on or before the third Business Day of every fourth week (commencing on the third Business Day of the fourth week following the week in which the Petition Date occurs), a proposed budget for the current week and the immediately following consecutive 12 weeks (collectively 13 weeks depicting on a weekly basis receipts and disbursements, unrestricted and restricted cash balance, the outstanding amount of Loans and loans under the Prepetition ABL Credit Agreement and the Delayed Draw Term Loans (as defined in the Term Loan DIP Credit Agreement), net cash flow, Availability, Liquidity and the Borrowing Base.

(i) *Variance Report.* On or before the fourth Business Day of each week (commencing on the fourth Business Day of the week in which the Petition Date occurs), a Variance Report certified by the Parent's chief financial officer, chief restructuring officer (or officer with equivalent duties), which shall be in a form reasonably acceptable to the Administrative Agent and the Required Lenders (each, a "**Variance Report**"), for the period commencing with the week in which the Petition Date occurs through the week ending immediately prior to the week in which the Variance Report was delivered (i) showing, for the Parent and its Subsidiaries, actual results during such period for the following items: (w) Cash Receipts (including detailed line items aggregating thereto), (x) Cash Disbursements (including detailed line items aggregating thereto), and (y) Cash Receipts less Cash Disbursements and (z) professional fees, (ii) showing Cumulative Net Cash Flow for such period, (iii) noting therein weekly and cumulative Variances, on a line-item basis (including for Cash Receipts, Cash Disbursements, Cash Receipts less Cash Disbursements, unrestricted and restricted cash balance, the outstanding amount of Loans hereunder and under the Prepetition ABL Credit Agreement and the Delayed Draw Term Loans (as defined in the Term Loan DIP Agreement), net cash flow, Availability, Liquidity, the Borrowing Base, professional fees and other amounts, line items and data aggregating to Cash Receipts and Cash Disbursements), from amounts set forth for such period in the Initial Budget, in each case, on a weekly and cumulative basis and (iv) providing a reasonably detailed written explanation of all material Variances, including a description of the Variances and whether they are permanent or if temporary, the approximate timing of their remedy.

(j) *Orders; Notices.* (i) as soon as practicable, but in no event later that two (2) Business Days, in advance of filing with either of the Bankruptcy Courts or delivering to any official committee appointed in any of the Cases (or the Professionals to any such committee) or to

the U.S. Trustee, as the case may be, any proposed Order, and all other material pleadings related to any of the Term Loans contemplated hereby, authorization for the use of cash collateral, any disposition of Collateral having a value in excess of $250,000 for any such Disposition that is not contemplated by the most recent Budget then in effect, any debtor-in-possession financing other than to the extent such provides for the Payment in Full of the Obligations, any plan of reorganization or liquidation for any of the Cases and/or any disclosure statement related thereto (except that with respect to any emergency pleading or document for which, despite the Debtors' commercially reasonable efforts, such advance notice is impracticable, the Debtors shall be required to furnish such documents no later than concurrently with such filings or deliveries thereof, as applicable) and (ii) substantially simultaneously with the filing with the Bankruptcy Courts or delivering to any official committee appointed in any of the Cases (or the Professionals to any such committee) or the U.S. Trustee, as the case may be, all material written notices, filings, motions, pleadings or other formally communicated written information (not covered by subclause (i) above or Section 8.01(e)) concerning the financial condition of the Borrower or any Subsidiary or other Indebtedness of the Credit Parties.

(k) *Intellectual Property.* In the event that any Guarantor, either itself or through any agent, employee, licensee or designee, files an application for or otherwise acquires any Recordable Intellectual Property following the date hereof, then the provisions of this Agreement shall automatically apply thereto and any such Intellectual Property (other than any Excluded Property) shall automatically constitute part of the Collateral and shall be subject to the Collateral Agent's security interest, without further action by any party. Such Guarantor shall, along with the quarterly financial statements required to be delivered pursuant to Section 8.01(a), provide complete and accurate lists of such Recordable Intellectual Property (other than domain names) and execute and deliver any and all appropriate agreements, assignments, notices instruments, documents and papers as necessary or desirable to evidence and perfect the Collateral Agent's security interest in such Recordable Intellectual Property provided that such agreements, instruments, documents and papers (the "**IP Security Documents**").

(l) *Other Information.* From time to time, such other information (financial or otherwise) with respect to the Parent or any of its Subsidiaries as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request.

The Parent hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Parent or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Parent hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Parent shall be deemed to have authorized the Administrative Agent, and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Parent or its securities for purposes of United States Federal and state securities laws (provided, that, to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.13); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the

Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." At any time that the Credit Parties shall have engaged Alvarez & Marsal, LLC or any replacement or similar financial advisor or consultant, the Credit Parties shall permit (and, at the reasonable request of the Administrative Agent and the Lenders, facilitate), communication between such financial advisor or consultant and the Administrative Agent and the Lenders regarding the business of and services being provided to the Credit Parties.

Section 8.02. *Books, Records and Inspections.* (a) The Parent will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities.

(b) The Lead Borrowers will permit the Administrative Agent, subject to reasonable advance notice to, and reasonable coordination with, the Lead Borrowers and normal business hours, to visit and inspect the properties of any Borrower or the Parent, at the Borrowers' expense as provided in clause (c) below, inspect, audit and make extracts from any Borrower's or the Parent's corporate, financial or operating records, and discuss with its officers, employees, agents, advisors and independent accountants (subject to such accountants' customary policies and procedures) such Borrower's or the Parent's business, financial condition, assets and results of operations (it being understood that a representative of the Parent is allowed to be present in any discussions with officers, employees, agent, advisors and independent accountants); *provided* that the Administrative Agent shall be limited to two such field examinations and two such inventory appraisals with respect to any ABL Priority Collateral (including Collateral comprising the Borrowing Base) per 12-month period; *provided further*, that during the existence and continuance of an Event of Default, there shall be no limit on the number of additional field examinations and inventory appraisals of Collateral comprising the Borrowing Base that shall be permitted at the Administrative Agent's request using reasonable credit judgment in accordance with customary business practices for comparable asset-based lending transactions (during the existence and continuance of an event of default). No such inspection or visit shall unduly interfere with the business or operations of any Borrower or the Parent, nor result in any damage to the property or other Collateral. No inspection shall involve invasive testing without the prior written consent of the Parent. Neither the Administrative Agent nor any Lender shall have any duty to the Parent or any Borrower to make any inspection, nor to share any results of any inspection, appraisal or report with any Borrower or the Parent. The Parent and the Borrowers acknowledges that all inspections, appraisals and reports are prepared by the Administrative Agent and Lenders for their purposes, and the Parent and the Borrowers shall not be entitled to rely upon them.

(c) Reimburse the Administrative Agent for all reasonable out-of-pocket costs and expenses (other than any legal fees or costs and expenses covered under Section 12.01) of the Administrative Agent in connection with (i) one examination per fiscal year of any Borrower's books and records or any other financial or Collateral matters as the Administrative Agent deems appropriate and (ii) field examinations and inventory appraisals of ABL Priority Collateral (including Collateral comprising the Borrowing Base) in each case subject to the limitations on such examinations, audits and appraisals permitted under the preceding paragraph. Subject to and without limiting the foregoing, the Borrowers specifically agree to pay the Administrative Agent's then standard charges for examination activities, including the standard charges of the Administrative Agent's internal appraisal group. This Section shall not be construed to limit the Administrative Agent's right to use third parties for such purposes.

Section 8.03. *Maintenance of Property; Insurance.* (a) The Parent will, and will cause each of its Subsidiaries to, (i) keep all tangible property necessary to the business of the Parent and its Subsidiaries in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, (ii) maintain with financially sound and reputable insurance companies insurance on all such property and against all such risks as is consistent and in accordance with industry practice for companies similarly situated owning similar properties and engaged in similar businesses as the Parent and its Subsidiaries, and (iii) furnish to the Administrative Agent, upon its request therefor, full information as to the insurance carried. The provisions of this Section 8.03 shall be deemed supplemental to, but not duplicative of, the provisions of any Security Documents that require the maintenance of insurance.

(b) If at any time the improvements on Real Property constituting Collateral are located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Parent shall, or shall cause the applicable Credit Party to maintain, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and deliver to the Administrative Agent evidence of such insurance in form and substance reasonably acceptable to the Administrative Agent.

(c) The Parent will, and will cause each of its Subsidiaries to, at all times keep its property insured in favor of the Collateral Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by the Parent and/or such Subsidiaries) (i) shall be endorsed to the Collateral Agent's reasonable satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as loss payee, mortgagee and/or additional insured), (ii) if agreed by the insurer (which agreement the Parent shall use commercially reasonable efforts to obtain), shall state that such insurance policies shall not be canceled without at least thirty (30) days' prior written notice thereof (or, with respect to non-payment of premiums, ten (10) days' prior written notice) by the respective insurer to the Collateral Agent; *provided* that the requirements of this Section 8.03(c) shall not apply to (x) insurance policies covering (1) directors and officers, fiduciary or other professional liability, (2) employment practices liability, (3) workers compensation liability, (4) automobile and aviation liability, (5) health, medical, dental and life insurance, and (6) such other insurance policies and programs as the Collateral Agent may approve; and (y) self-insurance programs and (iii) shall be deposited with the Collateral Agent.

(d) If the Parent or any of its Subsidiaries shall fail to maintain insurance in accordance with this Section 8.03, or the Parent or any of its Subsidiaries shall fail to so endorse and deposit all policies or certificates with respect thereto, after any applicable grace period, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance and the Credit Parties jointly and severally agree to reimburse the Administrative Agent for all reasonable costs and expenses of procuring such insurance.

Section 8.04. *Existence; Franchises.* The Parent will, and will cause each of its Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and, in the case of the Parent and its Subsidiaries, its and their rights, franchises, licenses, permits, and Intellectual Property, in each case to the extent material; *provided*, *however*, that nothing in this Section 8.04 shall prevent (a) sales of assets and other transactions by the Parent or any of its Subsidiaries in accordance with Section 9.02, (b) the abandonment by the Parent or any of its Subsidiaries of any rights, franchises, licenses, permits,

or Intellectual Property that the Parent reasonably determines are no longer beneficial to the operations of the Parent and its Subsidiaries taken as a whole or (c) the withdrawal by the Parent or any of its Subsidiaries of its qualification as a foreign corporation, partnership, limited liability company or unlimited liability company, as the case may be, in any jurisdiction if such withdrawal would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Borrower will, and will cause each of its Subsidiaries to, conduct its business and affairs without any known infringement, misappropriation or other violation of any Intellectual Property of any other Person except as would not reasonably be expected to be material to the operations of the Parent and its Subsidiaries taken as a whole.

Section 8.05. *Compliance with Statutes, etc*. The Parent will, and will cause each of its Subsidiaries to, comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 8.06. *Compliance with Environmental Laws.* (a) The Parent will comply, and will cause each of its Subsidiaries to comply, with all Environmental Laws and certificates of approval and permits applicable to, or required by, the ownership, lease, operation or use of Real Property now or hereafter owned, leased or operated by the Parent or any of its Subsidiaries, except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and will keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws (other than Liens imposed on leased Real Property resulting from the acts or omissions of the owner of such leased Real Property or of other tenants of such leased Real Property who are not within the control of the Parent or any of its Subsidiaries). Except as have not had, and would not reasonably be expected to have, a Material Adverse Effect, neither the Parent nor any of its Subsidiaries will generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of, Hazardous Materials on any Real Property now or hereafter owned, leased or operated by the Parent or any of its Subsidiaries, or transport or permit the transportation of Hazardous Materials to or from any such Real Property, except for Hazardous Materials generated, used, treated, stored, Released or disposed of at any such Real Properties or transported to or from such Real Properties in compliance with all applicable Environmental Laws.

(b) (i) After the receipt by the Administrative Agent or any Lender of any notice of the type described in Section 8.01(f), (ii) at any time that the Parent or any of its Subsidiaries are not in compliance with Section 8.06(a) or (iii) at any time when an Event of Default is in existence, the Credit Parties will (in each case) jointly and severally provide, at the written request of the Administrative Agent, an environmental site assessment report, including a phase I and phase II report if required by the Administrative Agent, concerning any Real Property owned, leased or operated by the Parent or any of its Subsidiaries (in the event of (i) or (ii) that is the subject of or could reasonably be expected to be the subject of such notice or noncompliance), prepared by an environmental consulting firm reasonably approved by the Administrative Agent, indicating the presence or absence of Hazardous Materials, compliance or non-compliance with all Environmental Laws and permits thereunder, and the reasonable worst case cost of any removal or remedial action in connection with any such Hazardous Materials on or non-compliance with Environmental Laws in connection with such Real Property. If the Credit Parties fail to provide

the same within 30 days after such request was made, the Administrative Agent may order the same, the reasonable cost of which shall be borne by the Parent, and the Credit Parties shall grant and hereby grant to the Administrative Agent and the Lenders and their respective agents access to such Real Property and specifically grant the Administrative Agent and the Lenders an irrevocable non-exclusive license to undertake such an environmental assessment at any reasonable time upon reasonable notice to the Parent, all at the sole expense of the Credit Parties (who shall be jointly and severally liable therefor).

Section 8.07. *ERISA*. As soon as possible and, in any event, within ten (10) Business Days after the Parent or any Subsidiary of the Parent knows of the occurrence of any of the following, the Parent will deliver to the Administrative Agent a certificate of a Responsible Officer of the Parent setting forth the full details as to such occurrence and the action, if any, that the Parent, such Subsidiary or an ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given or filed by the Parent, such Subsidiary, the Plan administrator or such ERISA Affiliate to or with the PBGC or any other Governmental Authority, or a Plan participant and any notices received by the Parent, such Subsidiary or such ERISA Affiliate from the PBGC or any other Governmental Authority, or a Plan participant with respect thereto: that (a) an ERISA Event has occurred that is reasonably expected to result in a Material Adverse Effect; (b) there has been an increase in Unfunded Pension Liabilities since the date the representations hereunder are given, or from any prior notice, as applicable, in either case, which is reasonably expected to result in a Material Adverse Effect; (c) there has been an increase in the estimated withdrawal liability under Section 4201 of ERISA, if the Parent, any Subsidiary of the Parent and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans which is reasonably expected to result in a Material Adverse Effect, (d) the Parent, any Subsidiary of the Parent or any ERISA Affiliate adopts, or commences contributions to, any Plan subject to Section 412 of the Code, or adopts any amendment to a Plan subject to Section 412 of the Code which is reasonably expected to result in a Material Adverse Effect, (e) that a contribution required to be made with respect to a Foreign Pension Plan has not been timely made which failure is reasonably likely to result in a Material Adverse Effect; or (f) that a Foreign Pension Plan has been or is reasonably expected to be terminated, reorganized, partitioned or declared insolvent and such event is reasonably expected to result in a Material Adverse Effect. The Parent will also deliver to the Administrative Agent, upon request by the Administrative Agent, a complete copy of the most recent annual report (on Internal Revenue Service Form 5500-series, including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information) filed with the Internal Revenue Service or other Governmental Authority of each Plan that is maintained or sponsored by the Parent or a Subsidiary.

As soon as possible and, in any event, within ten (10) Business Days after the Parent or any Subsidiary of the Parent knows of the occurrence of any of the following, the Parent will deliver to the Administrative Agent a certificate of a Responsible Officer of the Parent setting forth the full details as to such occurrence and the action, if any, that the Parent or such Subsidiary is required or proposes to take, together with any notices required or proposed to be given or filed by the Parent, such Subsidiary or the Canadian Pension Plan administrator to or with any Governmental Authority, or a Canadian Pension Plan participant and any notices received by the Parent or such Subsidiary from any Governmental Authority, or a Canadian Pension Plan participant with respect thereto: (a) that a contribution required to be made with respect to a Canadian Employee Plan or Canadian Statutory Plan has not been timely made which failure is reasonably likely to result in a Material Adverse Effect; or (b) that a Canadian Pension Plan has been or is reasonably expected to be terminated, reorganized, partitioned or declared insolvent and such event is reasonably expected to result in a Material Adverse Effect. The

Parent will also deliver to the Administrative Agent, upon request by the Administrative Agent, a complete copy of the most recent annual report (including, to the extent required, any related financial or actuarial statements or reports and opinions and other supporting statements, certifications, schedules and information) filed with each Governmental Authority in respect of each Canadian Pension Plan that is maintained or sponsored by the Parent or a Subsidiary.

Section 8.08. *[Reserved].*

Section 8.09. *Performance of Obligations*. The Parent will, and will cause each of its Subsidiaries to, perform all of its obligations under the terms of each mortgage, indenture, security agreement, loan agreement or credit agreement and each other agreement, contract or instrument by which it is bound, except such non-performances as, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

Section 8.10. *Payment of Taxes*. The Parent will timely pay and fully discharge prior to or when due, and will cause each of its Subsidiaries to pay and discharge, all material amounts of post-petition Taxes (and prepetition Taxes, unless the payment thereof is not authorized by the Bankruptcy Courts, to the extent such Taxes have priority to the DIP Superiority Claims and the payment thereof has been approved by a Financing Order) imposed upon it or upon its income or profits or upon any properties belonging to it and all material lawful claims which, if unpaid, might become a Lien or charge upon any properties of the Parent or any of its Subsidiaries not otherwise permitted under Section 9.01(a); *provided* that neither the Parent nor any of its Subsidiaries shall be required to pay any such Tax which is being contested in good faith and by appropriate proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP.

Section 8.11. *Use of Proceeds*. Each Borrower will use the proceeds of the Loans only as provided in Section 7.08 hereof. In addition, no portion of any Loans shall be used to, directly or indirectly, and whether immediately, incidentally, or ultimately, purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock or to refund indebtedness originally incurred for such purpose. Neither the making of any Loan nor the use of the proceeds thereof shall violate the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 8.12. *Additional Security; Further Assurances; etc.* (a) The Parent will, and will cause each of its Subsidiaries of the Parent to, grant to the Collateral Agent for the benefit of the Secured Parties security interests in such assets and properties of the Parent and such Subsidiaries of the Parent as are not covered by the original Security Documents and as may be reasonably requested from time to time by the Administrative Agent or the Required Lenders (collectively, as may be amended, modified or supplemented from time to time, the "**Additional Security Documents**"); *provided* that security interests shall not be required with respect to any assets or properties to the extent that such security interests would result in a material adverse tax consequence to the Parent or its Subsidiaries, as reasonably determined by the Parent and notified in writing to the Administrative Agent. All security interests shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and (subject to exceptions as are reasonably acceptable to the Administrative Agent) shall constitute, upon taking all necessary perfection action (which the Credit Parties agree to promptly take) valid and enforceable perfected security interests (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of

whether enforcement is sought in equity or at law), subject to the Post-Petition Intercreditor Agreement, superior to and prior to the rights of all third Persons, and subject to no other Liens except for Permitted Liens. The Additional Security Documents or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect (subject to exceptions as are reasonably acceptable to the Administrative Agent) the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Security Documents and all Taxes, fees and other charges payable in connection therewith shall be paid in full. Notwithstanding any other provision in this Agreement or any other Credit Document, no Foreign Subsidiary shall be required to pledge any of its assets to secure any obligations of the Borrowers under the Credit Documents or guarantee the obligations of the Lead U.S. Borrower or any of its U.S. Subsidiaries under the Credit Documents.

(b) Subject to the terms of the Post-Petition Intercreditor Agreement, with respect to any person that is or becomes a Subsidiary after the Closing Date, promptly (i) deliver to the Collateral Agent the certificates, if any, representing all (or such lesser amount as is required) of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Credit Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Credit Party (to the extent required pursuant to this Agreement and/or the Security Documents), (ii) cause such new Subsidiary (other than an Excluded Subsidiary) (A) to execute a joinder agreement hereto and/or such additional Security Document as may be reasonably required by the Administrative Agent, in each case, in a form reasonably acceptable to the Administrative Agent and (B) to take all actions necessary or advisable in the reasonable opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the applicable Security Document to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent and (iii) at the request of the Administrative Agent, deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the other Lenders, of counsel to the Credit Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 8.12(b) as the Administrative Agent may reasonable request.

(c) The Parent will, and will cause each of the other Credit Parties that are Subsidiaries of the Parent to, at the expense of the Parent, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent, promptly, upon the reasonable request of the Administrative Agent or the Collateral Agent, at the Parent's expense, any additional Security Document or document or instrument supplemental to or confirmatory of the Security Documents, including opinions of counsel, or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary for the continued validity, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except for Permitted Liens or as otherwise permitted by the applicable Security Document.

(d) The Parent agrees that each action required by clauses (a) through (c) of this Section 8.12 shall be completed as soon as reasonably practicable, but in no event later than twenty (20) days after such action is required to be taken pursuant to such clauses or requested to be taken by the Administrative Agent or the Required Lenders (or such longer period as the Administrative Agent shall otherwise agree), as the case may be; provided that in no event will the Parent or any of its Subsidiaries be required to take any action, other than using its commercially reasonable efforts, to obtain consents from third parties with respect to its compliance with this Section 8.12.

(e) If the Administrative Agent reasonably determines that it or the Lenders are required by law or regulation to have appraisals prepared in respect of any Real Property, the Borrowers will, at their own expense, provide such appraisals to the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent.

Section 8.13. *Post-Closing Actions*. The Parent agrees that it will, or will cause its relevant Subsidiaries to, complete each of the actions described on Schedule 8.13 as soon as commercially reasonable and by no later than the date set forth in Schedule 8.13 with respect to such action or such later date as the Administrative Agent may reasonably agree.

Section 8.14. *Lenders and Advisor Calls; Meetings with Senior Management*.

(a) Commencing on the second week that commences after the Petition Date, arrange for, once per week, upon reasonable prior notice (unless such notice is waived in writing by the Administrative Agent or the Required Lenders), a conference call with the Administrative Agent, the Advisors, the Lenders (and their respective professional advisors) and their respective professional advisors, discussing and analyzing (i) the financial condition and results of operations of each of the Credit Parties for the prior week, status of the Cases and progress in achieving the milestones set forth in Section 8.15, and (ii) the Budget, any Variance Report and the financial statements for the prior fiscal quarter delivered pursuant to Section 8.01(a).

(b) Arrange for, once a week, a conference call, among the Administrative Agent and senior management of the Borrower, with respect to any matter reasonably requested by the Administrative Agent, the Required Lenders or Advisors.

Section 8.15. *Milestones.* Ensure that each of the milestones set forth below is achieved in accordance with the applicable timing referred to below (or such later dates as approved by the Required Lenders):

(a) on the Petition Date, the Credit Parties shall file a motion to approve bidding procedures and stalking horse protections (including any break-up fee or expense reimbursement, the "**Bid Protections**") for the Acquiror (the "**Bidding Procedures Motion**") in respect of any 363 sale transaction under the U.S. Cases and/or an asset sale transaction under the CCAA Cases (any of the foregoing, a "**Sale Transaction**" and a Sale Transaction with the Acquiror, the "**Acquiror Sale Transaction**"), in form and substance reasonably acceptable to the Required Lenders and as soon as reasonably possible, whether before or as part of the Bid Procedure Order (as defined below), the Credit Parties shall obtain from each Bankruptcy Court approval of cross-border protocols, in form and substance reasonably acceptable to the Required Lenders;

(b) within three (3) business days after the Petition Date, the Credit Parties shall obtain from each Bankruptcy Court, and any other necessary court, entry of the Interim Financing Order, in form and substance reasonably acceptable to the Required Lenders;

(c) within twenty-one (21) days after the Petition Date, the Credit Parties shall obtain, in each case in form and substance reasonably acceptable to the Required Lenders, entry from each Bankruptcy Court of an order approving the Bidding Procedures Motion and the Bid Protections specified therein (the "**Bid Procedures Orders**");

(d) within thirty (30) days after the Interim Financing Order Date, the Credit Parties shall obtain, in each case in form and substance reasonably acceptable to the Required Lenders,

entry of the Final Financing Order by the U.S. Bankruptcy Court approving the Term Loan DIP Credit Agreement on a final basis;

(e) on or prior to January 4, 2017, the bid deadline set forth in the Bid Procedures Order shall occur;

(f) on or prior to January 9, 2017, if qualifying bids are received in accordance with the Bid Procedures Order, the Credit Parties shall hold an auction with respect to the Sale Transaction;

(g) on or prior to January 16, 2017 the Credit Parties shall obtain entry of court orders of the Bankruptcy Courts authorizing the Sale Transaction to the successful bidder in accordance with the Bid Procedures Order, in each case in form and substance reasonably acceptable to the Required Lenders; and

(h) on or prior to February 16, 2017, the Sale Transaction shall close and all Prepetition Obligations and Obligations hereunder shall be Paid In Full; provided that, such February 16 date shall be extended to February 28, 2017 (and in any event no later than one (1) Business Day prior to the Scheduled Maturity Date) in order for the Sale Transaction to obtain regulatory approval.

Section 8.16. *Financing Orders*. Comply in all respects, after entry thereof, with all requirements and obligations set forth in the Financing Orders, as each such order is amended and in effect from time to time in accordance with this Agreement.

Section 8.17. *Bankruptcy Pleadings*. Promptly after the same is available, copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of any of the Credit Parties with the Bankruptcy Courts, or distributed by or on behalf of any of the Credit Parties to any committee or Monitor appointed in the Cases, providing copies of the same to the Lenders and counsel for the Administrative Agent; *provided* that such documents may be made available by posting on a website maintained (x) by the Borrower and identified to the Lenders and the Administrative Agent in connection with the Cases or (y) by the Monitor.

Section 8.18. *Collateral Monitoring and Reporting.*

(a) *Appraisals and Borrowing Base Certificates*. By the 20th day of each month, the Lead Borrowers shall deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver same to the Lenders) a Borrowing Base Certificate prepared as of the close of business on the last Business Day of the previous month. In addition to the monthly Borrowing Base Certificates described above, the Credit Parties shall deliver to the Administrative Agent weekly Borrowing Base Certificates by Thursday of each week prepared as of the close of business on Friday of the previous week, which weekly Borrowing Base Certificates shall include updated amounts of (1) Eligible Accounts, along with a week-over-week roll-forward of Accounts (to include, without limitation, information relating to sales, cash and any debit, credit and discount activity), and (2) ineligible Accounts; *provided* that, item (2) above is only required to be updated on a weekly basis to the extent that such amount has increased or decreased by more than an estimated amount of $2,500,000 since the most-recently delivered monthly Borrowing Base Certificate. Notwithstanding the provisions of Section 10.01 hereof, performance of this covenant shall not be subject to any cure or grace period. All calculations of Availability in any Borrowing Base Certificate shall be made by the Parent and certified by a Responsible Officer, *provided* that

the Administrative Agent may from time to time review and adjust any such calculation in consultation with the Parent to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Reserves. That segment of the Borrowing Base Certificate that sets forth the Canadian Borrowing Base shall set forth Accounts in their invoiced currencies.

(b) *Records and Schedules of Accounts and Inventory*. Each Lead Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to the Administrative Agent sales, collection, reconciliation and other reports in form reasonably satisfactory to the Administrative Agent on a periodic basis (but not more frequently than at the time of delivery of each of the financials required pursuant to Section 8.01(a) and (b)). Each Lead Borrower shall also provide to the Administrative Agent, on or before the 20th day of each month (i) a detailed aged trial balance of all Accounts as of the end of the preceding month, specifying each Account's Account Debtor name and the amount, invoice date and due date as the Administrative Agent may reasonably request, (ii) a report identifying all locations where the Borrowers store any Inventory and including details of the quantity and value of Inventory stored at each such location and (iii) a balance sheet (consolidated for all Credit Parties), as of the most recent month-end. If Accounts owing from any single Account Debtor in an aggregate face amount of $1,000,000 or more cease to be Eligible Accounts, the Borrowers shall notify the Administrative Agent of such occurrence promptly (and in any event within three (3) Business Days) after any Responsible Officer of the Parent has actual knowledge thereof.

(c) *Maintenance of Dominion Account*. (i) Consistent with the Cash Management Order and the Post-Petition Intercreditor Agreement, each Credit Party shall cause each bank or other depository institution at which any Collection Account or Concentration Account is maintained, to transfer to a Dominion Account, on a daily basis, all balances in each Collection Account or Concentration Account maintained by any Credit Party with such depository institution, for application to the Obligations then outstanding, provided, that, until the Full Payment of the Prepetition Obligations, all such balances shall be presumed to constitute and arise from collateral securing the Prepetition Obligations and shall be applied first to the Prepetition Obligations until Paid in Full before application to the Obligations, and any proceeds of Term Priority Collateral shall be applied in a manner consistent with the Post-Petition Intercreditor Agreement. The Administrative Agent and the Lenders assume no responsibility to the Borrowers for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any check, draft or other item of payment payable to a Borrower (including those constituting proceeds of Collateral) accepted by any bank. Notwithstanding anything to the contrary contained above, such cash dominion shall not extend to (x) up to $7,500,000 of cash drawn under the Prepetition ABL Facility, (y) any deposit received from a potential buyer under an asset purchase agreement in connection with the Sale Transaction, and (z) the proceeds of any borrowings under the Term Loan DIP Credit Agreement.

(d) *Proceeds of Accounts*. If any Borrower receives cash or any check, draft or other item of payment payable to a Borrower with respect to any Accounts, it shall hold the same in trust for the Administrative Agent and promptly deposit the same into any such Collection Account, Concentration Account or Dominion Account (it being understood that it shall not be a Default or Event of Default if any such payments are deposited in any account other than a Collection Account or a Concentration Account).

(e) *Administration of Deposit Accounts*. Schedule 8.17(e) sets forth all Collection Accounts and or Concentration Accounts maintained by the Credit Parties, including all Dominion Accounts, as of the Closing Date. Subject to Section 8.18(c), each Credit Party shall take all

actions necessary to establish the Administrative Agent's control (within the meaning of the UCC) over each Collection Account and each Concentration Account at all times. Each Credit Party shall be the sole account holder of each Collection Account or Concentration Account and shall not allow any other Person (other than the Administrative Agent, the Term Loan Agent and the applicable depositary bank) to have control over a Collection Account or Concentration Account or any deposits therein subject to the Post-Petition Intercreditor Agreement. Each Lead Borrower shall promptly notify the Administrative Agent of any opening or closing of a Collection Account or Concentration Account, and shall not open any Collection Account or Concentration Account at a bank not reasonably acceptable to the Administrative Agent.

## ARTICLE 9
## NEGATIVE COVENANTS

The Parent and each of its Subsidiaries hereby covenant and agree that on and after the Closing Date and so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than (i) any indemnification obligations arising hereunder which are not then due and payable and (ii) Secured Bank Product Obligations) shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding (unless Cash Collateralized or backstopped on terms reasonably satisfactory to the Administrative Agent).

Section 9.01. *Liens*. The Parent will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible) of the Parent or any of its Subsidiaries, whether now owned or hereafter acquired, or sell accounts receivable with recourse to the Parent or any of its Subsidiaries) or authorize the filing of, any financing statement under the UCC or PPSA with respect to any Lien or any other similar notice of any Lien under any similar recording or notice statute; *provided* that the provisions of this Section 9.01 shall not prevent the creation, incurrence, assumption or existence of, or any filing in respect of, the following (Liens described below are herein referred to as "**Permitted Liens**"):

(a) Liens for Taxes, assessments or governmental charges or levies not overdue or Liens for Taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP (or, for Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);

(b) Liens in respect of property or assets of the Parent or any of its Subsidiaries imposed by law that were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, contractors', materialmen's and mechanics' liens and other similar Liens arising in the ordinary course of business, and which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or assets, and for which adequate reserves have been established in accordance with GAAP;

(c) Liens in existence on the Closing Date *plus* modifications, renewals, replacements, refinancings and extensions of such Liens, *provided* that (x) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase from that amount outstanding at the time of any such renewal, replacement or extension, *plus* accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension and (y) any such renewal, replacement or extension does not encumber any additional assets or properties of the Parent or any of its Subsidiaries (other than after-acquired property that

is affixed or incorporated into the property encumbered by such Lien on the Closing Date and the proceeds and products thereof) unless such Lien is permitted under the other provisions of this Section 9.01;

(d) (v) Liens created pursuant to the Credit Documents, (w) Liens securing obligations (as defined in the Prepetition Term Loan Credit Agreement) and the credit documents related thereto and incurred pursuant to Section 9.04(a)(x); (x) Liens securing obligations (as defined in the Term Loan DIP Credit Agreement) and the credit documents related thereto and incurred pursuant to Section 9.04(a)(y); (y) Liens securing obligations (as defined in the Prepetition ABL Facility) and the credit documents related thereto and incurred pursuant to Section 9.04(a)(z), and (z) the Administration Charge, the Term Loan DIP Charge, the D&O Charge, the KEIP / KERP Charge and the Intercompany Charge; *provided* that, in the case of Liens securing such Indebtedness under the Term Loan Facilities, such Liens are subject to the Post-Petition Intercreditor Agreement;

(e) Leases, subleases, licenses or sublicenses (including licenses or sublicenses of Intellectual Property) granted to other Persons in the ordinary course of business and consistent with past practice and not materially interfering with the conduct of the business of the Parent or any of its Subsidiaries;

(f) Liens upon assets of the Parent or any of its Subsidiaries subject to Capitalized Lease Obligations to the extent such Capitalized Lease Obligations are permitted by Section 9.04(d), *provided* that (x) such Liens serve only to secure the payment of Indebtedness and/or other monetary obligations arising under such Capitalized Lease Obligation and (y) the Lien encumbering the asset or assets giving rise to such Capitalized Lease Obligation does not encumber any asset of the Parent or any of its Subsidiaries other than the proceeds of the assets giving rise to such Capitalized Lease Obligations;

(g) Liens placed upon equipment, machinery or other fixed assets acquired or constructed after the Closing Date and used in the ordinary course of business of the Parent or any of its Subsidiaries and placed at the time of the acquisition or construction thereof by the Parent or such Subsidiary or within ninety (90) days thereafter to secure Indebtedness incurred to pay all or a portion of the purchase or construction price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition or construction of any such equipment, machinery or other fixed assets or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, *provided* that (x) the Indebtedness secured by such Liens is permitted by Section 9.04(d) and (y) in all events, the Lien encumbering the equipment, machinery or other fixed assets so acquired or constructed does not encumber any other asset of the Parent or such Subsidiary; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender on customary terms;

(h) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar charges or encumbrances and minor title deficiencies, which individually or in the aggregate do not materially interfere with the conduct of the business of the Parent or any of its Subsidiaries;

(i) Liens arising from precautionary UCC, PPSA or other similar financing statement filings regarding operating leases or consignments entered into in the ordinary course of business;

(j) attachment and judgment Liens, to the extent and for so long as the underlying judgments and decrees do not constitute an Event of Default pursuant to Section 10.01(i);

(k) statutory and common law landlords' liens under leases to which the Parent or any of its Subsidiaries is a party;

(l) Liens (other than Liens imposed under ERISA or in respect of any Canadian Pension Plan) incurred in the ordinary course of business in connection with workers' compensation claims, unemployment insurance and social security benefits and Liens securing the performance of bids, tenders, leases and contracts in the ordinary course of business, statutory obligations, surety, stay, customs or appeal bonds, performance bonds and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit) incurred in the ordinary course of business;

(m) deposits or pledges to secure bids, tenders, contracts (other than contracts for the repayment of borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds and other obligations of like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit), and as security for the payment of rent, in each case arising in the ordinary course of business and consistent with past practice;

(n) any interest or title of a lessor, sublessor, licensee, sublicensee, licensor or sublicensor under any lease, sublease, or license or sublicense agreement (including software and other technology licenses) in the ordinary course of business and consistent with past practice;

(o) with respect to any Real Estate, Permitted Encumbrances;

(p) Liens on Collateral in favor of any Credit Party securing intercompany Indebtedness permitted by Section 9.05, provided that any Liens securing Indebtedness that is required to be subordinated pursuant to Section 9.05 shall be subordinated to the Liens created pursuant to the Security Documents;

(q) Liens on specific items of inventory or other goods (and proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods, and pledges or deposits in the ordinary course of business;

(r) Liens on insurance policies and the proceeds thereof (whether accrued or not) and rights or claims against an insurer, in each case securing insurance premium financings permitted under Section 9.04(f);

(s) Liens that may arise on inventory or equipment of the Parent or any of its Subsidiaries in the ordinary course of business and consistent with past practice as a result of such inventory or equipment being located on premises owned by Persons other than the Parent and its Subsidiaries;

(t) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(u) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection and (ii) in favor of a banking or other financial institution arising as a

matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(v) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence or issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Parent or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Parent or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Parent or any of its Subsidiaries in the ordinary course of business and consistent with past practice;

(w) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Parent or any Subsidiary in the ordinary course of business;

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business of the Parent and the Subsidiaries complies, and (ii) any zoning or similar law or right reserved to or vested in, or any development agreement, site plan agreement, subdivision agreement or other similar agreement with any Governmental Authority to control or regulate the use of any real property lease, license, franchise, grant or permit that does not materially interfere with the ordinary conduct of the business of the Parent or any Subsidiary;

(y) any cash deposits securing the Parent's or any of its Subsidiaries' obligations to any utility providers;

(z) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(aa) the right reserved to or vested in any Governmental Authority by any statutory provision or by the terms of any lease, license, franchise, grant or permit of the Parent or any Subsidiary to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

(bb) deposits made in the ordinary course of business to secure liability to insurance carriers; and

(cc) Liens not otherwise permitted by the foregoing clauses (a) through (bb), to the extent attaching to properties and assets with an aggregate fair market value not in excess of, and securing liabilities not in excess of $500,000 in the aggregate at any time outstanding.

In connection with the granting of Liens of the type described in this Section 9.01 by the Parent or any of its Subsidiaries, the Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate by it in connection therewith (including, without limitation, by executing appropriate lien releases or lien subordination agreements in favor of the holder or holders of such Liens, in either case solely with respect to the item or items of equipment or other assets subject to such Liens).

Section 9.02. *Consolidation, Merger, or Sale of Assets, etc.* The Parent will not, and will not permit any of its Subsidiaries to, wind up, liquidate or dissolve its affairs or enter into any partnership, joint venture, or transaction of merger, amalgamation or consolidation, or convey,

sell, lease or otherwise dispose of all or any part of its property or assets, or enter into any Sale-Leaseback Transactions of any Person, except that (subject to any Orders issued by the Bankruptcy Courts):

(a) each of the Parent and its Subsidiaries may sell or discount, in each case in the ordinary course of business and consistent with past practice, accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof and not as part of any financing transaction;

(b) each of the Parent and its Subsidiaries may grant licenses, sublicenses, leases or subleases to other Persons not materially interfering with the conduct of the business of the Parent or any of its Subsidiaries, including of Intellectual Property, in each case, in the ordinary course of business and consistent with past practice;

(c) each of the Parent and its Subsidiaries may make sales or leases of (x) inventory and goods held for sale, in each case, in the ordinary course of business and consistent with past practice and (y) assets (other than Intellectual Property) with a fair market value, in the case of this clause (y), of less than $1,500,000 in the aggregate;

(d) each of the Parent and its Subsidiaries may sell or otherwise dispose of (i) outdated, obsolete, surplus or worn out property and (ii) property no longer used or useful in the conduct of the business of the Parent and its Subsidiaries, in each case, in the ordinary course of business and consistent with past practice;

(e) each of the Parent and its Subsidiaries may make transfers of property subject to casualty or condemnation proceedings upon the occurrence of the related Recovery Event;

(f) each of the Parent and its Subsidiaries may abandon Intellectual Property rights in the ordinary course of business and consistent with past practice, which in the reasonable good faith determination of the Borrower or a Subsidiary are no longer material to the Borrower or any of its Subsidiaries;

(g) each of the Parent and its Subsidiaries may make dispositions resulting from foreclosures by third parties on properties of the Parent or any of its Subsidiaries and acquisitions by the Parent or any of its Subsidiaries resulting from foreclosures by such Persons or properties of third parties;

(h) each of the Parent and its Subsidiaries may terminate leases and subleases;

(i) each of the Parent and its Subsidiaries may use cash and Cash Equivalents to make payments that are otherwise permitted under Sections 9.03 and 9.07;

(j) each of the Parent or its Subsidiaries may sell or otherwise dispose of property, for reasonably equivalent value, to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such sale or disposition are promptly applied to the purchase price of such replacement property;

(k) sales, dispositions or contributions of property (i) between Credit Parties, (ii) between Subsidiaries (other than Credit Parties), (iii) by Subsidiaries that are not Credit Parties to the Credit Parties or (iv) by Credit Parties to any Subsidiary that is not a Credit Party; *provided* that

any such sale, disposition or contribution of property, shall in each case constitute an Investment in such Subsidiary equal to the fair market value so sold, disposed of or contributed;

(l) the sale of the Credit Parties' assets that the Required Lenders reasonably agree constitute the Credit Parties' soccer business pursuant to terms and conditions acceptable to the Required Lenders (the "**Soccer Sale**");

(m) transfers of property that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement; provided that the proceeds of such dispositions are applied in accordance with Section 2.09(c)(ii); and

(n) with the prior written approval of the Administrative Agent (which approval shall not be unreasonably withheld), the Parent and each of its Subsidiaries may complete transaction steps expressly contemplated as part of a Sale Transaction Restructuring (and if approval of a Bankruptcy Court is required, to the extent so approved by an Order).

To the extent the Required Lenders waive the provisions of this Section 9.02 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 9.02 (other than to the Parent or a Subsidiary thereof), such Collateral shall be sold free and clear of the Liens created by the Security Documents, and the Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate in order to effect the foregoing to the extent contemplated by Section 11.10.

Section 9.03. *Dividends*. The Parent will not, and will not permit any of its Subsidiaries to, authorize, declare or pay any Dividends with respect to the Parent or any of its Subsidiaries, except that any Subsidiary of the Parent may pay Dividends or return capital or make distributions and other similar payments with regard to its Equity Interests to the Parent or to other Subsidiaries of the Parent which directly or indirectly own equity therein.

Section 9.04. *Indebtedness*. The Parent will not, and will not permit any of its Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(a) (w) Indebtedness incurred pursuant to this Agreement and the other Credit Documents, (x) Indebtedness incurred pursuant to the Prepetition Term Loan Credit Agreement in an aggregate principal amount not to exceed (I) the amount thereunder outstanding as of the Petition Date, minus (II) any such amounts in clause (I) prepaid from time to time after the Petition Date, (y) Indebtedness incurred pursuant to the Term Loan DIP Facility in an aggregate principal amount not to exceed $500,000 in the aggregate and (z) Indebtedness incurred pursuant to the Prepetition ABL Facility in an aggregate principal amount not to exceed (I) the amount thereunder outstanding as of the Petition Date minus (II) any such amounts in clause (I) prepaid from time to time after the Petition Date;

(b) Indebtedness under Swap Contracts entered into with respect to other Indebtedness permitted under this Section 9.04 so long as the entering into of such Swap Contracts are bona fide hedging activities in the ordinary course of business and consistent with past practice and are not for speculative purposes;

(c) intercompany Indebtedness among the Parent and its Subsidiaries to the extent permitted by Section 9.05(f);

(d) Indebtedness of the Parent and its Subsidiaries consisting of Capitalized Lease Obligations and purchase money Indebtedness (including obligations in respect of mortgages, industrial revenue bonds, industrial development bonds and similar financings) described in Section 9.01(g); *provided* that in no event shall the aggregate principal amount of Capitalized Lease Obligations and the principal amount of all such Indebtedness incurred or assumed in each case after the Closing Date permitted by this clause (iii) exceed $500,000 in the aggregate;

(e) Indebtedness outstanding on the Closing Date and disclosed as material Indebtedness under the Biscuit Acquisition Agreement as in effect as of the date hereof ("**Existing Indebtedness**");

(f) Indebtedness incurred in the ordinary course of business to finance insurance premiums or take-or-pay obligations contained in supply arrangements;

(g) Indebtedness incurred in the ordinary course of business in respect of netting services, overdraft protections, employee credit card programs, automatic clearinghouse arrangements and other similar services in connection with cash management and deposit accounts and Indebtedness in connection with the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, including, in each case, Bank Product Debt;

(h) additional Indebtedness of the Parent and its Subsidiaries not to exceed $500,000 in aggregate principal amount;

(i) Contingent Obligations for customs, stay, performance, appeal, judgment, replevin and similar bonds and suretyship arrangements, and completion guarantees and other obligations of a like nature, all in the ordinary course of business;

(j) Contingent Obligations to insurers required in connection with worker's compensation and other insurance coverage incurred in the ordinary course of business;

(k) guarantees made by the Parent or any of its Subsidiaries of Indebtedness of the Parent or any of its Subsidiaries permitted to be outstanding under this Section 9.04; *provided* that such guarantees are permitted by Section 9.05;

(l) customary Contingent Obligations in connection with sales, other dispositions and leases permitted under Section 9.02 (but not in respect of Indebtedness for borrowed money or Capitalized Lease Obligations) including indemnification obligations with respect to leases, and guarantees of collectability in respect of accounts receivable or notes receivable for up to face value;

(m) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within two (2) Business Days of its incurrence;

(n) (x) severance, pension and health and welfare retirement benefits or the equivalent thereof to current and former employees of the Parent or its Subsidiaries incurred in the ordinary course of business, (y) Indebtedness representing deferred compensation or stock-based compensation to employees of the Parent and the Subsidiaries and (z) Indebtedness consisting of promissory notes issued by any Credit Party to current or former officers, directors and employees,

their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Parent permitted by Section 9.03;

(o) (x) guarantees made by the Parent or any of its Subsidiaries of obligations (not constituting debt for borrowed money) of the Parent or any of its Subsidiaries owing to vendors, suppliers and other third parties incurred in the ordinary course of business and (y) Indebtedness of any Credit Party as an account party in respect of trade letters of credit issued in the ordinary course of business;

(p) guarantees made by a Foreign Subsidiary of Indebtedness of any other Foreign Subsidiary permitted to be outstanding under this Section 9.04;

(q) guarantees of Indebtedness of directors, officers and employees of the Borrower or any of its Subsidiaries in respect of expenses of such Persons in connection with relocations and other ordinary course of business purposes not to exceed $1,000,000 at any time outstanding;

(r) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (q) above.

Section 9.05. *Advances, Investments and Loans*. The Parent will not, and will not permit any of its Subsidiaries to, directly or indirectly, lend money or credit to or guaranty the Indebtedness of any Person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other Person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or hold any cash or Cash Equivalents or make any advances (each of the foregoing, an "**Investment**" and, collectively, "**Investments**" and with the value of each Investment being measured at the fair market value thereof determined as of the time made and without giving effect to subsequent changes in value or any write-ups, write-downs or write-offs thereof but giving effect to any cash return or cash distributions received by the Parent and its Subsidiaries with respect thereto as of the time made), except that the following shall be permitted:

(a) the Parent and its Subsidiaries may acquire and hold accounts receivable owing to any of them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms of the Parent or such Subsidiary;

(b) the Parent and its Subsidiaries may acquire and hold cash and Cash Equivalents; *provided* that, Foreign Subsidiaries may not hold more than $500,000 of any cash or Cash Equivalents at any time;

(c) the Parent and its Subsidiaries may hold the Investments held by them on the Closing Date and described on Schedule 9.05(c), and any modification, replacement, renewal or extension thereof that does not increase the principal amount thereof unless any additional Investments made with respect thereto are permitted under the other provisions of this Section 9.05;

(d) the Parent and its Subsidiaries may acquire and hold Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers, and Investments received in good faith settlement of delinquent

obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(e) the Parent and its Subsidiaries may enter into Swap Contracts to the extent permitted by Section 9.04(b);

(f) (i) the Parent and any Subsidiary may make intercompany loans to and other investments in Credit Parties, (ii) any Foreign Subsidiary may make intercompany loans to and other investments in the Parent or any of its Subsidiaries so long as in the case of such intercompany loans to Credit Parties, all payment obligations of the respective Credit Parties are subordinated to their obligations under the Credit Documents on terms reasonably satisfactory to the Administrative Agent and the Required Lenders, (iii) the Credit Parties may make intercompany loans to, guarantees on behalf of, and other investments in, Subsidiaries that are not Credit Parties so long as the aggregate amount of outstanding loans, guarantees and other Indebtedness made pursuant to this subclause (f)(iii) does not exceed $500,000, (iv) any Subsidiary that is not a Credit Party may make intercompany loans to, and other investments in, any other Subsidiary that is also not a Credit Party, and (v) Credit Parties may make intercompany loans to, guarantees on behalf of, and other investments in, Subsidiaries that are not Credit Parties to fund the operating expenses of such Subsidiaries in an amount not to exceed $100,000 during any fiscal year of the Parent;

(g) loans and advances by the Parent and its Subsidiaries to officers, directors and employees of the Parent and its Subsidiaries in connection with (i) relocations and other ordinary course of business purposes (including travel and entertainment expenses) shall be permitted and (ii) any such Person's purchase of Equity Interests of the Borrower; *provided* that no cash is actually advanced pursuant to this clause (g) unless immediately repaid;

(h) extensions of trade credit may be made in the ordinary course of business and consistent with past practice, Investments received in satisfaction or partial satisfaction of previously extended trade credit from financially troubled account debtors, Investments consisting of prepayments to suppliers made in the ordinary course of business and loans or advances made to distributors in the ordinary course of business;

(i) Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

(j) Investments in the ordinary course of business consisting of endorsements for collection or deposit;

(k) the licensing, sublicensing or contribution of Intellectual Property pursuant to arrangements with Persons other than the Parent and the Subsidiaries in the ordinary course of business and consistent with past practice for fair market value, as determined by the Parent or such Subsidiary, as the case may be, in good faith;

(l) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case, in the ordinary course of business and consistent with past practice;

(m) advances of payroll payments to employees of the Parent and its Subsidiaries in the ordinary course of business consistent with past practice; and

(n) with the prior written approval of the Administrative Agent (which approval shall not be unreasonably withheld), the Parent and each of its Subsidiaries may complete transaction steps expressly contemplated as part of a Sale Transaction Restructuring (and if approval of a Bankruptcy Court is required, to the extent so approved by an Order of the Bankruptcy Court).

Section 9.06. *Transactions with Affiliates*. The Parent will not, and will not permit any of its Subsidiaries to, enter into any transaction or series of related transactions with any Affiliate of the Parent or any of its Subsidiaries, other than on terms and conditions not less favorable to the Parent or such Subsidiary as would reasonably be obtained by the Parent or such Subsidiary at that time in a comparable arm's-length transaction with a Person other than an Affiliate, except:

(a) Dividends may be paid to the extent provided in Section 9.03;

(b) to the extent not otherwise prohibited by this Agreement, transactions between or among the Parent and any of its Subsidiaries shall be permitted (including equity issuances); provided that, transactions among Credit Parties, on the one hand and Subsidiaries of the Parent that are not Credit Parties, on the other, shall be on terms and conditions not less favorable to the relevant Credit Party as would reasonably be obtained by such Credit Party at that time in a comparable arm's-length transaction with a Person other than an Affiliate; and

(c) transactions described on Schedule 9.06.

Section 9.07. *Limitations on Payments of Indebtedness; Amendments to the Certificate of Incorporation, By-Laws and Certain Other Agreements, etc*. The Parent will not, and will not permit any of its Subsidiaries to:

(a) Pay, prepay, redeem, purchase, defease or otherwise satisfy (a) any Indebtedness or other obligation that is subordinated in right of payment to the Obligations or secured by a Lien on any Collateral that is junior to the Liens on such Collateral securing the Obligations or (b) any Indebtedness or other obligation that was incurred prior to the Petition Date, in each case, whether by way of "adequate protection" under the Bankruptcy Code or otherwise, except for (i) payments made pursuant to the Financing Orders or, to the extent not in violation of the Financing Orders, any other order of the Bankruptcy Courts then in effect that is reasonably satisfactory to the Required Lenders or (ii) payments made in accordance with the Budget (subject to the Permitted Cash Flow Test).

(b) amend, modify or change its certificate or articles of incorporation (including, without limitation, by the filing or modification of any certificate or articles of designation), certificate of formation, limited liability company agreement or by-laws (or the equivalent organizational documents), as applicable, or any agreement entered into by it with respect to its Equity Interests, or enter into any new agreement with respect to its Equity Interests, unless such amendment, modification, change or other action contemplated by this Section 9.07 could not reasonably be expected to be adverse in any material respect to the interests of the Lenders.

(c) agree, consummate or permit to exist (A) any changes or amendments to any Term Loan Facility that would result in an increase of the extension of credit under such Term Loan Facility, (B) any increase in pricing (whether in the form of interest rates, margins, commissions, fees, original issue discount or otherwise) other than as a result of the application of default rate interest under any Term Loan Facility, or (C) any repayment or "exit" premiums, fees or other similar costs.

Section 9.08. *Limitation on Certain Restrictions on Subsidiaries*. The Parent will not, and will not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any such Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by the Parent or any of its Subsidiaries, or pay any Indebtedness owed to the Parent or any of its Subsidiaries, (b) make loans or advances to the Parent or any of its Subsidiaries or (c) unless expressly permitted by an Order issued by either Bankruptcy Court transfer any of its properties or assets to the Parent or any of its Subsidiaries, except for such encumbrances or restrictions existing under or by reason of:

(i) applicable law;

(ii) this Agreement and the other Credit Documents or the documents governing the Term Loan Facilities and the Prepetition ABL Facility and the Term Loan DIP Credit Agreement and, on or prior to the Closing Date, the Prepetition Term Loan Credit Agreement;

(iii) customary provisions restricting subletting or assignment of any lease governing any leasehold interest of the Parent or any of its Subsidiaries;

(iv) customary provisions restricting assignment of any licensing agreement (in which the Parent or any of its Subsidiaries is the licensee) or other contract entered into by the Parent or any of its Subsidiaries in the ordinary course of business;

(v) restrictions on the transfer of any asset pending the close of the sale of such asset;

(vi) encumbrances or restrictions on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(vii) any agreement or instrument relating to Indebtedness of a Foreign Subsidiary incurred pursuant to Section 9.04 to the extent such encumbrance or restriction only applies to such Foreign Subsidiary;

(viii) an agreement effecting a refinancing, replacement or substitution of Indebtedness issued, assumed or incurred pursuant to an agreement or instrument referred to in clause (vi) above; *provided* that the provisions relating to such encumbrance or restriction contained in any such refinancing, replacement or substitution agreement are no less favorable to the Parent or the Lenders in any material respect than the provisions relating to such encumbrance or restriction contained in the agreements or instruments referred to in such clause (vi);

(ix) restrictions on the transfer of any asset subject to a Lien permitted by Section 9.01 (in the case of Liens securing Indebtedness for borrowed money, subject to clause (x) below);

(x) restrictions and conditions imposed by the terms of the documentation governing any Indebtedness of a Subsidiary of the Parent that is not a Credit Party, which Indebtedness is permitted by Section 9.04 (but solely as such restrictions and conditions pertain to such Subsidiaries that are not Credit Parties);

(xi) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 9.05 and applicable solely to such joint venture; and

(xii) restrictions imposed by the Financing Orders.

Section 9.09. *Business.* The Parent will not permit at any time the business activities taken as a whole conducted by the Parent and its Subsidiaries to be materially different from the business activities taken as a whole conducted by the Parent and its Subsidiaries on the Closing Date.

Section 9.10. *Negative Pledges*. The Parent shall not, and shall not permit any of its Subsidiaries to, agree or covenant with any Person to restrict in any way its ability to grant any Lien on its assets in favor of the Lenders, other than pursuant to the Post-Petition Intercreditor Agreement and other than:

(a) any covenants contained in this Agreement or any other Credit Documents or that exist on the Closing Date;

(b) covenants existing under (i) the Prepetition ABL Credit Agreement, and, solely on or prior to the Closing Date, the Prepetition Term Loan Credit Agreement as in effect on the Petition Date and the other credit documents pursuant thereto and/or (ii) the ABL DIP Credit Agreement and the other credit documents pursuant thereto;

(c) covenants and agreements permitted under Section 9.08(ix);

(d) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment thereof;

(e) covenants and agreements made in connection with any agreement relating to secured Indebtedness permitted by this Agreement but only if such covenant or agreement applies solely to the specific asset or assets to which such Lien relates;

(f) restrictions imposed by applicable law;

(g) customary restrictions and conditions contained in agreements relating to any sale of assets or Equity Interests pending such sale, provided such restrictions and conditions apply only to the Person or property that is to be sold;

(h) contractual obligations binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Subsidiary;

(i) restrictions imposed by the Financing Orders;

(j) restrictions on any Foreign Subsidiary pursuant to the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred hereunder;

(k) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; and

(l) any restrictions on Liens imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a), (b), (c), and (g) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Parent, no more restrictive with respect to such encumbrance and other restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 9.11. *[Reserved].*

Section 9.12. *[Reserved].*

Section 9.13. *Budget Compliance; Borrowing Base Covenant.* The Parent shall not, and shall not permit any of its Subsidiaries to:

(a) Except as otherwise provided herein or previously and expressly approved by the Required Lenders in writing (including via email or other electronic transmission), permit the proceeds of Loans to be used for any use other than a use permitted by Section 7.08, it being understood that (x) neither the Administrative Agent nor the Lenders shall have any duty to monitor such compliance and (y) the line items in the Budget for payment of amortization of principal, interest, expenses and other amounts to the Secured Parties are estimates only, and the Borrower remains obligated to pay any and all Obligations in accordance with the terms of the Credit Documents.

(b) Commencing with the week ending November 25, 2016, permit the actual Cumulative Net Cash Flow as set forth in the Variance Report delivered for such Variance Period pursuant to Section 8.01(i) to be less than the Cumulative Net Cash Flow for such Variance Period as set forth in the Initial Budget by an amount in excess of the Permitted Cash Flow Test.

(c) Without the express written consent of the Required Lenders, make any Cash Disbursements with respect to (x) any Indebtedness or (y) other obligations, in any such case, arising on or before the Petition Date owed by the Borrower or any other Debtor Credit Party, unless such Cash Disbursements (I) are in accordance with the Budget (subject to the Permitted Cash Flow Test) and (II) do not violate Section 9.07(i) or (III) constitute an Event of Default under Section 10.01(m).

(d) To the extent actual Liquidity is less than Liquidity in the Budget less the Permitted Liquidity Variance as of the last day of any week, permit the Borrowing Base as determined as of any applicable date of determination, to be less than 90% of the Borrowing Base for such date as set forth in the Initial Budget.

Section 9.14. *Final Bankruptcy Court Financing Order; Administrative Priority; Lien Priority; Payment of Claims*. The Parent shall not, and shall not permit any of its Subsidiaries to:

(a) At any time, seek or consent to any reversal, modification, amendment, stay, vacation or termination of (i) any "first day orders" or "second day orders" entered by the Bankruptcy Courts in any of the Cases, if such reversal, modification, amendment, stay or vacation could have an adverse effect on the rights of the Secured Parties under this Agreement, (ii) the Interim Financing Order or (iii) as provided in the Final Financing Orders.

(b) At any time, seek or consent to a priority for any administrative expense or unsecured claim against the Borrower or any other Debtor Credit Party (now existing or hereafter arising) of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in, or arising or ordered under, Sections 105(a), 326, 328, 330, 331, 363, 503(a), 503(b), 506(c), 507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code equal or senior to the priority of the Secured Parties in respect of the Obligations, except for the Carve-Out as provided in Section 2.19 or in the Financing Orders.

(c) At any time, seek or consent to a priority of any Liens against the Borrower or any other Debtor Credit Party that is equal or senior to the priority of the Liens granted to the Secured Parties, except as provided in Section 2.19 or the Financing Orders or that constitutes Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not adversely impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law or as otherwise expressly provided for in Section 9.01.

(d) Prior to the date on which the Obligations have been Paid in Full (or otherwise satisfied) and the Commitments have been cancelled and terminated, file with the Bankruptcy Courts any alternative debtor-in-possession financing proposal that does not provide for the Obligations and the Prepetition Obligations to be Paid in Full.

Section 9.15. *Appointment of Chief Restructuring Officer*. Except as otherwise provided herein or approved by the Required Lenders (it being agreed that a chief restructuring officer employed by Alvarez and Marsal shall be deemed reasonably acceptable to the Required Lenders), the Parent shall not, and shall not permit any of its Subsidiaries to, appoint a chief restructuring officer with respect to any Debtor.

Section 9.16. *Critical Vendor Payments*. Except as otherwise provided herein or approved by the Required Lenders, the Parent shall not, and shall not permit any of its Subsidiaries to, make payments to critical vendors or otherwise file any critical vendor motions seeking payments with the Bankruptcy Courts, in each case, in an aggregate amount in excess of the amounts (if any) specified in “first day” or “second day” orders that have been confirmed in writing as being reasonably acceptable to the Required Lenders.

Section 9.17. *Actions in Cases*. The Parent shall not, and shall not permit any of its Subsidiaries to, bring a motion in the Cases that could constitute a Default or an Event of Default pursuant to Article 10 of this Agreement.

## ARTICLE 10
## EVENTS OF DEFAULT

Section 10.01. *Events of Default*. Any of the following shall constitute an Event of Default:

(a) *Payments*. Any Borrower shall (i) default in the payment when due of any principal of any Loan or any Note or (ii) default, and such default shall continue unremedied for five (5) or more Business Days, in the payment when due of any interest on any Loan or Note, or any Fees or any other amounts owing hereunder or under any other Credit Document; or

(b) *Representations, etc*. Any representation, warranty, certification or statement made or deemed made by any Credit Party herein or in any other Credit Document or in any certificate delivered to the Administrative Agent or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or

(c) *Covenants*. The Parent or any of its Subsidiaries shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 8.01(d)(i), 8.02(b), Section 8.03, 8.04 (as to the Credit Parties), 8.08, 8.09, Section 8.10, 8.11, Section 8.12, Section 8.13, Section 8.14, Section 8.15, Section 8.16, Section 8.17, Section 8.18 or Article 9 or (ii) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement or in any other Credit Document (other than those set forth in Sections 10.01(a) and 10.01(b)), and such default shall continue unremedied for a period of five (5) Business Days after the earlier of (A) written notice thereof to the defaulting party by the Administrative Agent or the Required Lenders and (b) knowledge thereof by the Parent or any Subsidiary; or

(d) *Default Under Other Agreements*. (i) The Parent or any of its Subsidiaries shall (x) default in any payment of any Indebtedness incurred after the Petition Date (other than the Obligations) beyond the period of grace, if any (but whether or not all required notices have been delivered) (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), provided in an instrument or agreement under which such Indebtedness was created or (y) default in the observance or performance of any agreement or condition relating to any such Indebtedness (other than the Obligations) (but whether or not all required notices have been delivered) (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its stated maturity, or (ii) any Indebtedness incurred after the Petition Date (other than the Obligations) of the Parent or any of its Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof, *provided* that (x) it shall not be a Default or an Event of Default under this Section 10.01(d) unless the aggregate principal amount of all Indebtedness as described in preceding clauses (i) and (ii) is at least equal to the Threshold Amount, and (y) the preceding clause (ii) shall not apply to Indebtedness that becomes due as a result of a voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is otherwise permitted hereunder; or

(e) *Bankruptcy, etc*. Except for the commencement of a proceeding for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court or under Debtor Relief Laws in the Canadian Bankruptcy Court that does not or would not constitute an Event of Default under Section 10.01(t) hereunder and that is, within ten (10) days of the filing thereof, jointly administered with the Cases (it being agreed that, during any such ten (10)-day period, any such proceeding shall not constitute a Default), any Subsidiary of the Parent (other than a Debtor) shall commence a voluntary case or proceeding concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "**Bankruptcy Code**") or under the provisions of the Bankruptcy and Insolvency Act (Canada) or the Companies' Creditors Arrangement Act (Canada) or any other bankruptcy, insolvency or other similar law or makes an assignment in bankruptcy, makes a proposal to its creditors or files notice of its intention to do so, institutes any other proceeding under applicable law seeking to adjudicate it a bankrupt or an insolvent, or seeking liquidation, dissolution, winding-up, reorganization,

receivership compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors, composition of it or its debts or any other similar relief; or an involuntary case or proceeding is commenced against such Person, and the petition is not controverted within twenty-one (21) days, or is not dismissed within thirty (30) days, after commencement of the case; or such Person applies for the appointment of, or the taking of possession by a custodian (as defined in the Bankruptcy Code), receiver, receiver- manager, interim receiver, trustee, monitor, liquidator or other similar official, or such official is appointed for, or takes charge of, all or substantially all of the property of such Person, or such Person commences any other proceeding under any reorganization, bankruptcy, insolvency, arrangement, winding-up, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to such Person, or there is commenced against such Person any such proceeding which remains undismissed for a period of thirty (30) days, or such Person is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or such Person suffers any appointment of any custodian, receiver, receiver-manager, interim receiver, trustee, monitor or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of thirty (30) days; or such Person makes a general assignment for the benefit of creditors; or any corporate, limited liability company or similar action is taken by such Person for the purpose of effecting any of the foregoing; or

(f) *ERISA*. (a) An ERISA Event has occurred with respect to a Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect; (b) there is or arises Unfunded Pension Liability which has resulted or would reasonably be expected to result in a Material Adverse Effect, (c) there is or arises any potential withdrawal liability under Section 4201 of ERISA, if the Lead Borrower, any Subsidiary of the Parent or the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans which has resulted or would reasonably be expected to result in a Material Adverse Effect; or (d) a Foreign Pension Plan or Canadian Pension Plan has failed to comply with, or be funded in accordance with, its applicable law which has resulted or would reasonably be expected to result in a Material Adverse Effect; or

(g) *Security Documents*. Any of the Security Documents shall cease to be in full force and effect, or shall cease to give the Collateral Agent for the benefit of the Secured Parties the Liens, rights, powers and privileges purported to be created thereby (including, without limitation (to the extent provided therein), a perfected security interest or hypothec in, and Lien on, all of the Collateral (other than Collateral with an aggregate fair market value not in excess of the Threshold Amount), in favor of the Collateral Agent, superior to and prior to the rights of all third Persons (except as permitted by Section 9.01), and subject to no other Liens (except as permitted by Section 9.01)); or

(h) *Guaranties*. Article 13 or any provision thereof shall cease to be in full force or effect as to any Subsidiary Guarantor, or any Subsidiary Guarantor or any Person acting for or on behalf of such Subsidiary Guarantor shall deny or disaffirm such Subsidiary Guarantor's obligations under Article 13 or any Subsidiary Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to Article 13; or

(i) *Judgments*. One or more judgments or decrees shall be entered against the Borrower or any Subsidiary (other than any Excluded Subsidiary) of the Borrower involving in the aggregate for the Parent and its Subsidiaries a liability or liabilities (not paid or fully covered by a reputable and solvent insurance company with respect to judgments for the payment of money) and such judgments and decrees either shall be final and non-appealable or shall not be vacated,

discharged or stayed or bonded pending appeal for any period of 30 consecutive days, and (i) the aggregate amount of all such judgments and decrees (to the extent not paid or fully covered by such insurance company) equals or exceeds the Threshold Amount or (ii) such judgments, individually and in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect; or

(j) *Actual or Asserted Impairment*. At any time after the execution thereof, (i) any Credit Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof) or shall be declared null and void or (ii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability or shall contest in writing the validity or perfection of any Lien in any material portion of the Collateral purported to be covered by the Security Documents.

(k) *Bankruptcy-Related Events*.

(i) A court order shall have been entered dismissing any of the Cases or converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, or in the case of the Canadian Case, converted to a liquidation proceeding or bankruptcy under the Bankruptcy and Insolvency Act (Canada), or the Parent or any other Debtor shall file a motion or other pleading seeking the dismissal or conversion of any of the Cases under Section 1112 of the Bankruptcy Code or otherwise; or

(i) A trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or a responsible officer or examiner (other than a fee examiner) having expanded powers is appointed or elected in the Cases, the Parent or any other Debtor applies for or consents to any such appointment, or the U.S. Bankruptcy Court shall have entered an order providing for such appointment, or a receiver, interim receiver, receiver and manager or trustee in bankruptcy is appointed by the Canadian Bankruptcy Court; or

(ii) (A) The Final Financing Order (in form and substance reasonably satisfactory to the Required Lenders) shall not have been entered by the U.S. Bankruptcy Court on or prior to the date occurring thirty (30) days after the Interim Financing Order Date (or such later date as the Required Lenders may approve in their reasonable discretion), (B) either Bankruptcy Court shall have entered an order staying, reversing, vacating or terminating Interim Financing Order or, after entry thereof, a Final Financing Order or extending, modifying, supplementing or amending an Interim Financing Order or, after entry thereof, a Final Financing Order, in any such case, other than in form and substance reasonably satisfactory to the Required Lenders, (C) subject to the Post-Petition Intercreditor Agreement and the Financing Orders, Orders of the Bankruptcy Courts shall be entered granting a Lien on the Collateral that is senior to or *pari passu* with the Liens on such Collateral securing the Obligations; (D) any Interim Financing Order and/or Final Financing Order shall cease to create, as applicable, valid and perfected Liens, as provided in Section 2.19, on the Collateral of the Debtors or otherwise cease to be valid and binding and in full force and effect, (E) the Borrower or any other Credit Party shall fail to comply with any provision of the Interim Financing Orders or, after the entry thereof, the Final Financing Order, other than any such failure to comply which is not material and is remedied within two (2) Business Days, (F) the Borrower or any other Credit Party is enjoined, restrained or in any way prevented by order of a court of competent jurisdiction from continuing or conducting all or any material part of its business or affairs, (G) a final non-appealable order in the Cases shall be entered surcharging any of the Collateral under Section 506(c) of the Bankruptcy Code against

the Secured Parties or the Debtors shall file or support any motion supporting such surcharging under Section 506(c) of the Bankruptcy Code, or (H) on or prior to three (3) Business Days after the entry of the Final Financing Order, the Parent and its Subsidiaries shall not have received the Refinancing Term Loans (as defined in the Term Loan DIP Credit Agreement); or

(iii) The Bankruptcy Courts shall have entered an order in any of the Cases (A) denying or terminating use of cash collateral by any of the Debtors, and the Debtors have not obtained use of cash collateral (consensually or non-consensually), to the extent provided in any such orders, (B) granting relief from any stay or proceeding (including, without limitation, the automatic stay under Section 362 of the Bankruptcy Code or the CCAA) so as to allow any third party to proceed with foreclosure (or the granting of a deed in lieu of foreclosure or the like) against any assets of the Debtors with a value in excess of $500,000 in the aggregate or the Equity Interests in any Credit Party or in any Subsidiary whose Equity Interest (or portion thereof) has been pledged as security for the Obligations or permit third parties to exercise other remedies that would have a Material Adverse Effect or (C) without the prior written consent of the Required Lenders, authorizing financing for any of the Credit Parties under Section 364 of the Bankruptcy Code or under the CCAA (other than the Term Loan DIP Credit Agreement and the other transactions contemplated by the Credit Documents) unless such financing is expressly permitted hereunder or such order contemplates Payment in Full of the Obligations upon consummation thereof; or

(iv) The filing or support of any pleading by any Credit Party or other Debtor seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (iv) above, unless such filing or any pleading is in connection with the enforcement of the Credit Documents against any Secured Party; or

(v) The filing of a motion in any of the Cases by the Parent or any other Debtor to (A) use DIP Cash Collateral under Section 363(c) of the Bankruptcy Code or the CCAA without the consent of the Required Lenders or (B) to file any plan of reorganization or liquidation unless such plan contemplates a Payment in Full of all Prepetition Obligations and Obligations hereunder on the effective date of such plan; or

(l) *Material Payments*. Any material payments are made in respect of pre-petition obligations of any Debtor other than (i) to the extent permitted by the Interim Financing Order (or the Final Financing Orders, when applicable), (ii) to the extent permitted by any "first day order" or "second day order" entered by the Bankruptcy Courts that is in form and substance reasonably satisfactory to the Required Lenders, or (iii) as otherwise permitted hereunder; or

(m) *Consolidation*. Any Credit Party consolidating or combining with any other Person except to the extent expressly permitted hereunder; or

(n) *Claim Status*. Other than in respect of the Obligations, the Carve-Out or as otherwise permitted under the Credit Documents or the Financing Orders, an order is entered by the Bankruptcy Courts granting superpriority administrative expense claim status in the Cases pursuant to Section 364(c)(1) of the Bankruptcy Code on a *pari passu* or senior basis to the claims against the Debtors of the Secured Parties under the Credit Documents, or the filing by any Credit Party of a motion or application seeking entry of such an order; or

(o) *Plan of Reorganization*. A Chapter 11 plan or any other plan, a plan of compromise or arrangement in the Canadian Case that does not provide for the Payment in Full of the Obligations shall be confirmed in any of the Cases, or any of the Credit Parties or any of their Subsidiaries shall file, propose, support or fail to contest in good faith the filing or confirmation of such a plan unless such plan contemplated a Payment in Full of all Obligations; or

(p) *Avoidance; Disgorgement; etc*. The Bankruptcy Courts shall (i) enter an order avoiding or requiring disgorgement by the Secured Parties of any amounts received in respect of the Obligations, (ii) enter an order authorizing or directing payment of any claim or claims under Section 506(c) or 552(b) of the Bankruptcy Code against or with respect to any of the Collateral or (iii) enter an order resulting in marshaling of any Collateral or precluding the attachment of Liens securing the Obligations to post-petition property based on the "equities of the case" under Section 552(b) of the Bankruptcy Code; or

(q) *[Reserved]*; or

(r) *Material Impairment.* If any Credit Party shall file a motion, pleading or proceeding that challenges the rights and remedies of any of the Administrative Agent or the Lenders under the Credit Documents in any of the Cases or that is inconsistent with the Credit Documents, in any such case, to the extent the relief sought thereby or such determination could reasonably be expected to result in a material impairment of the rights or interests of the Lenders, other than a challenge to whether an Event of Default has, in fact, occurred and is continuing; or

(s) *Non-Debtor Proceedings*. (i) Any Domestic Subsidiary that is not a Debtor (or a Debtor as a result thereof) institutes or consents to the institution of any proceeding under any Debtor Relief Law or (ii) any Foreign Subsidiary that is a Credit Party institutes or consents to the institution of a proceeding for relief under Chapter 11 of the Bankruptcy Code, and, in any event set forth in clause (i) or (ii) above, within twenty (20) days after the occurrence thereof, the court overseeing such proceeding has not entered an order subjecting such non-Debtor to the Interim Financing Order (or, after entry thereof, the Final Financing Orders) and such other orders as the Required Lenders may reasonably require (it being agreed that, during any such thirty (30)-day period after any event set forth in clause (i) or (ii) above, such event shall not constitute a Default).

(t) *Additional Financing*. The Parent or any other Debtor shall file a motion in any of the Cases to obtain, or either Bankruptcy Court shall enter an order to approve, any additional financing under Sections 364(c) or (d) of the Bankruptcy Code or under the CCAA (including, without limitation, any indebtedness secured by a Lien on any Collateral equal or senior to the priority of the Liens securing the Obligations) unless (i) such financing and, if applicable, any Liens securing such financing are expressly permitted hereunder or (ii) such motion or order, as applicable, contemplates Payment in Full of the Obligations and the Prepetition Obligations upon consummation thereof.

(u) *Priming Liens*. At any time, the Parent any other Credit Party or any Debtor seeks or consents to a priority of any Liens against the Parent or any other Credit Party that is equal or senior to the priority of the Liens granted to the Secured Parties, except (i) as provided in the Financing Orders, (ii) with respect to a Permitted Lien or (iii) such motion or order, as applicable contemplates Payment in Full of the Obligations upon consummation thereof.

(v) *Post-Petition Intercreditor Agreement*. (i) the Liens shall cease to have the priorities contemplated in Section 2.19 and/or in the Post-Petition Intercreditor Agreement

or any such provision thereof, (ii) the Post-Petition Intercreditor Agreement shall be invalidated or otherwise cease, for any reason, to be obligations in full force and effect, and valid, binding and enforceable obligations of the Persons (other than the Lenders or the Administrative Agent) subject thereto, (iii) any Person party to the Post-Petition Intercreditor Agreement (other than the Lenders or the Administrative Agent) shall breach any obligations under the Post-Petition Intercreditor Agreement or any Person (other than the Lenders or the Administrative Agent) shall repudiate its obligations thereunder and/or state that any such obligations are not in full force and effect, valid, binding and enforceable against any such Person, (iv) any Person party to the Post-Petition Intercreditor Agreement (other than the Lenders or the Administrative Agent) shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Post-Petition Intercreditor Agreement, or (B) that any of such Post-Petition Intercreditor Agreement exist for the benefit of any Secured Party; or (v) any Person party to the Post-Petition Intercreditor Agreement (other than the Lenders or the Administrative Agent) thereof or any other Person fails to observe or perform any of the provisions of the Post-Petition Intercreditor Agreement applicable to it.

(w) *Sale Transaction.* An amendment (in any event, without the Administrative Agent's consent, in its Permitted Discretion), of the Biscuit Acquisition Agreement which would result in either the Prepetition ABL Facility or the Obligations under this Agreement not being paid in full in cash.

Section 10.02. *Remedies Upon Event of Default*. Subject in all respects to the Financing Orders, including any notice requirement thereunder as applicable, if any Event of Default shall have occurred and be continuing, the Administrative Agent may, with the consent of the Required Lenders, and shall, upon the written request of the Required Lenders, in each case by written notice to the Parent, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, any Lender or the holder of any Note to enforce its claims against any Credit Party (*provided* that , if an Event of Default specified in Section 10.01(e) shall occur with respect to any Credit Party, the result which would occur upon the giving of written notice by the Administrative Agent as specified in clauses (a) and (b) below shall occur automatically without the giving of any such notice): (a) declare the Aggregate Commitments terminated, whereupon all Commitments of each Lender shall forthwith terminate immediately; (b) declare the principal of and any accrued interest in respect of all Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party; (c) enforce, as Collateral Agent, all of the Liens and security interests created pursuant to the Security Documents; (d) enforce the terms of Article 13, (e) terminate, reduce or condition any Revolving Commitment, or make any adjustment to the Borrowing Base and (f) require the Credit Parties to Cash Collateralize LC Obligations, and, if the Credit Parties fail promptly to deposit such Cash Collateral, the Administrative Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolving Loans (whether or not an Overadvance exists or is created thereby, or the conditions in Section 6.01 are satisfied).

Section 10.03. *Application of Funds*. After the exercise of remedies provided for above (or after the Loans have automatically become immediately due and payable and the LC Exposure has automatically been required to be Cash Collateralized as set forth above), any amounts received on account of the Obligations (including without limitation, proceeds received

by the Administrative Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral (including, without limitation, pursuant to the exercise by the Administrative Agent of its remedies during the continuance of an Event of Default) or otherwise received on account of the Obligations) shall, subject to the provisions of Sections 2.11 and 2.13(j), and subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, be applied in the following order:

*First*, to the payment of all reasonable costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Administrative Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent in connection therewith;

*Second*, to the payment of all other reasonable costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith (other than in respect of Secured Bank Product Obligations);

*Third*, to interest then due and payable on the Swingline Loans;

*Fourth*, to the principal balance of the Swingline Loans outstanding until the same has been prepaid in full;

*Fifth*, to interest then due and payable on Revolving Loans and other amounts due pursuant to Sections 3.01, 3.02 and 4.01;

*Sixth*, to Cash Collateralize all LC Exposures (to the extent not otherwise Cash Collateralized pursuant to the terms hereof) *plus* any accrued and unpaid interest thereon;

*Seventh*, to the principal balance of Revolving Borrowings then outstanding and all Obligations on account of Noticed Hedges with Secured Parties, pro rata;

*Eighth*, to all other Obligations *pro rata*;

*Ninth*, to the payment in full of the Prepetition Obligations including the funding of indemnity accounts; and

*Tenth*, the balance, if any, as required by the Post-Petition Intercreditor Agreement or, in the absence of any such requirement, to the Person lawfully entitled thereto (including the applicable Credit Party or its successors or assigns).

Amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause *Sixth* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Amounts distributed with respect to any Secured Bank Product Obligations shall be the lesser of the maximum Secured Bank Product Obligations last reported to the Administrative Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Secured Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver

such calculation within five (5) days following request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is zero.

In the event that any such proceeds are insufficient to pay in full the items described in clauses *First* through *Ninth* of this Section 10.03, the Credit Parties shall remain liable for any deficiency. Notwithstanding the foregoing provisions, this Section 10.03 is subject to the provisions of the Post-Petition Intercreditor Agreement.

## ARTICLE 11
## THE ADMINISTRATIVE AGENT

Section 11.01. *Appointment and Authority.* (a) Each of the Lenders and the Issuing Banks hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and neither the Borrowers nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "Collateral Agent" under the Credit Documents, and each of the Lenders, the Issuing Banks hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the Issuing Banks for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 11.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article 11 (including Section 11.05, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Credit Documents) as if set forth in full herein with respect thereto.

Section 11.02. *Rights as a Lender.* The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Parent or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.03. *Exculpatory Provisions.* The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents,

and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.02 and Section 12.10) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the Issuing Banks.

(e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 11.04. *Reliance by Administrative Agent*. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the

issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or any Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Parent or the Lead Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.05. *Delegation of Duties*. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 11.06. *Resignation of Administrative Agent*. (a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Banks and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Banks under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except

for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Article shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation or removal by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as Issuing Bank and Swingline Lender. If Bank of America resigns as an Issuing Bank, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all Obligations with respect thereto, including the right to require the Lenders to make U.S. Base Rate Loans or Canadian Prime Rate Loans or fund risk participations in unreimbursed LC Disbursements pursuant to Section 2.13(e). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make U.S. Base Rate Loans or Canadian Prime Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.12(d). Until the appointment of a successor Swingline Lender, Swingline Loans will not be available. Upon the appointment by the Borrower of a successor Issuing Bank or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank or Swingline Lender, as applicable, (b) the retiring Issuing Bank and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Credit Documents, and (c) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

Section 11.07. *Non-Reliance on Administrative Agent and Other Lenders*. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking

action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 11.08. *No Other Duties, Etc.* Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or other titles as necessary listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder.

Section 11.09. *Administrative Agent May File Proofs of Claim; Credit Bidding.* In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letters of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, any Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under Section 2.05, Section 12.01 or Section 12.16 allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Banks to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 2.05, Section 12.01 and Section 12.16.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank to authorize the Administrative Agent to vote in respect of the claim of such Lender or such Issuing Bank or in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or under the provisions of the Bankruptcy and Insolvency Act (Canada) or the Companies' Creditors Arrangement Act (Canada) or any similar Laws in any other jurisdictions to which a Credit Party

is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (i) through (vi) of Section 12.10(a), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 11.10. *Collateral and Guaranty Matters*. Without limiting the provision of Section 11.09, each of the Lenders and Issuing Banks irrevocably authorizes the Administrative Agent, at its option and in its discretion,

(a) release any Lien on any property granted to or held by the Administrative Agent under any Credit Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities in respect of Secured Bank Product Obligations as to which arrangements satisfactory to the applicable Secured Bank Product Provider shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the applicable Issuing Bank shall have been made), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Credit Document to a Person that is not a Credit Party, (iii) that constitutes "Excluded Property", or (iv) if approved, authorized or ratified in writing in accordance with Section 12.10;

(b) to release any Subsidiary Guarantor from its obligations under Article 13 if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Credit Documents; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Credit Document to the holder of any Lien on such property that is permitted by Section 9.01(f).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under Article 13 pursuant to this Section 11.10. In each case as specified in this Section 11.10, the Administrative Agent will, at each Borrower's expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under Article 13, in each case in accordance with the terms of the Credit Documents and this Section 11.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

As part of its duties as the Collateral Agent under the Credit Documents, the Collateral Agent (x) is, for the purposes of holding any security granted under the Security Documents governed by the laws of the Province of Quebec, hereby appointed by each Secured Party, and (y) hereby agrees to act as hypothecary representative within the meaning of Article 2692 of the Civil Code of Quebec, for all present and future Secured Parties. Any Person who becomes a Secured Party shall, by its execution of an Assignment and Assumption Agreement, be deemed to have consented to and confirmed the Collateral Agent as the Person acting as hypothecary representative holding the aforementioned Security Documents. The appointment of a successor Collateral Agent pursuant to this Agreement shall also constitute the appointment of a successor hypothecary representative hereunder. Notwithstanding the provisions of Section 12.08, the provisions of this subsection shall be governed by the laws of the Province of Quebec and the federal laws of Canada applicable therein.

Section 11.11. *Secured Bank Product Obligations*. Except as otherwise expressly set forth herein or in any other Credit Document, no Secured Bank Product Provider that obtains the benefits of Section 10.03, the Guaranty or any Collateral by virtue of the provisions hereof or of the Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Credit Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Credit Documents. Notwithstanding any other provision of this Article 11 to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Bank Product Obligations unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Secured Bank Product Provider.

Section 11.12. *[Reserved]*.

Section 11.13. *Withholding Taxes*. To the extent required by any applicable law (as determined in the good-faith discretion of the withholding agent), the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service, the Canada Revenue Agency or any other authority of the United States, Canada or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within ten (10) days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Section 4.01, and without limiting or expanding the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Credit Document against any amount due the Administrative Agent under this Section 11.13. The agreements in this Section 11.13 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

## ARTICLE 12
## MISCELLANEOUS

Section 12.01. *Payment of Expenses, etc.* (a) The Credit Parties hereby jointly and severally agree to (i) pay all reasonable invoiced out-of-pocket costs and expenses of (x) the Administrative Agent for fees and documented expenses of any advisors and professionals engaged by the Administrative Agent (including, without limitation, the reasonable fees and disbursements of Choate Hall & Stewart LLP and Norton Rose Fulbright Canada LLP and, if reasonably necessary, one local counsel in any other relevant jurisdiction, but excluding the monthly fees and disbursements of any financial advisor(s)) in connection with the preparation, execution and delivery of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein, the administration hereof and thereof and any amendment, waiver or consent relating hereto or thereto (whether or not effective), of the Agents in connection with their syndication efforts with respect to this Agreement and/or those associated with collateral monitoring, collateral reviews and appraisals, environmental reviews, of (y) the Administrative Agent and each Lender but, in no event, more than one firm of outside counsel for the Lenders (or if reasonably necessary, one firm of local counsel in any local jurisdiction), in connection with the enforcement of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a “work-out” or pursuant to any insolvency or bankruptcy proceedings (and, in each case, in the case of an actual or perceived conflict of interest, where the party affected by such conflict informs the Parent of such conflict and thereafter retains its own counsel, of another firm of counsel for each such affected party similarly situated); (ii) pay and hold each Agent, each Lender and each Issuing Bank harmless from and against any and all Other Taxes with respect to the foregoing matters and save each Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent

attributable to such Agent or Lender) to pay such Other Taxes; and (iii) indemnify each Agent, each Lender, each Issuing Bank and each other Secured Party and each of their respective Affiliates, successors and assigns, and the partners, officers, directors, employees, trustees, agents, advisors, controlling persons, investment advisors and other representatives of each of the foregoing (each, an "**Indemnified Person**") but, in no event, more than one firm of outside counsel for the Lenders (or if reasonably necessary, one firm of local counsel in any local jurisdiction), from and against and hold each of them harmless against (and will reimburse each Indemnified Person as the same are incurred for) any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements and documented out-of-pocket expenses) incurred by, imposed on, assessed or asserted against any of them as a result of, or arising out of, or in any way related to, or by reason of, (A) any investigation, litigation or other proceeding (whether or not any Agent, any Lender or other Secured Party is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Credit Party) related to the entering into and/or performance of this Agreement or any other Credit Document or the proceeds of any Loans hereunder or the consummation of the Transaction or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents, or (B) the actual or alleged presence of Hazardous Materials in the Environment relating in any way to any Real Property owned, leased or operated, at any time, by the Parent or any of its Subsidiaries or any of their respective predecessors; the generation, storage, transportation, handling, treatment, use, Release or threat of Release of Hazardous Materials by or on behalf of the Parent or any of its Subsidiaries or any of their respective predecessors at any location, whether or not owned, leased or operated by the Parent or any of its Subsidiaries or any of their respective predecessors; the non-compliance by the Parent or any of its Subsidiaries or any of their respective predecessors with any Environmental Law (including applicable permits thereunder); or any Environmental Claim or liability under any applicable Environmental Laws related to the Parent or any of its Subsidiaries or any of their respective predecessors or relating in any way to any Real Property at any time owned, leased or operated by the Parent or any of its Subsidiaries or any of their respective predecessors (but excluding in each case any losses, liabilities, claims, damages or expenses (1) to the extent incurred by reason of the gross negligence, bad faith or willful misconduct of the applicable Indemnified Person or any of its Related Indemnified Persons, (2) to the extent incurred by reason of any material breach of the obligations of such Indemnified Person under this Agreement or the other Credit Documents (in the case of each of preceding clauses (1) and (2), as determined by a court of competent jurisdiction in a final and non-appealable decision) or (3) that do not involve or arise from an act or omission by the Parent or other Credit Parties or any of their respective affiliates and is brought by an Indemnified Person against an Indemnified Person (other than claims against any Agent in its capacity as such or in its fulfilling such role). To the extent that the undertaking to indemnify, pay or hold harmless any Agent, any Lender or any other Secured Party or other Indemnified Person set forth in the preceding sentence may be unenforceable because it violates of any law or public policy, the Credit Parties shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law. Notwithstanding the foregoing, this Section 12.01(a) shall not apply with respect to Taxes other than any Taxes that represent losses, liabilities, claims and damages arising from a non-Tax claim. All amounts due under this Section 12.01(a) shall be paid within ten (10) Business Days of receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail.

(b) To the fullest extent permitted by applicable law, each of the Credit Parties shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against

any Indemnified Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnified Person referred to above shall be liable for any damages arising from the use by others of any information or other materials distributed to such party by such Indemnified Person through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Person as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(c) To the extent that the Credit Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof), the Issuing Bank, the Swingline Lender or to any Affiliate thereof, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Bank, the Swingline Lender or to such Affiliate, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the aggregate Revolving Loan Commitments at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), _provided_, _further_ that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Bank, the Swingline Lender or against any Affiliate thereof acting for the Administrative Agent (or any such sub-agent), the Issuing Bank or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are several and not joint.

Section 12.02. *Right of Setoff*. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, subject to the Financing Orders and the Post-Petition Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) (other than accounts used exclusively for payroll, payroll taxes, fiduciary and trust purposes, and employee benefits) and any other Indebtedness at any time held or owing by the Administrative Agent or such Lender (including, without limitation, by branches and agencies of the Administrative Agent or such Lender wherever located) to or for the credit or the account of the Parent or any of its Subsidiaries against and on account of the Obligations and liabilities of the Credit Parties to the Administrative Agent or such Lender under this Agreement or under any of the other Credit Documents, including, without limitation, all interests in Obligations purchased by such Lender pursuant to Section 12.04(b), and all other claims of any nature or description arising out of or connected with this Agreement or any other Credit Document, irrespective of whether or not the Administrative Agent or such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

Section 12.03. *Notices; Effectiveness; Electronic Communications.*

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all

notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Parent, the Lead Borrowers or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 1.01(c); and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in an administrative questionnaire in form and substance reasonably satisfactory to the Administrative Agent (an "**Administrative Questionnaire**") (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Parent or the Lead 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.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to Parent, the Lead Borrowers, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Parent, Lead Borrowers', any Credit Party's or the Administrative Agent's transmission of Borrower Materials through the Internet, except for losses, claims, damages, liabilities or expenses to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party.

(d) Change of Address, Etc. Each of the Parent, the Lead Borrowers and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Notices of Borrowing) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 12.04. *Successors and Assigns.*

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrowers may not assign or otherwise transfer any of their rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 12.04(b), (ii) by way of participation in accordance with the provisions of Section 12.04(d), or (iii) by way of pledge or assignment of a security interest or hypothec subject to the restrictions of Section 12.04(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. No Lender may

assign or transfer any of its rights or obligations hereunder to an Ineligible Transferee. The list of all Ineligible Transferees shall be made available to all Lenders. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Ineligible Transferees. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is an Ineligible Transferees or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to, or the restrictions on any exercise of rights or remedies of, any Ineligible Transferees.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in subsection (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption Agreement, as of the Trade Date, shall not be less than $5,000,000 unless each of the Administrative Agent and, so long as no Event of Default under Section 10.01(a) or (e) has occurred and is continuing, the Lead Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Lead Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Default or an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Lead Borrowers shall be deemed to have consented to any such assignment unless they shall object thereto by written notice to the

Administrative Agent within ten (10) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent and the Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Revolving Commitment if such assignment is to a Person that is not a Lender with a Revolving Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption Agreement, together with a processing and recordation fee in the amount of $3,500; provided, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. Except as expressly provided herein, no such assignment shall be made (A) to the Borrowers or any of the Borrowers' Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to an Ineligible Transferee or (D) to a natural Person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Term Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Term Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this

Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 4.01, Section 3.01, Section 3.03, Section 12.01(a)(iii) and Section 12.16 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section 12.04.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Parent and the Lead Borrowers (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Notice Office in the United States of America a copy of each Assignment and Assumption Agreement delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and each Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Lead Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than an Ineligible Transferee, a natural Person, a Defaulting Lender, the Parent or any of the Parent's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) all Borrowers, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.13 without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (i), (ii) and (iii) of the first proviso to Section 12.10(a) or clause (1) of the second proviso to Section 12.10 , in each case, that affects such Participant. Each Borrower agrees that each Participant shall be entitled to the benefits of Section 4.01, Section 3.01, and Section 3.03 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Sections 4.01(b) and 4.01(c) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 3.04

and Section 12.19 as if it were an assignee under subsection (b) of this Section and (B) shall not be entitled to receive any greater payment under Section 3.01 or Section 4.01, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at each Borrower's request and expense, to use reasonable efforts to cooperate with each Borrower to effectuate the provisions of Section 2.19 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.02 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.10(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of each Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or in connection with an enquiry by the Canada Revenue Agency in accordance with the provisions of the ITA. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest or hypothec in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as Issuing Bank or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitment and Revolving Loans pursuant to Section 12.04(b), Bank of America may, (i) upon 30 days' notice to the Lead Borrowers and the Lenders, resign as Issuing Bank and/or (ii) upon 30 days' notice to the Lead Borrowers, resign as Swingline Lender. In the event of any such resignation as Issuing Bank or Swingline Lender, the Lead Borrowers shall be entitled to appoint from among the Lenders a successor Issuing Bank or Swingline Lender hereunder; *provided*, *however*, that no failure by the Lead Borrowers to appoint any such successor shall affect the resignation of Bank of America as Issuing Bank or Swingline Lender, as the case may be. If Bank of America resigns as Issuing Bank, it shall retain all the rights, powers, privileges and duties of the Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all LC Obligations with respect thereto (including the right to require the Lenders to make U.S. Base Rate Loans or fund risk participations in unreimbursed LC Disbursements pursuant to Section 2.13(e)). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make U.S. Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.12(d). Upon the

appointment of a successor Issuing bank and/or Swingline Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank or Swingline Lender, as the case may be, and (b) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

Section 12.05. *No Waiver; Remedies Cumulative*. No failure or delay on the part of the Administrative Agent, the Collateral Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Parent or any other Credit Party and the Administrative Agent, the Collateral Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Credit Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Collateral Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Collateral Agent or any Lender to any other or further action in any circumstances without notice or demand.

Notwithstanding anything to the contrary contained herein or in any other Credit Document, the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 11.10 for the benefit of all the Lenders; *provided*, *however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Credit Documents, (b) any Lender from exercising setoff rights in accordance with Section 12.02 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and *provided*, *further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Credit Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 11.10 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13 any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 12.06. *Calculations; Computations.*

(a) The financial statements to be furnished to the Lenders pursuant hereto shall be made and prepared in accordance with GAAP consistently applied throughout the periods involved (except as set forth in the notes thereto).

(b) All computations of interest and other Fees hereunder shall be made on the basis of a three hundred sixty-five (365)-day or three hundred sixty-six (366)-day year, as the case may be, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or Fees are payable.

(c) The calculation of any financial ratios under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-down if there is no nearest number).

Section 12.07. *GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL.*

(a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN THE RELEVANT SECURITY DOCUMENT, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF, TO THE EXTENT THAT THE SAME ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION) AND (TO THE EXTENT APPLICABLE) THE U.S. BANKRUPTCY CODE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT (EXCEPT THAT, (X) IN THE CASE OF ANY SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT OR COLLATERAL AGENT IN THE JURISDICTION IN WHICH THE RELEVANT COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO ANY CREDIT PARTY, ACTIONS OR PROCEEDINGS RELATED TO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS SHALL BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS) MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, EACH OF THE PARTIES HERETO OR THERETO HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER IT, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENTS BROUGHT IN ANY OF THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER IT.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING

OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

Section 12.08. *Counterparts*. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Parent and the Administrative Agent.

Section 12.09. *Headings Descriptive*. The headings of the several Sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 12.10. *Amendment or Waiver; etc.* (a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the Credit Parties party hereto or thereto and the Required Lenders (although additional parties may be added to (and annexes may be modified to reflect such additions) the Security Documents in accordance with the provisions hereof and thereof without the consent of the other Credit Parties party thereto or the Required Lenders), *provided* that no such change, waiver, discharge or termination shall:

(i) without the prior written consent of each Lender (and Issuing Bank, if applicable) directly and adversely affected thereby, extend the final scheduled maturity of any Revolving Commitment, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with the applicability of any post-default increase in interest rates) or reduce or forgive the principal amount thereof;

(ii) except as otherwise expressly provided in the Security Documents, release all or substantially all of the Collateral under all the Security Documents without the prior written consent of each Lender, other than in connection with the Payment in Full of all Obligations;

(iii) except as otherwise provided in the Credit Documents or in connection with the Payment in Full of the Obligations, release all or substantially all of the value of Article 13 without the prior written consent of each Lender;

(iv) amend, modify or waive any pro rata sharing provision of Section 2.10, the payment waterfall provision of Section 10.03, or any provision of this Section 12.10(a) (except for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford the protections to such additional extensions of credit of the type provided to the Revolving Commitments on the Closing Date), in each

case, without the prior written consent of each Lender directly and adversely affected thereby;

(v) reduce the percentage specified in the definitions of Required Lenders or Supermajority Lenders without the prior written consent of each Lender directly and adversely affected thereby (it being understood that, with the prior written consent of the Required Lenders or Supermajority Lenders, as applicable, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders or Supermajority Lenders, as applicable, on substantially the same basis as the extensions of Revolving Commitments are included on the Closing Date);

(vi) consent to the assignment or transfer by any Borrower of any of its rights and obligations under this Agreement without the consent of each Lender; *provided further* that no such change, waiver, discharge or termination shall (1) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Aggregate Commitments shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender shall not constitute an increase of the Commitment of such Lender), (2) without the consent of each Agent adversely affected thereby, amend, modify or waive any provision of Article 11 or any other provision as same relates to the rights or obligations of such Agent, (3) without the consent of Collateral Agent, amend, modify or waive any provision relating to the rights or obligations of the Collateral Agent, (4) without the consent of an Issuing Bank or the Swingline Lender, amend, modify or waive any provision relating to the rights or obligations of such Issuing Bank or Swingline Lender, (5) without the prior written consent of the Supermajority Lenders, change the definition of the terms "Availability" or "Borrowing Base" or any component definition used therein (including, without limitation, the definitions of "Eligible Accounts" and "Eligible Inventory") if, as a result thereof, the amounts available to be borrowed by the Borrowers would be increased; *provided* that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves or (6) without the prior written consent of the Supermajority Lenders, increase the percentages set forth in the term "Borrowing Base" or add any new classes of eligible assets thereto.

(b) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement as contemplated by clauses (i) through (v), inclusive, of the first proviso to Section 12.10(a), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained (such Lender, a "**Non-Consenting Lender**"), then the Parent shall have the right, so long as all Non-Consenting Lenders whose individual consent is required are treated as described in either clauses (i) or (ii) below, to either (i) replace each such Non-Consenting Lender or Lenders with one or more replacement lenders so long as at the time of such replacement, each such replacement lender consents to the proposed change, waiver, discharge or termination or (ii) terminate such Non-Consenting Lender's Commitments and/or repay the outstanding Revolving Loans of such Lender *provided* that, unless the Commitments that are terminated, and Revolving Loans repaid, pursuant to the preceding clause (ii) are immediately replaced in full at such time through the addition of new Lenders or the increase of outstanding Loans of existing Lenders (who in each case must specifically consent thereto), then in the case of any action pursuant to preceding clause (ii) the Required Lenders (determined after giving effect to the proposed action) shall specifically consent thereto, *provided further* that in any event the Parent shall not have the right to replace a Lender,

terminate its Commitments or repay its Revolving Loans solely as a result of the exercise of such Lender's rights (and the withholding of any required consent by such Lender) pursuant to the second proviso to Section 12.10(a).

(c) Notwithstanding anything to the contrary herein, any fee letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto.

(d) Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender will not be entitled to vote in respect of amendments, waivers and consents hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Lender hereunder will not be taken into account in determining whether the Required Lenders or all of the Lenders, as required, have approved any such amendment, waiver or consent (and the definitions of "Supermajority" and "Required Lenders" will automatically be deemed modified accordingly for the duration of such period); *provided* that any such amendment or waiver that would increase or extend the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, or alter the terms of this proviso, will require the consent of such Defaulting Lender.

(e) Further, notwithstanding anything to the contrary contained in this Section 12.10, if following the Closing Date, the Administrative Agent and any Credit Party shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Credit Documents, then the Administrative Agent and the Credit Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Credit Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

Section 12.11. *Survival*. All indemnities set forth herein including, without limitation, in Sections 3.01, 3.02, 4.01, Section 11.13, 12.01 and Section 12.16 shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations. All representations and warranties made hereunder and in any other Credit Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Event, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 12.12. *Domicile of Loans*. Each Lender may transfer and carry its Revolving Loans at, to or for the account of any office, Subsidiary or Affiliate of such Lender. Notwithstanding anything to the contrary contained herein, to the extent that a transfer of Loans pursuant to this Section 12.12 would, at the time of such transfer, result in increased costs under Section 3.01 or 4.01 from those being charged by the respective Lender prior to such transfer, then the Borrowers shall not be obligated to pay such increased costs (although the Borrowers shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective transfer).

Section 12.13. *Confidentiality.* (a) Subject to the provisions of subsection (b) of this Section 12.13, each Agent and Lender agrees that it will use its commercially reasonable efforts not to disclose without the prior consent of the Parent (other than to its directors, officers, employees, accountants, auditors, advisors, counsel or other representatives or to another Lender if such Lender or such Lender's holding or parent company in its sole discretion determines that any such party should have access to such information, provided such Persons shall be subject to the provisions of this Section 12.13 to the same extent as such Lender (or language substantially similar to this Section 12.13(a)) any information with respect to the Parent or any of its Subsidiaries which is now or in the future furnished pursuant to this Agreement or any other Credit Document, *provided* that any Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this Section 12.13(a) by such Lender, (ii) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state, provincial or federal regulatory body having or claiming to have jurisdiction over such Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or the Canada Deposit Insurance Corporation or similar organizations (whether in the United States, Canada or elsewhere) or their successors, (iii) as may be required or appropriate in respect to any summons or subpoena or in connection with any litigation, (iv) in order to comply with any law, order, regulation or ruling applicable to such Lender, (v) to the Administrative Agent or the Collateral Agent, (vi) to any prospective or actual direct or indirect contractual counterparty in any swap, hedge or similar agreement (or to any such contractual counterparty's professional advisor), so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section 12.13 (or language substantially similar to this Section 12.13(a)), and (vii) to any prospective or actual transferee, pledgee or participant in connection with any contemplated transfer, pledge or participation of any of the Notes or Commitments or any interest therein by such Lender, *provided* that such prospective transferee, pledge or participant agrees to be bound by the confidentiality provisions contained in this Section 12.13 (or language substantially similar to this Section 12.13(a)); *provided further* that, to the extent permitted pursuant to any applicable law, order, regulation or ruling, and other than in connection with credit and other bank examinations conducted in the ordinary course with respect to such Lender, in the case of any disclosure pursuant to the foregoing clauses (ii), (iii) or (iv), such Lender will use its commercially reasonable efforts to notify the Lead Borrowers in advance of such disclosure so as to afford the Lead Borrowers the opportunity to protect the confidentiality of the information proposed to be so disclosed.

(b) The Borrowers hereby acknowledge and agree that each Lender may share with any of its affiliates, and such affiliates may share with such Lender, any information related to the Parent or any of its Subsidiaries (including, without limitation, any non-public customer information regarding the creditworthiness of the Parent and its Subsidiaries), provided such Persons shall be subject to the provisions of this Section 12.13 to the same extent as such Lender.

Section 12.14. *USA Patriot Act and Canadian AML Acts Notice*. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Parent and the Borrowers that pursuant to the requirements of the USA PATRIOT Act Title III of Pub. 107-56 (signed into law October 26, 2001 and amended on March 9, 2009) (the "**Patriot Act**") and the Canadian AML Acts, it is required to obtain, verify, and record information that identifies the Parent, the Borrowers and each Subsidiary Guarantor, which information includes the name of each Credit Party and other information that will allow such Lender to identify the Credit Party in accordance with the Patriot Act and the Canadian AML Acts, and each Credit Party agrees to promptly provide such information from time to time to any Lender.

Section 12.15. *Special Provisions Regarding Pledges of Equity Interests in Persons Not Organized in Qualified Jurisdictions*. The parties hereto acknowledge and agree that the provisions of the various Security Documents executed and delivered by the Credit Parties require that, among other things, all Equity Interests in various Persons owned by the respective Credit Party be pledged, and delivered for pledge, pursuant to the Security Documents. The parties hereto further acknowledge and agree that each Credit Party shall be required to take all actions under the laws of the jurisdiction in which such Credit Party is organized to create and perfect all security interests or hypothecs granted pursuant to the various Security Documents and to take all actions under the laws of the United States or Canada (as applicable) to perfect the security interests in the Equity Interests of any Person organized under the laws of said jurisdictions (to the extent said Equity Interests are owned by any Credit Party).

Section 12.16. *Currency Indemnity.* If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Agents or any Lender under any Credit Document or for the payment of damages in respect of any breach of any Credit Document, or under or in respect of a judgment or order of another court or tribunal for the payment of those amounts or damages, and the judgment or order is expressed in a currency (the "**Judgment Currency**") except the currency payable under the relevant Credit Document (the "**Agreed Currency**"), the party against whom the judgment or order is made shall indemnify and hold the Agents and the Lenders harmless against any deficiency in terms of the Agreed Currency in the amounts received by the Agents and the Lenders arising or resulting from any variation as between (a) the actual rate of exchange at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the actual rate of exchange at which the Agents or the Lender is able to purchase the Agreed Currency with the amount of the Judgment Currency actually received by the Agent or the Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent obligation from the other obligations of the Credit Parties under the Credit Documents and shall apply irrespective of any indulgence granted by the Agents or any Lender.

Section 12.17. *Waiver of Sovereign Immunity*. Each of the Credit Parties, in respect of itself, its Subsidiaries, its process agents, and its properties and revenues, hereby irrevocably agrees that, to the extent that the Parent, the Borrowers, or any of their respective Subsidiaries or any of its properties has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States, Canada or elsewhere, to enforce or collect upon the Loans or any Credit Document or any other liability or obligation of the Parent, the Borrowers, or any of their respective Subsidiaries related to or arising from the transactions contemplated by any of the Credit Documents, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, the Parent and the Borrowers, for themselves and on behalf of their respective Subsidiaries, hereby expressly waive, to the fullest extent permissible under applicable law, any such immunity, and agree not to assert any such right or claim in any such proceeding, whether in the United States, Canada or elsewhere. Without limiting the generality of the foregoing, the Parent and the Lead Borrowers further agree that the waivers set forth in this Section 12.17 shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

Section 12.18. *INTERCREDITOR AGREEMENT.* (a) EACH LENDER PARTY HERETO UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT IT (AND EACH OF ITS SUCCESSORS AND ASSIGNS) AND EACH OTHER LENDER (AND EACH OF THEIR

SUCCESSORS AND ASSIGNS) SHALL BE BOUND BY THE POST-PETITION INTERCREDITOR AGREEMENT, WHICH IN CERTAIN CIRCUMSTANCES MAY REQUIRE (AS MORE FULLY PROVIDED THEREIN) THE TAKING OF CERTAIN ACTIONS BY THE LENDERS, INCLUDING THE PURCHASE AND SALE OF PARTICIPATIONS BY VARIOUS LENDERS TO EACH OTHER IN ACCORDANCE WITH THE TERMS THEREOF.

(b) THE PROVISIONS OF THIS SECTION 12.19 ARE NOT INTENDED TO SUMMARIZE OR FULLY DESCRIBE THE PROVISIONS OF THE POST-PETITION INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE POST-PETITION INTERCREDITOR AGREEMENT TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE POST-PETITION INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NO AGENT OR ANY OF AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE POST-PETITION INTERCREDITOR AGREEMENT.

Section 12.19. *Acknowledgment and Consent to Bail-In of EEA Financial Institutions*. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 12.20. *Absence of Fiduciary Relationship; Acknowledgement of no Liability*. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Parent and its respective Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (B)

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

## ARTICLE 13
## GUARANTY

Section 13.01. *Guaranty*. Each Credit Party, severally, unconditionally and irrevocably guarantees (the undertaking by each Credit Party under this Article 13 being the "Guaranty") the punctual payment when and as due, whether at scheduled maturity or at a date fixed for prepayment or by acceleration, demand or otherwise, of all of the Obligations of each of the other Credit Parties now or hereafter existing under or in respect of the Credit Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premium, fees, indemnification payments, contract causes of action, costs, expenses or otherwise (such Obligations being the "**Guaranteed Obligations**"), and agrees to pay any and all expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Administrative Agent, the Collateral Agent or any of the other Secured Parties solely in enforcing any rights under this Guaranty. Without limiting the generality of the foregoing, each Credit Party's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any of the other Credit Parties to the Administrative Agent or any of the other Secured Parties under or in respect of the Credit Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Credit Party.

Section 13.02. *Guaranty Absolute*. Each Credit Party guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Credit Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Administrative Agent or any other Secured Party with respect thereto. The Obligations of each Credit Party under this Guaranty are independent of the Guaranteed Obligations or any other Obligations of any Credit Party under the Credit Documents, and a separate action or actions may be brought and prosecuted against such Credit Party to enforce this Guaranty, irrespective of whether any action is brought against any other Credit Party or whether any other Credit Party is joined in any such action or actions. The liability of each Credit Party under this Guaranty shall be absolute, unconditional and irrevocable irrespective of, and such

Credit Party hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any and all of the following:

(a) any lack of validity or enforceability of any Credit Document or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any Credit Party under the Credit Documents, or any other amendment or waiver of or any consent to departure from any Credit Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Credit Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or nonperfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any Subsidiary Guaranty or any other guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of Collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Guaranteed Obligations or any other Obligations of any Credit Party under the Credit Documents, or any other property and assets of any other Credit Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any other Credit Party or any of its Subsidiaries;

(f) any failure of the Administrative Agent or any other Secured Party to disclose to any Credit Party any information relating to the financial condition, operations, properties or prospects of any other Credit Party now or hereafter known to the Administrative Agent or such other Secured Party, as the case may be (such Credit Party waiving any duty on the part of the Secured Parties to disclose such information);

(g) the failure of any other Person to execute this Guaranty or any other guarantee or agreement of the release or reduction of the liability of any of the other Credit Parties or any other guarantor or surety with respect to the Guaranteed Obligations; or

(h) any other circumstance (including, without limitation, any statute of limitations or any existence of or reliance on any representation by the Administrative Agent or any other Secured Party) that might otherwise constitute a defense available to, or a discharge of, such Guarantor, any other Credit Party or any other guarantor or surety other than payment in full in cash of the Guaranteed Obligations.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Administrative Agent or any other Secured Party or by any other Person upon the insolvency, bankruptcy or reorganization of any other Credit Party or otherwise, all as though such payment had not been made.

Section 13.03. *Waivers and Acknowledgments*.

(a) Each Credit Party hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Guaranty, and any requirement that the Administrative Agent or any other Secured Party protect, secure, perfect or insure any Lien or any property or assets subject thereto or exhaust any right or take any action against any other Credit Party or any other Person or any Collateral.

(b) Each Credit Party hereby unconditionally waives any right to revoke this Guaranty, and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) Each Credit Party hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by the Secured Parties which in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Credit Party or other rights to proceed against any of the other Credit Parties, any other guarantor or any other Person or any Collateral, and (ii) any defense based on any right of setoff or counterclaim against or in respect of such Credit Party's obligations hereunder.

(d) Each Credit Party acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Credit Documents and that the waivers set forth in Section 13.02 and this Section 13.03 are knowingly made in contemplation of such benefits.

Section 13.04. *Subrogation*. Each Credit Party hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or may hereafter acquire against any other Credit Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of its Obligations under this Guaranty or under any other Credit Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Administrative Agent or any other Secured Party against such other Credit Party or any other insider guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from such other Credit Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, until such time as all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, and the Commitments shall have expired or terminated. If any amount shall be paid to any Credit Party in violation of the immediately preceding sentence at any time prior to the latest of (a) the payment in full in cash of all of the Guaranteed Obligations and all other amounts payable under this Guaranty, and (b) the Maturity Date, such amount shall be held in trust for the benefit of the Administrative Agent and the other Secured Parties and shall forthwith be paid to the Administrative Agent to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Credit Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) any Credit Party shall pay to the Administrative Agent all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, and (iii) the Maturity Date shall have occurred, the Administrative Agent and the other Secured Parties will, at such Credit Party's

request and expense, execute and deliver to such Credit Party appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer of subrogation to such Credit Party of an interest in the Guaranteed Obligations resulting from the payment made by such Credit Party.

Section 13.05. *Additional Guarantors*. Upon the execution and delivery by any Person of a guaranty joinder agreement in a form reasonably acceptable to the Administrative Agent (each, a "**Guaranty Supplement**"), (a) such Person shall be referred to as an "Additional Guarantor" and shall become and be a Credit Party hereunder, and each reference in this Guaranty to a "Credit Party " shall also mean and be a reference to such Additional Guarantor, and each reference in any other Credit Document to a "Credit Party " shall also mean and be a reference to such Additional Guarantor, and (b) each reference herein to "this Guaranty", "hereunder", "hereof" or words of like import referring to this Guaranty, and each reference in any other Credit Document to the "Guaranty", "thereunder", "thereof" or words of like import referring to this Guaranty, shall include each such duly executed and delivered Guaranty Supplement.

Section 13.06. *Continuing Guarantee; Assignments*. This Guaranty is a continuing guaranty and shall (a) remain in full force and effect until the latest of (i) the payment in full in cash of all of the Guaranteed Obligations and all other amounts payable under this Guaranty, and (ii) the Maturity Date, (b) be binding upon each Credit Party and its successors and assigns and (c) inure to the benefit of, and be enforceable by, the Administrative Agent and the other Secured Parties and their respective successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Lender may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender under this Article 13 or otherwise, in each case as provided in Section 12.04.

Section 13.07. *No Reliance*. Each Credit Party has, independently and without reliance upon any Agent or any Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guaranty and each other Credit Document to which it is or is to be a party, and such Credit Party has established adequate means of obtaining from each other Credit Party on a continuing basis information pertaining to, and is now and on a continuing basis will be completely familiar with, the business, condition (financial or otherwise), operations, performance, properties and prospects of such other Credit Party.

Section 13.08. *Quebec Guarantees*. To the extent that any Credit Party, whether now or at any time in the future, is located in the Province of Quebec:

(a) it hereby agrees that it shall be liable for, and hereby absolutely, irrevocably and unconditionally guarantees, on a solidary basis and as primary obligor and not merely as surety, to the Administrative Agent and the other Secured Parties and their respective successors and assigns, the Guaranteed Obligations; and

(b) it expressly waives and renounces the benefits of division and discussion.

# ARTICLE 14
# SECURITY

Section 14.01. *Grant of Security*.

(a) As security for the prompt and complete payment or performance, as the case may be, when due of all of its Obligations, each Credit Party does hereby pledge, assign, mortgage, charge and grant to the Collateral Agent, for the benefit of the Secured Parties, as and by way of a fixed and specific mortgage and charge, and grants to the Collateral Agent, for the benefit of the Secured Parties, a continuing security interest in, all of its present and after-acquired personal property, including, without limiting the foregoing, all of its right, title and interest in, to and under all of the following personal property and fixtures (and all rights therein), or in which or to which it has any rights, in each case whether now existing or hereafter from time to time acquired (but excluding any Excluded Property):

(i) each and every Account, including all claims of any kind that such Credit Party has, including claims against the Crown and claims under insurance policies;

(ii) the Cash Collateral Account and all Money, Securities, Instruments and other investments deposited or required to be deposited in the Cash Collateral Account;

(iii) all Chattel Paper;

(iv) all Contracts, together with all Contract Rights arising thereunder;

(v) all Equipment and fixtures;

(vi) all Deposit Accounts and all Money, Securities, Instruments and other investments deposited or required to be deposited in any of the foregoing;

(vii) all Documents of Title;

(viii) all Financial Assets;

(ix) all Goods;

(x) all Instruments;

(xi) all Intangibles;

(xii) all Intellectual Property

(xiii) all Inventory;

(xiv) all Investment Property, including shares, stock, warrants, bonds, debentures, debenture stock and other Securities (in each case whether evidenced by a Security Certificate or an Uncertificated Security) and Security Entitlements, Securities Accounts, Futures Contracts and Futures Accounts;

(xv) all rights in letters of credit (whether or not the respective letter of credit is evidenced by a writing);

(xvi) all Money;

(xvii) all Patents;

(xviii) all Permits;

(xix) all Commercial Tort Claims;

(xx) all Letter of Credit Rights;

(xxi) all insurance policies and Proceeds thereof;

(xxii) all Real Property (including each Credit Party's estate, right, title, interest, property, claim and demand, now or hereafter arising, in and to such Credit Party's Real Property);

(xxiii) subject to entry of the Final Financing Orders, any Proceeds of an Avoidance Action (but not the Avoidance Action itself);

(xxiv) any and all other assets of each Credit Party;

(xxv) with respect to the foregoing, all parts, components, renewals, substitutions and replacements of that property and all attachments, accessories and increases, additions and Accessions to that property; and

(xxvi) all Proceeds and products of any and all of the foregoing, including property in any form derived directly or indirectly from any dealing with such property

(all of the above, the "**Collateral**").

(b) The security interest of the Collateral Agent under this Agreement extends to all Collateral that any Credit Party may acquire, or with respect to which any Credit Party may obtain rights, at any time during the term of this Agreement.

Section 14.02. *Intellectual Property*. The security interest with respect to Intellectual Property constitutes a security interest in, and a charge and pledge of, such Collateral in favour of the Collateral Agent, for the benefit of the Secured Parties, but does not constitute an assignment or mortgage of such Collateral to the Collateral Agent or any Secured Party.

Section 14.03. *Attachment*. Each Credit Party has rights in its Collateral and agrees that the Secured Parties have given value and that the security interests created by this Agreement are intended to attach (a) with respect to Collateral that is now in existence, upon execution of this Agreement, and (b) with respect to Collateral that comes into existence in the future, upon such Credit Party acquiring rights in the Collateral or the power to transfer rights in the Collateral to the Collateral Agent. In each case, the parties do not intend to postpone the attachment of any security interests created by this Agreement.

Section 14.04. *Power of Attorney*. Subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Final Financing Orders, each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to act, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due or to become due to such Credit Party under or arising out of the Collateral, to endorse any cheques or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Collateral Agent may deem to be reasonably necessary or advisable to protect the interests of the Secured Parties, which appointment as attorney is coupled with an interest. Subject to the entry and the terms of the Financing Orders, including the Post-Petition Intercreditor Agreement, each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to act, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due or to become due to such Credit Party under or arising out of the Collateral, to endorse any cheques or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Collateral Agent may deem to be reasonably necessary or advisable to protect the interests of the Secured Parties, which appointment as attorney is coupled with an interest. Each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to sign any document which may be required by the United States Patent and Trademark Office, any domain name registrar, the United States Copyright Office, the Canadian Intellectual Property Office or any other governmental authority in order to effect an assignment of all right, title and interest in any Intellectual Property constituting Collateral, and record the same. Each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to execute and file any IP Security Documents to evidence and perfect the Collateral Agent's security interest in any after-acquired Recordable Intellectual Property.

Section 14.05. *In Addition to Other Rights; No Marshalling*. This Agreement is in addition to and is not in any way prejudiced by or merged with any other security interest or Lien now or subsequently held by the Collateral Agent in respect of any Obligations. The Secured Parties shall be under no obligation to marshal in favour of the Credit Parties any other security interest or Lien or any money or other property that the Secured Parties may be entitled to receive or may have a claim upon.*Covenants*. Each Credit Party covenants and agrees with the Collateral Agent (for its own benefit and for the benefit of the other Secured Parties) that:

(a) such Credit Party will keep and maintain proper books and records of its Accounts and Contracts, in which full, true and correct entries in conformity with generally accepted accounting principles and all Requirements of Law shall be made of all such Accounts and Contracts, and such Credit Party will make the same available on such Credit Party's premises to officers and designated representatives of the Collateral Agent for inspection in accordance with the terms and conditions set forth in this Agreement. Upon the occurrence and during the continuance of an Event of Default and at the request of the Collateral Agent, such Credit Party shall, at its own cost and expense, deliver all tangible evidence of its Accounts and Contract Rights (including, without limitation, all documents evidencing the Accounts and all

Contracts) and such books and records to the Collateral Agent or to its representatives (copies of which evidence and books and records may be retained by such Credit Party). Subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, upon the occurrence and during the continuance of an Event of Default and if the Collateral Agent so requests, such Credit Party shall legend, in form and manner satisfactory to the Collateral Agent, the Accounts and the Contracts, as well as books, records and documents (if any) of such Credit Party evidencing or pertaining to such Accounts and Contracts with an appropriate reference to the fact that such Accounts and Contracts have been assigned to the Collateral Agent and that the Collateral Agent has a security interest therein;

(b) subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, upon the occurrence and during the continuance of an Event of Default, after giving notice to the relevant Credit Party of its intent to do so, if the Collateral Agent so directs any Credit Party, such Credit Party agrees (i) to cause all payments on account of the Accounts and Contracts to be made directly to a Collection Account, a Concentration Account or a Dominion Account, (ii) that the Collateral Agent may, at its option, directly notify the obligors in its own name or in the name of others with respect to any Accounts and/or under any Contracts to make payments with respect thereto as provided in the preceding clause (i), and (iii) that the Collateral Agent may enforce collection of any such Accounts and Contracts and may adjust, settle or compromise the amount of payment thereof, in the same manner and to the same extent as such Credit Party; provided that, (x) any failure by the Collateral Agent to give or any delay in giving such notice to the relevant Credit Party shall not affect the effectiveness of such notice or the other rights of the Collateral Agent created by this Section 14.06(b) and (y) no such notice shall be required if an Event of Default has occurred and is continuing. Subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, without notice to or assent by any Credit Party, the Collateral Agent may, upon the occurrence and during the continuance of an Event of Default, apply any or all amounts then in, or thereafter deposited in, the Cash Collateral Account or any Dominion Account toward the payment of the Obligations in the manner provided in this Agreement. The reasonable costs and expenses of collection (including reasonable legal fees), whether incurred by a Credit Party or the Collateral Agent, shall be borne by the relevant Credit Party. The Collateral Agent shall deliver a copy of each notice referred to in the preceding clause (y) to the relevant Credit Party, provided that (x) the failure by the Collateral Agent to so notify such Credit Party shall not affect the effectiveness of such notice or the other rights of the Collateral Agent created by this Section and (y) no such notice shall be required if an Event of Default has occurred and is continuing;

(c) except in accordance with such Credit Party's ordinary course of business and consistent with reasonable business judgment, or as permitted hereunder or by the Credit Documents, no Credit Party shall rescind or cancel any indebtedness evidenced by any Account, or modify any material term thereof or make any material adjustment with respect thereto, or extend or renew the same, or compromise or settle any material dispute, claim, suit or legal proceeding relating thereto, or sell any Account, or interest therein, without the prior written consent of the Collateral Agent unless such rescissions, cancellations, modifications, adjustments, extensions, renewals, compromises, settlements, releases, or sales would not reasonably be expected to materially adversely affect the value of the Accounts constituting Collateral taken as a whole. Except as otherwise permitted by the Credit Documents, no Credit Party will do anything to impair the rights of the Collateral Agent in the Accounts or Contracts;

(d) such Credit Party shall endeavor in accordance with historical business practices to cause to be collected from the Account Debtor named in each of its Accounts or

obligor under any Contract, as and when due (including, without limitation, amounts which are delinquent, such amounts to be collected in accordance with generally accepted lawful collection procedures) any and all amounts owing under or on account of such Account or Contract, and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Account or under such Contract. Except as otherwise directed by the Collateral Agent after the occurrence and during the continuation of an Event of Default or otherwise required pursuant to the Credit Agreement, any Credit Party may allow in the ordinary course of business as adjustments to amounts owing under its Accounts and Contracts (i) an extension or renewal of the time or times of payment, or settlement for less than the total unpaid balance, which such Credit Party finds appropriate in accordance with reasonable business judgment, (ii) a refund or credit due as a result of returned or damaged merchandise or improperly performed services or for other reasons which such Credit Party finds appropriate in accordance with reasonable business judgment and (iii) any other adjustments necessary or desirable in the Credit Party's reasonable business judgment. The reasonable costs and expenses (including, without limitation, reasonable legal fees) of collection, whether incurred by a Credit Party or the Collateral Agent, shall be borne by the relevant Credit Party;

(e) anything herein to the contrary notwithstanding, the Credit Parties shall remain liable under each of the Accounts to observe and perform all of the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to such Accounts. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Agreement, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Credit Party under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by them or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times;

(f) anything herein to the contrary notwithstanding, the Credit Parties shall remain liable under each of the Contracts to observe and perform all of the conditions and obligations to be observed and performed by them thereunder, all in accordance with and pursuant to the terms and provisions of each Contract. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Contract by reason of or arising out of this Agreement, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Credit Party under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any performance by any party under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times;

(g) [reserved];

(h) each Credit Party will do nothing to impair the rights of the Collateral Agent in the Collateral. Each Credit Party or an affiliate on behalf of such Credit Party will at all times maintain insurance, at such Credit Party's own expense to the extent and in the manner provided in this Agreement. If any Event of Default shall have occurred and be continuing, the Collateral Agent shall, at the time any proceeds of such insurance are distributed to the Secured Parties, apply such proceeds in accordance with Section 14.08(e). Each Credit Party assumes all

liability and responsibility in connection with the Collateral acquired by it and the liability of such Credit Party to pay the Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Credit Party;

(i) to the extent practicable, each Credit Party agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such Credit Party shall request that such warehouse receipt or receipt in the nature thereof shall not be a "negotiable" document of title (as such term is used in Section 26(1) of the PPSA or Section 7-104 of the UCC, in each case, as in effect in any relevant jurisdiction or under other relevant law);

(j) each Credit Party will, at its own expense, from time to time upon the reasonable request of the Collateral Agent, promptly furnish to the Collateral Agent such information with respect to the Collateral (including the identity of the Collateral or such components thereof as may have been reasonably requested by the Collateral Agent, the value and location of such Collateral, etc.) as may be requested by the Collateral Agent;

(k) each Credit Party will, at its own expense and upon the reasonable request of the Collateral Agent, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such lists, descriptions and designations of its Collateral, warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, certificates, reports and other assurances or instruments and take such further steps relating to the Collateral and other property or rights covered by the security interest hereby granted, which the Collateral Agent deems reasonably appropriate or advisable to perfect, preserve or protect its security interest in the Collateral; provided, that notwithstanding anything herein to the contrary, the Credit Parties shall not be required to take any action to perfect any security interest in any Collateral under the laws of any jurisdiction outside of the United States or Canada; and

(l) each Credit Party agrees to file such financing statements, in form reasonably acceptable to the Collateral Agent, as the Collateral Agent may from time to time reasonably request to establish and maintain a valid, enforceable, perfected security interest in the Collateral as provided herein and for the purpose of obtaining and preserving the full benefits of the other rights and security contemplated hereby. Each Credit Party will pay any applicable filing fees, recordation taxes and related expenses relating to its Collateral. Each Credit Party hereby authorizes the Collateral Agent to file any such financing statements without the signature of such Credit Party where permitted by law (and such authorization includes describing the Collateral as "all assets and all personal property whether now owned or hereafter acquired" or as "all present and after-acquired personal property" of such Credit Party or words of similar effect).

Section 14.07. *Security Representations and Warranties.* Each Credit Party represents and warrants, as applicable, as of the date hereof, as follows:

(a) Such Credit Party is the record and beneficial owner of Securities and Security Entitlements forming part of the Collateral. No security agreement, financing statement or other notice with respect to any or all of the Collateral is on file or on record in any public office, except for filings with respect to Permitted Liens.

(b) The terms of any interest in a partnership or limited liability company that is Collateral expressly provide that such interest is a "security" for the purposes of the Securities Transfer Act (Ontario) (or similar legislation of another jurisdiction), as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

Section 14.08. *Remedies*.

(a) Each Credit Party agrees that, subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, if any Event of Default shall have occurred and be continuing, then and in every such case, the Collateral Agent, in addition to any rights now or hereafter existing under applicable law and under the other provisions of this Agreement, shall have all rights as a secured party under any PPSA, any UCC, and such additional rights and remedies to which a secured party is entitled under the laws in effect in all relevant jurisdictions and may:

(i) personally, or by agents or attorneys, immediately take possession of the Collateral or any part thereof, from such Credit Party or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon such Credit Party's premises where any of the Collateral is located and remove the same and use in connection with such removal any and all services, supplies, aids and other facilities of such Credit Party;

(ii) instruct the obligor or obligors on any agreement, instrument or other obligation (including, without limitation, the Accounts and the Contracts) constituting the Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent and may exercise any and all remedies of such Credit Party in respect of such Collateral;

(iii) sell, assign or otherwise liquidate any or all of the Collateral or any part thereof in accordance with Section 14.08(b) hereof, or direct such Credit Party to sell, assign or otherwise liquidate any or all of the Collateral or any part thereof, and, in each case, take possession of the proceeds of any such sale or liquidation;

(iv) take possession of the Collateral or any part thereof, by directing such Credit Party in writing to deliver the same to the Collateral Agent at any reasonable place or places designated by the Collateral Agent, in which event such Credit Party shall at its own expense:

(A) forthwith cause the same to be moved to the place or places so designated by the Collateral Agent and there delivered to the Collateral Agent;

(B) store and keep any Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent as provided in Section 14.08(b) hereof; and

(C) while the Collateral shall be so stored and kept, provide such security and maintenance services as shall be reasonably necessary to protect the same and to preserve and maintain it in good condition;

(v) license or sublicense, on a royalty free basis, whether on an exclusive or nonexclusive basis, any Intellectual Property included in the Collateral (in the case of Trademarks, subject to reasonable quality control and in connection with goods and services of a similar type and quality sold by the applicable Credit Party under such Trademarks) and subject to those exclusive licenses granted by Credit Parties in effect on the date hereof and those granted by any Credit Party hereafter to the extent permitted by the Credit Agreement for such term and on such conditions and in such manner as the Collateral Agent shall in its sole judgment determine, it being understood that any such license may be exercised, at the option of the Collateral Agent, only upon the occurrence and during the continuation of an Event of Default; provided, that any such license shall be binding upon the Credit Parties notwithstanding any subsequent cure of an Event of Default;

(vi) apply any monies constituting Collateral or proceeds thereof in accordance with the provisions of Section 14.18(e); and

(vii) take any other action as specified in the PPSA or in the UCC;

it being understood that each Credit Party's obligation so to deliver the Collateral is of the essence of this Article 14 and that, accordingly, upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by such Credit Party of said obligation. By accepting the benefits of this Agreement and each other Security Document, the Secured Parties expressly acknowledge and agree that this Agreement and each other Security Document may be enforced only by the action of the Collateral Agent acting upon the instructions of the Required Lender and that no other Secured Party shall have any right individually to seek to enforce or to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Collateral Agent or the holders of at least a majority of the outstanding other Obligations, as the case may be, for the benefit of the Secured Parties upon the terms of this Agreement and the other Security Documents.

(b) To the extent permitted by applicable law, subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders:

(viii) if any Event of Default shall have occurred and be continuing, then any Collateral repossessed by the Collateral Agent under or pursuant to Section 14.08(a) hereof and any other Collateral whether or not so repossessed by the Collateral Agent, may be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Collateral Agent may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Collateral Agent or after any overhaul or repair at the expense of the relevant Credit Party which the Collateral Agent shall reasonably determine to be commercially reasonable.

(ix) any such sale, lease or other disposition may be effected by means of a public disposition or private disposition, effected in accordance with the applicable requirements (in each case if and to the extent applicable) of the PPSA and/or

such other mandatory requirements of applicable law as may apply to the respective disposition.

(x) the Collateral Agent may, without notice or publication, adjourn any public or private disposition or cause the same to be adjourned from time to time by announcement at the time and place fixed for the disposition, and such disposition may be made at any time or place to which the disposition may be so adjourned.

(xi) to the extent permitted by any such requirement of law, the Collateral Agent may bid for and become the purchaser (and may pay all or any portion of the purchase price by crediting Obligations against the purchase price) of the Collateral or any item thereof, offered for disposition in accordance with this Section 14.08(b) without accountability to the relevant Credit Party.

(xii) the Collateral Agent may also accept the Collateral in satisfaction of the Obligations. Each Credit Party agrees to do or cause to be done all such other acts and things as may be reasonably necessary to make such disposition or dispositions of all or any portion of the Collateral valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at such Credit Party's expense.

(c) Subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, the Collateral Agent may take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term includes a receiver and manager) of the Collateral or may by appointment in writing appoint any person to be a receiver of the Collateral. The Collateral Agent may remove any receiver appointed by it and appoint another in its place, and may determine the remuneration, acting reasonably, of any receiver, which may be paid from the proceeds of the Collateral in priority to other Obligations; any receiver appointed by the Collateral Agent shall, to the extent permitted by applicable law, have all of the rights, benefits and powers of the Collateral Agent under this Agreement, the PPSA or otherwise; and any receiver shall be deemed the agent of the Credit Parties and the Collateral Agent shall not be in any way responsible for any misconduct or negligence of any receiver.

(d) Except as otherwise provided in this Agreement, subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, EACH CREDIT PARTY HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH THE COLLATERAL AGENT'S TAKING POSSESSION OR THE COLLATERAL AGENT'S DISPOSITION OF ANY OF THE COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES, and each Credit Party hereby further waives, to the extent permitted by law:

(i) all damages occasioned by such taking of possession or any such disposition except any damages which are the direct result of the Collateral Agent's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision);

(ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder; and

(iii) all rights of redemption, appraisement, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof, and each Credit Party, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the relevant Credit Party therein and thereto, and shall be a perpetual bar both at law and in equity against such Credit Party and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under such Credit Party.

(e) Subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, all moneys collected by the Collateral Agent (or, to the extent any other Security Document requires proceeds of collateral under such other Security Document to be applied in accordance with the provisions of this Agreement, the Collateral Agent under such other Security Document) upon any sale or other disposition of the Collateral (or the collateral under the relevant Security Document), together with all other moneys received by the Collateral Agent hereunder (or under the relevant Security Document), in each case, as a result of the exercise of remedies by the Collateral Agent after the occurrence and during the continuance of an Event of Default, shall be applied as set forth in Section 10.03.

For purposes of this Article 14, "Pro Rata Share" shall mean, when calculating a Secured Party's portion of any distribution or amount, that amount (expressed as a percentage) equal to a fraction the numerator of which is the then unpaid amount of such Secured Party's Obligations, and the denominator of which is the then outstanding amount of all Obligations. All payments required to be made hereunder shall be made to the Administrative Agent for the account of the Secured Parties.

For purposes of applying payments received in accordance with this Section 14.18(e), the Collateral Agent shall be entitled to rely upon the Administrative Agent for a determination (which the Administrative Agent agrees (or shall agree) to provide upon request of the Collateral Agent) of the outstanding Obligations owed to the Secured Parties. It is understood that the Credit Parties are and shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Obligations.

(f) Subject to the entry and the terms of the Post-Petition Intercreditor Agreement and the Financing Orders, each and every right, power and remedy hereby specifically given to the Collateral Agent shall be in addition to every other right, power and remedy specifically given to the Collateral Agent under this Agreement, the other Security Documents or now or hereafter existing at law, in equity or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Collateral Agent. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Collateral Agent in the exercise of any such right, power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence thereof. No notice to or demand on any Credit Party in any case shall entitle it to

any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Collateral Agent to any other or further action in any circumstances without notice or demand. In the event that the Collateral Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Collateral Agent may recover reasonable expenses, including reasonable legal fees, and the amounts thereof shall be included in such judgment.

(g) In case the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case the relevant Credit Party, the Collateral Agent and each holder of any of the Obligations shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the security interest created under this Agreement, and all rights, remedies and powers of the Collateral Agent shall continue as if no such proceeding had been instituted.

(h) Any amounts paid by any Indemnified Person as to which such Indemnified Person has the right to reimbursement shall constitute Obligations secured by the Collateral. The indemnity obligations of each Credit Party contained in the Credit Agreement shall continue in full force and effect notwithstanding the full payment of all of the other Obligations and notwithstanding the discharge thereof.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement as of the date first above written.

| | |
|---|---|
| PARENT AND GUARANTOR: | PERFORMANCE SPORTS GROUP LTD. |
| LEAD U.S. BORROWER AND SUBSIDIARY GUARANTOR: | BAUER HOCKEY, INC. |
| LEAD CANADIAN BORROWER AND SUBSIDIARY GUARANTOR: | BAUER HOCKEY CORP. |
| SUBSIDIARY BORROWERS AND SUBSIDIARY GUARANTORS: | BAUER HOCKEY RETAIL INC. |
| | BAUER HOCKEY RETAIL CORP. |
| | BAUER PERFORMANCE SPORTS UNIFORMS INC. |
| | BAUER PERFORMANCE SPORTS UNIFORMS CORP. |
| | BPS DIAMOND SPORTS INC. |
| | BPS DIAMOND SPORTS CORP. |
| | BPS US HOLDINGS INC. |
| | BPS CANADA INTERMEDIATE CORP. |
| | EASTON BASEBALL / SOFTBALL INC. |
| | EASTON BASEBALL / SOFTBALL CORP. |
| | KBAU HOLDINGS CANADA, INC. |
| | PERFORMANCE LACROSSE GROUP INC. |
| | PERFORMANCE LACROSSE GROUP CORP. |
| SUBSIDIARY GUARANTORS: | PSG INNOVATION INC. |
| | PSG INNOVATION CORP. |

By:________________________________
Name:
Title:

BANK OF AMERICA, N.A.,
as Administrative Agent, Collateral
Agent, Swingline Lender, Issuing Bank
and a Lender

By: ______________________________
Name:
Title:

BANK OF AMERICA, N.A. (acting through its Canada
branch), as a Lender

By: ______________________________
Name: Medina Sales De Andrade
Title: Vice President

JPMORGAN CHASE BANK, N.A.,
as Lender

______________________________
Name:
Title:

ROYAL BANK OF CANADA,
as Lender

______________________________
Name:
Title:

FIFTH THIRD BANK,
as a Lender

____________________________________
Name:
Title:

FIFTH THIRD BANK, (acting through its Canada branch), as a Lender

____________________________________
Name:
Title:

WELLS FARGO BANK, N.A.,
as a Lender

______________________________
Name:
Title:

WELLS FARGO CAPITAL FINANCE
CORPORATION CANADA, as a Lender

______________________________
Name:
Title:

# **Exhibit F**

Term Loan DIP Credit Agreement

**EXECUTION COPY**

**SUPERPRIORITY DEBTOR-IN-POSSESSION**
**TERM LOAN CREDIT AGREEMENT**

dated as of October 31, 2016,

among

**PERFORMANCE SPORTS GROUP LTD.**,
a debtor and a debtor-in-possession, as Borrower,

the **SUBSIDIARY GUARANTORS** from time to time party hereto,

the **LENDERS** from time to time party hereto,

and

**9938982 CANADA INC.**,
as Administrative Agent and Collateral Agent

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This SUPERPRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of October 31, 2016, among PERFORMANCE SPORTS GROUP LTD., a British Columbia corporation ("**PSG**") and debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code and under the Companies' Creditors Arrangement Act (Canada) (the "**Borrower**"), the Subsidiaries of the Borrower, which are or become debtors and debtors-in-possession, which are now or which hereafter become a party hereto as Subsidiary Guarantors, the financial institutions which are now or which hereafter become a party hereto (collectively, the "**Lenders**", and each a "**Lender**"), and 9938982 Canada Inc., as the Administrative Agent and Collateral Agent for the Lenders. All capitalized terms used herein and defined in Article 1 are used herein as therein defined.

W I T N E S S E T H:

WHEREAS, on October 31, 2016 (the "**Petition Date**"), the Borrower and each of the other U.S. Debtors filed a voluntary petition for relief (collectively, the "**U.S. Cases**") under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**").

WHEREAS, on October 31, 2016, the Borrower and each of the other Canadian Debtors brought an application (collectively, the "**Canadian Cases**", and together with the U.S. Cases, the "**Cases**") under the Companies' Creditors Arrangement Act (Canada) (the "**CCAA**" with the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Bankruptcy Court**", and together with the U.S. Bankruptcy Court, the "**Bankruptcy Courts**", and each, a "**Bankruptcy Court**").

WHEREAS, the Debtors are continuing in the possession of their assets and continuing to operate their respective businesses and manage their respective properties as debtors and debtors in possession under Section 1107(a) and 1108 of the Bankruptcy Code, and the CCAA, as applicable.

WHEREAS, the Borrower has requested the Lenders provide a new money term loan facility, consisting of (a) Refinancing Term Loans, to be funded in cash on the Closing Date in an aggregate principal amount of up to $331,300,000, and (b) Delayed Draw Term Loans, to be funded in cash in one or more drawings occurring after the Closing Date in an aggregate principal amount of up to $30,000,000, in each case, for the purposes set forth in Section 7.08; and

WHEREAS, the Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein and in the Financing Orders.

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

## ARTICLE 1
## DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 *Defined Terms*. As used in this Agreement, the following terms shall have the following meanings:

"**ABL Charge**" shall have the meaning ascribed to the term "ABL DIP Charge" as defined in the Initial CCAA Order.

"**ABL DIP Agent**" has the meaning assigned to the term "Administrative Agent" as such term is defined in the ABL DIP Credit Agreement.

"**ABL DIP Credit Agreement**" means that certain Super-Priority Debtor-In-Possession ABL Credit Agreement, dated as of October 31, 2016, by and among the Borrower, each of the other borrowers party thereto, and Bank of America, N.A., as administrative agent.

"**ABL DIP Facility**" means the commitments under the ABL DIP Credit Agreement utilized in making loans thereunder.

"**ABL Facilities**" means collectively, the Prepetition ABL Facility and the ABL DIP Facility.

"**ABL Priority Collateral**" shall have the meaning assigned to the term "ABL Priority Collateral" in the Post-Petition Intercreditor Agreement.

"**Account**" shall mean any "account" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Acquiror**" means 9938982 Canada Inc., a Canadian corporation.

"**Acquiror Sale Transaction**" shall have the meaning provided in Section 8.14(a).

"**Additional Security Documents**" shall have the meaning provided in Section 8.11(a).

"**Administrative Agent**" shall mean 9938982 Canada Inc., a Canadian corporation, in its capacity as Administrative Agent for the Lenders hereunder, and shall include any successor to the Administrative Agent appointed pursuant to Section 11.01.

"**Administration Charge**" shall have the meaning given to such term in the Initial CCAA Order.

"**Administrative Questionnaire**" shall have the meaning provided in Section 12.01(a)(ii).

"**Advisors**" means Kirkland & Ellis LLP, Blake, Cassels & Graydon LLP, BDT & Company and Rothschild & Co. and their respective affiliates (and such other advisors, representatives and agents acting on behalf of the Administrative Agent that have been appointed by the Administrative Agent from time to time).

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; *provided, however*, that neither the Administrative Agent nor any Lender (nor any Affiliate thereof) shall be considered an Affiliate of the Borrower or any Subsidiary thereof as a result of this Agreement, the extensions of credit hereunder or its actions in connection therewith.

"**Agents**" shall mean the Administrative Agent and the Collateral Agent, and any other agent with respect to the Credit Documents serving as an agent or similar capacity.

"**Agreement**" shall mean this Superpriority Debtor-In-Possession Credit Agreement, as modified, supplemented, amended, restated (including any amendment and restatement hereof), extended or renewed from time to time.

"**Applicable Rate**" means 8.00% per annum.

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

"**Asset Sale**" shall mean any sale, transfer or other disposition by the Borrower or any of its Subsidiaries to any Person (including by way of redemption by such Person) other than to (x) the Borrower or (y) a Wholly-Owned Subsidiary of the Borrower that is a Credit Party, of any asset (including, without limitation, any capital stock or other securities of, or Equity Interests in, another Person) pursuant to Section 9.02(iii)(y), (v), (xii) (solely for this clause (xii), to the extent the Net Sale Proceeds thereof exceed $1,500,000 in the aggregate) and (xiii) and/or any Sale Transaction.

"**Assignment and Assumption Agreement**" shall mean an Assignment and Assumption Agreement substantially in the form of Exhibit K (appropriately completed) or such other form as shall be acceptable to the Administrative Agent.

"**Availability Period**" shall mean the period commencing on the Closing Date and ending on the Maturity Date.

"**Avoidance Actions**" shall have the meaning provided in Section 2.14(a).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bank Product**" shall mean any of the following products, services or facilities extended to the Borrower or any Credit Parties: (a) Cash Management Services; (b) products under Swap Contracts; (c) commercial credit card and merchant card services; and (d) other banking products or services as may be requested by the Borrower or any Credit Parties.

"**Bank Product Debt**" shall mean the Indebtedness and other obligations of the Borrower or any of its Subsidiaries relating to Bank Products.

"**Bankruptcy Code**" shall mean the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, *et seq.*), as amended.

"**Bankruptcy Courts**" has the meaning set forth in the recitals hereto.

"**Bid Procedures Order**" shall have the meaning provided in Section 8.14(c).

"**Bidding Procedures Motion**" shall have the meaning provided in Section 8.14(a).

"**Bid Protections**" shall have the meaning provided in Section 8.14(a).

"**Biscuit Acquisition Agreement**" shall mean that certain Asset Purchase Agreement, dated as of October 31, 2016, by and among PSG, the other entities identified therein as sellers and the Acquiror in connection with the Acquiror Sale Transaction, with the same terms and conditions (including the Bid Protections) as the acquisition agreement filed in connection with the Bidding Procedures Motion.

"**Borrower**" shall have the meaning provided in the first paragraph of this Agreement.

"**Borrower Materials**" shall have the meaning provided in Section 8.01.

"**Borrowing**" shall mean the borrowing of Term Loans made by the Lenders to the Borrower on a Borrowing Date.

"**Borrowing Base**" shall mean the "Borrowing Base" as such term is defined in the ABL DIP Credit Agreement as in effect as of the date hereof.

"**Borrowing Date**" shall mean the Closing Date or any Delayed Draw Borrowing Date, as the context may require.

"**Budget**" means (a) initially, the Initial Budget and (b) following the delivery of any budget pursuant to Section 8.01(h), the budget in effect from time to time after the Signing Date pursuant to Section 8.01(h).

"**Business Day**" shall mean any day except Saturday, Sunday and (i) any day that shall be in New York City a legal holiday or a day on which banking institutions in New York City are authorized or required by law or other government action to close and (ii) any day that shall be in Toronto, Ontario a legal holiday or a day on which banking institutions in Toronto, Ontario are authorized or required by law or other government action to close.

"**Canadian AML Acts**" shall mean applicable Canadian law regarding anti-money laundering, anti-terrorist financing, government sanctions and "know your client" matters, including the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).

"**Canadian Bankruptcy Court**" shall have the meaning provided in the recitals hereto.

"**Canadian Cases**" has the meaning set forth in the recitals hereto.

"**Canadian Debtors**" means the Borrower, the Canadian Subsidiaries and each other Domestic Subsidiary of the Borrower that are debtors under the Canadian Cases.

"**Canadian Defined Benefit Plan**" shall mean a Canadian Pension Plan that contains a "defined benefit provision" as defined in subsection 147.1(1) of the ITA.

"**Canadian Dollars**" and the sign "**Can$**" shall each mean freely transferable lawful money (expressed in Canadian Dollars) of Canada.

"**Canadian Employee Plan**" shall mean a Canadian Pension Plan, a Canadian Welfare Plan or both.

"**Canadian Pension Plan**" shall mean a pension plan or plan that is subject to the Pension Benefits Act (Ontario) or any other similar legislation in any other jurisdiction of Canada for employees in Canada and former employees in Canada of the Borrower or any Subsidiary of the Borrower.

"**Canadian Securities Laws**" means, collectively, the securities laws of each province and territory of Canada and the respective regulations, rules, blanket rulings, orders and notices made thereunder and the national, multilateral and local instruments and published policies adopted by the Canadian Securities Regulators.

"**Canadian Securities Regulators**" means, collectively, the securities commission or securities regulatory authority in each of the provinces and territories of Canada.

"**Canadian Security Agreements**" shall mean, collectively, the security agreement and hypothec, delivered pursuant to the terms of this Agreement substantially in the form of Exhibits F and G, respectively, as amended, amended and restated or otherwise modified or supplemented from time to time in accordance with the terms hereof.

"**Canadian Statutory Plan**" shall mean any benefit plan that the Borrower or any Subsidiary of the Borrower is required by statute to participate in or contribute to in respect of any current or former employee, director, officer, consultant or independent contractor in Canada of that Person, or any dependent of any of them, including the Canada Pension Plan, the Quebec Pension Plan and plans administered pursuant to applicable legislation regarding healthcare, workers' compensation insurance and employment insurance.

"**Canadian Welfare Plan**" shall mean any deferred compensation, bonus, share option or purchase, savings, retirement savings, retirement benefit, profit sharing, medical, health, hospitalization, insurance or any other benefit, program, agreement or arrangement, funded or unfunded, formal or informal, written or unwritten, that is applicable to any current or former employee, director, officer, consultant or independent contractor in Canada of the Borrower or any Subsidiary of the Borrower, or any dependent of any of them, other than a Canadian Pension Plan or a Canadian Statutory Plan.

"**Capitalized Lease Obligations**" shall mean, with respect to any Person, all rental obligations of such Person which, under GAAP are or will be required to be capitalized on the books of such Person, in each case taken at the amount thereof accounted for as indebtedness in accordance with GAAP.

"**Carve-Out**" has the meaning specified in the Financing Orders and includes the Administration Charge created pursuant to Section 11.52 of the CCAA, which in any case, for the period after a carve-out trigger event specified in the Financing Orders, shall not exceed $7,500,000 in the aggregate.

"**Cases**" has the meaning set forth in the recitals hereto.

"**Cash Collateral Account**" shall mean a non-interest bearing cash collateral account maintained with, and in the sole dominion and control of, the Collateral Agent for the benefit of the Secured Parties.

"**Cash Disbursements**" means disbursements made in cash by or on behalf of the Borrower and its Subsidiaries, including, without limitation, for investments, capital expenditures and repayments of Indebtedness, but excluding any checks (or similar instruments) outstanding on the Petition Date that are reissued in accordance with an order of the Bankruptcy Court.

"**Cash Equivalents**" shall mean:

(i) U.S. Dollars, Canadian Dollars, pounds sterling, euros, the national currency of any participating member state of the European Union or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(ii) readily marketable direct obligations of any member of the European Economic Area, Switzerland, or Japan, or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of such country, and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody's or Aa3 by S&P;

(iii) marketable general obligations issued by any state of the United States or any province or territory of Canada or any political subdivision thereof or any instrumentality thereof that are guaranteed by the full faith and credit of such state, province or territory and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody's or Aa3 by S&P;

(iv) securities or any other evidence of Indebtedness or readily marketable direct obligations issued or directly and fully guaranteed or insured by the United States or Canadian government or any agency or instrumentality of the United States or Canadian government (*provided* that the full faith and credit of the United States or Canada is pledged in support of those securities), in such case having maturities of not more than twelve months from the date of acquisition;

(v) certificates of deposit and eurodollar time deposits with maturities of twelve months or less from the date of acquisition, bankers' acceptances with maturities not exceeding twelve months and overnight bank deposits, in each case, with any Lender party to this Agreement or any commercial bank or trust company having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least "A" or the equivalent thereof from S&P or "A2" or the equivalent thereof from Moody's and a combined capital and surplus greater than $500,000,000;

(vi) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clauses (iv) and (v) above entered into with any financial institution meeting the qualifications specified in clause (v) above;

(vii) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within twelve months after the date of acquisition; and

(viii) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (vii) of this definition.

"**Cash Management Services**" shall mean any services provided from time to time to the Borrower or any of its Subsidiaries in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

"**Cash Receipts**" means receipts of cash by or on behalf of the Borrower and its Subsidiaries from third parties, excluding, except to the extent forecasted in the Budget, tax refunds, proceeds from non-ordinary course asset sales (including the sale of the "Inaria" division), or other extraordinary or non-ordinary course cash receipts.

"**CCAA**" shall mean the Companies' Creditors Arrangement Act (Canada).

"**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same has been amended and may hereafter be amended from time to time, 42 U.S.C. § 9601 *et seq*.

"**CFC**" shall mean a Subsidiary of a U.S. Subsidiary that is a "controlled foreign corporation" for purposes of Section 957 of the Code.

"**Change in Law**" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States, Canadian or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued but only to the extent a Lender is imposing applicable increased costs or costs in connection with capital adequacy requirements similar to those described in clauses (a) and (b) of Section 2.10 generally on other borrowers of loans under United States cash flow term loan credit facilities.

"**Chattel Paper**" shall mean "chattel paper" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York. Without limiting the foregoing, the term "Chattel Paper" shall in any event include all Tangible Chattel Paper and all Electronic Chattel Paper.

"**Closing Date**" shall mean the first Business Day on or after the Final Financing Order Date on which all of the conditions precedent set forth in Section 5.02 are satisfied or waived pursuant to the terms hereof and the funding of the Refinancing Term Loans occur.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" shall have the meaning provided in Section 14.01.

"**Collateral Agent**" shall mean the party acting as collateral agent for the Secured Parties pursuant this Agreement or to the Security Documents.

"**Commercial Tort Claims**" shall mean "commercial tort claims" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Commitment**" means, with respect to any Lender, such Lender's (x) Refinancing Term Loan Commitment and/or (y) Delayed Draw Term Loan Commitment, as the context shall require.

"**Compliance Certificate**" shall mean a certificate of the Responsible Officer of the Borrower substantially in the form of Exhibit J hereto, or otherwise in form and substance reasonably satisfactory to the Administrative Agent.

"**Connection Income Taxes**" shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"**Contingent Obligation**" shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including, without limitation, any such obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (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 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 or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided*, *however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent 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.

"**Contract Rights**" shall mean all rights of any Credit Party under each Contract, including, without limitation, (i) any and all rights to receive and demand payments under any or all Contracts, (ii) any and all rights to receive and compel performance under any or all Contracts and (iii) any and all other rights, interests and claims now existing or in the future arising in connection with any or all Contracts.

"**Contracts**" shall mean all contracts between any Credit Party and one or more additional parties (including, without limitation, any Swap Contracts, contracts for Bank Products, licensing agreements and any partnership agreements, joint venture agreements and limited liability company agreements, and settlement agreements).

"**Copyrights**" shall mean all: (a) copyrights (whether statutory or common law, whether registered or unregistered and whether published or unpublished), and all copyright registrations and applications therefor, including, without limitation, the copyright registrations and applications in the United States Copyright Office and the Canadian Intellectual Property Office; (b) rights and privileges arising under applicable law with respect to such copyrights; and (c) renewals and extensions thereof and amendments thereto.

"**Credit Documents**" shall mean this Agreement and, after the execution and delivery thereof pursuant to the terms of this Agreement, each Note and each Security Document and the Post-Petition Intercreditor Agreement.

"**Credit Event**" shall mean the making of any Term Loan.

"**Credit Parties**" shall mean the collective reference to the Borrower and each Subsidiary Guarantor.

"**Cumulative Net Cash Flow**" means, with respect to any Variance Period, an amount (which amount may be negative) equal to (a) cumulative Cash Receipts (excluding the proceeds of any Term Loans and proceeds of the ABL DIP Facility) attributable to the Borrower and its consolidated Subsidiaries in such Variance Period less (b) cumulative Cash Disbursements (other than interest on and the repayment of Term Loans and amounts outstanding under the ABL Facilities and excluding professional fees actually paid during the Variance Period) attributable to the Borrower and its consolidated Subsidiaries in such Variance Period.

"**Debtors**" means the Canadian Debtors and the U.S. Debtors, collectively.

"**Debtor Credit Parties**" means the Borrower and each other Credit Party that is a Debtor.

"**Debtor Relief Laws**" shall mean the Bankruptcy Code, the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), the Winding-Up and Restructuring Act (Canada) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors or debt security holders, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect.

"**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 (i) fund all or any portion of its Term Loans within two Business Days of the date such Term Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Term Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) becomes subject to a Bail-In Action or (iii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation, the Canada Deposit Insurance Corporation or any other state, provincial or federal regulatory authority acting in such a capacity; *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 so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and as of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

"**Delayed Draw Borrowing Date**" means any Business Day on which the conditions set forth in Section 5.03 and Article 6 are satisfied or waived in accordance with the terms hereof and the Delayed Draw Term Loans are made by the Delayed Draw Lenders pursuant to Section 2.01(b).

"**Delayed Draw Lender**" means those Lenders with a Delayed Draw Term Loan Commitment or holding Delayed Draw Term Loans.

"**Delayed Draw Term Loan Commitment**" means, with respect to each Lender, the commitment of such Lender to make Delayed Draw Term Loans hereunder on any Delayed Draw Borrowing Date. The amount of each Lender's Delayed Draw Term Loan Commitment is set forth on Schedule 2.01(b) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of the Delayed Draw Term Loan Commitments as of the Closing Date is $30,000,000.

"**Delayed Draw Term Loan Facility**" means Delayed Draw Term Loan Commitments utilized in making Delayed Draw Term Loans hereunder.

"**Delayed Draw Term Loans**" means the term loans made by the Delayed Draw Lenders to the Borrower pursuant to Section 2.01(b).

"**Delayed Draw Termination Date**" means the earliest of the Maturity Date and the Delayed Draw Borrowing Date that results in the Delayed Draw Term Loan Commitment being reduced to $0.00.

"**Deposit Accounts**" shall mean all deposit, demand, time, savings, cash management, passbook or other similar accounts with a bank, credit union, trust company, similar financial institution or other Person and all accounts and sub-accounts relating to any of the foregoing accounts.

"**DIP Cash Collateral**" shall mean "Cash Collateral" as defined in the Final Financing Orders.

"**DIP Superpriority Claim**" has the meaning set forth in Section 2.14.

"**D&O Charge**" shall have the meaning given to such term in the Initial CCAA Order.

"**Disqualified Stock**" shall mean any preferred Equity Interests of the Borrower.

"**Dividend**" shall mean, with respect to any Person, that such Person has declared or paid a dividend, distribution or returned any equity capital to its stockholders, partners or members or authorized or made any other distribution, payment or delivery of property (other than common equity of such Person) or cash to its stockholders, partners or members as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for a consideration any shares of any class of its Equity Interests outstanding on or after the Signing Date (or any options or warrants issued by such Person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes.

"**Documents**" shall mean "documents" as such term is defined in the UCC as in effect on the date hereof in the State of New York or, as applicable, Documents of Title as such term is defined in the PPSA as in effect on the date hereof in the Province of Ontario.

"**Dollars**," "**U.S.$**" and "**$**" shall mean the lawful money of the United States.

"**Domestic Subsidiary**" shall mean, as to any Person, any Subsidiary of such Person incorporated or organized under the laws of (i) the United States, any state thereof or the District of Columbia (a "**U.S. Subsidiary**") or (ii) Canada or any province or territory thereof (a "**Canadian Subsidiary**").

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Electronic Chattel Paper**" shall mean "electronic chattel paper" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

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

"**Environment**" shall mean ambient air, indoor air, surface water, groundwater, drinking water, land surface and sub- surface strata and natural resources such as wetlands, flora and fauna.

"**Environmental Claims**" shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, orders, directives, claims, liens, notices of liability, noncompliance or violation, penalties, investigations and/or proceedings relating in any way to any Environmental Law or any permit or license issued, or any approval given, under any such Environmental Law (hereafter, "**Claims**"), including, without limitation, (a) any and all Claims by governmental or regulatory authorities for enforcement, investigation, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation, injunctive or other equitable relief or other actions arising out of or relating to any Environmental Law or an alleged injury or threat of injury to human health, safety or the Environment due to the presence of Hazardous Materials, including any Release or threat of Release of any Hazardous Materials.

"**Environmental Law**" shall mean any Federal, state, provincial, foreign or local statute, law, rule, regulation, by-law, restriction, ordinance, code, permit, binding guideline, agreement and rule of common law, now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order or direction, consent decree or judgment, relating to the Environment, human health and safety or Hazardous Materials, including, without limitation, in the United States: CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq*.; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq*.; the Clean Air Act, 42 U.S.C. § 7401 *et seq*.; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq*.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq*.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 *et seq*.; the Hazardous Material Transportation Act, 49 U.S.C. § 5101 *et seq*.; the Clean Water Act, 33 U.S.C. § 1251 *et seq*.; in Canada: the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C., 1985, c. F-14; *Species at Risk Act*, S.C. 2002, c. 29; *Transportation of Dangerous Goods Act*, 1992, S.C. 1992, c. 34, and any state, provincial and local or foreign counterparts or equivalents, in each case as amended from time to time.

"**Equipment**" shall mean any "equipment" as such term is defined in the UCC as in effect on the date hereof in the State of New York and in the PPSA, as applicable, and in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings, fixtures and vehicles now or hereafter owned by any Credit Party and any and all additions, substitutions and replacements of any of the foregoing and all accessions thereto, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

"**Equity Interests**" of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and, unless the context indicates otherwise, the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any successor section thereof.

"**ERISA Affiliate**" shall mean each person (as defined in Section 3(9) of ERISA) which together with the Borrower or a Subsidiary of the Borrower would be deemed to be a "single employer" within the meaning of Section 414(b) or (c) of the Code and solely with respect to Section 412 of the Code, Sections 414(b), (c), (m) or (o) of the Code.

"**ERISA Event**" shall mean (a) any "reportable event**,**" as defined in Section 4043 of ERISA or the regulations issued thereunder, but excluding any event for which the 30-day notice period is waived with respect to a Plan, (b) any failure to make a required contribution to any Plan that would result in the imposition of a Lien or other encumbrance or the failure to satisfy the minimum funding standards set forth in Sections 412 or 430 of the

Code or Sections 302 or 303 of ERISA, or the arising of such a Lien or encumbrance, with respect to a Plan, (c) the incurrence by the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal (including under Section 4062(e) of ERISA) of any of the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate from any Plan or Multiemployer Plan, (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 of ERISA, or the receipt by the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate from the PBGC or a plan administrator of any notice of intent to terminate any Plan or Multiemployer Plan or to appoint a trustee to administer any Plan, (e) the adoption of any amendment to a Plan that would require the provision of security pursuant to the Code, ERISA or other applicable law, (f) the receipt by the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate of any notice concerning statutory liability arising from the withdrawal or partial withdrawal of the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate from a Multiemployer Plan or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA, (g) the occurrence of any non-exempt "prohibited transaction" (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to which the Borrower or any Subsidiary is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which the Borrower or any Subsidiary could reasonably be expected to have liability, (h) the occurrence of any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of any Plan or the appointment of a trustee to administer any Plan, (i) the filing of any request for or receipt of a minimum funding waiver under Section 412(c) of the Code with respect to any Plan or Multiemployer Plan, (j) a determination that any Plan is in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (k) the receipt by the Borrower, a Subsidiary of the Borrower or any ERISA Affiliate of any notice, that a Multiemployer Plan is, or is expected to be, in endangered or critical status under Section 305 of ERISA or, (l) any other extraordinary event or condition with respect to a Plan or Multiemployer Plan which could reasonably be expected to result in a Lien or any acceleration of any statutory requirement to fund all or a substantial portion of the unfunded accrued benefit liabilities of such plan.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Event of Default**" shall have the meaning provided in Article 10.

"**Excluded Agreements**" shall have the meaning provided in "Excluded Property".

"**Excluded Property**" shall mean:

(a) any leases, licenses, Instruments, Contracts, Chattel Paper, Intangibles, Permits, governmental licenses, provincial, territorial or local franchises, charters or authorizations or other contracts or agreements (other than an Account or Chattel Paper) with or issued by Persons other than the Borrower or Subsidiaries of the Borrower or an Affiliate thereof (collectively, "**Excluded Agreements**") that would otherwise be included in the Collateral (and such Excluded Agreements shall not be deemed to constitute a part of the Collateral) for so long as, and to the extent that, the granting of such a security interest or hypothec pursuant hereto would invalidate or result in a violation, breach, default or termination of such Excluded Agreements or create a right of termination in favour of, or require the consent of, any party thereto (in each case other than the Borrower or a Subsidiary Guarantor) (in each case, except to the extent any such violation, breach, default, termination, right or consent would be rendered ineffective under the Bankruptcy Code, the UCC, the PPSA or other applicable law); provided, however, that a security interest or hypothec in an Excluded Agreement in favour of the Secured Parties shall attach immediately (i) at such time as Credit Party's grant of a security interest or hypothec in such Excluded Agreement no longer results in a violation, breach, default or termination thereof or thereunder or no longer creates such right of termination or such right has been waived or requires such consent or such consent has been obtained, (ii) to the extent severable, to any portion of such Excluded Agreement that does not result in a respective violation, breach, default, termination or right or consent thereof or thereunder and (iii) to any proceeds or receivables of such Excluded Agreement that are not Excluded Property;

(b) any intent-to-use trademark application prior to the filing and acceptance of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period,

if any, in which, the grant of a security interest or hypothec therein would impair the validity or enforceability of such intent-to-use trademark application under applicable United States federal law;

(c) any Margin Stock;

(d) cash that is segregated for utility deposits under any order of the Bankruptcy Court or that secures any letters of credit outstanding and permitted to be outstanding and secured pursuant to the terms of this Agreement;

(e) those assets as to which the Administrative Agent and the Lead Borrower reasonably agree in a writing to the Collateral Agent that the cost of obtaining a security interest therein is excessive in relation to the value of the security to be afforded thereby;

(f) any Avoidance Actions; and

(g) any of the following:

(i) any Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods that would otherwise be included in the Collateral (and such Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods shall not be deemed to constitute a part of the Collateral) if such Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods have been sold or otherwise transferred in connection with a sale-leaseback transaction permitted under Section 9.02(xi), or are subject to any Liens permitted under Section 9.01(vii), or constitute the Proceeds or products of any Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods that have been so sold or otherwise transferred, in each case in accordance with the terms of this Agreement, so long as such Proceeds or products remain subject to the Liens referenced above in this clause (i); and

(ii) any property or asset that would otherwise be included in the Collateral (and such property or asset shall not be deemed to constitute a part of the Collateral) if such property or assets is subject to a Lien permitted by Section 9.01(xiv);

in each case pursuant to preceding clauses (g)(i) through (ii), for so long as, and to the extent that, the granting or existence of such a security interest or hypothec pursuant hereto would result in a breach, default or termination of any agreement relating to the respective Lien or obligations secured thereby (in each case, except to the extent any such breach, default or termination would be rendered ineffective under the UCC, the PPSA or other applicable law); provided that immediately upon repayment of the Indebtedness and/or other monetary obligation secured by a Lien referenced in clauses (g)(i) through (ii), the relevant Credit Party shall be deemed to have granted a security interest or hypothecin all of its rights, title and interests under or in such Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods that are the subject of such Lien; provided, however, that Excluded Property shall not include any Proceeds, substitutions or replacements of any Excluded Property referred to in any of clauses (a) through (g) (unless such Proceeds, substitutions or replacements would constitute Excluded Property referred to in any of clauses (a) through (f)).

"**Excluded Subsidiary**" shall mean any Subsidiary of the Borrower that is (a) a Foreign Subsidiary that is (i) a direct or indirect Subsidiary of a U.S. Subsidiary and (ii) a CFC, (b) a FSHCO, (c) a U.S. Subsidiary of a Foreign Subsidiary, (d) prohibited by applicable Law from guaranteeing the Facilities and (e) any other Subsidiary where the Borrower and Administrative Agent reasonably agree (in writing by the Administrative Agent and confirmed by the Borrower), that the cost or other consequences (including any adverse tax consequences) of guaranteeing the Obligations shall be excessive in view of the value to be afforded thereby; *provided* that, notwithstanding the above, (x) if a Subsidiary executes a joinder hereto to become a "Subsidiary Guarantor" then it shall not constitute an "Excluded Subsidiary" (unless released from its obligations under Article 13 as a "Subsidiary Guarantor" in accordance with the terms hereof), (y) if a Subsidiary serves as a guarantor under the ABL Facilities and/or the Prepetition Term Loan Credit Agreement, then it shall not constitute an "Excluded Subsidiary" (unless released from its obligations under Article 13 as a "Subsidiary Guarantor" in accordance with the terms hereof and

thereof) and (z) no U.S. Subsidiary or Canadian Subsidiary of the Borrower existing on the Signing Date will be an Excluded Subsidiary.

"**Excluded Taxes**" shall mean, with respect to any Recipient of any payment to be made by or on account of any obligation of any Credit Party under any Credit Document, (a) Taxes imposed on (or measured by) its net income and franchise (and similar) Taxes imposed on it in lieu of income Taxes, in each case, either pursuant to the laws of the jurisdiction in which such Recipient is organized or in which the principal office or applicable lending office of such Recipient is located (or any political subdivision thereof) or that are Other Connection Taxes, (b) any branch profits Taxes under Section 884(a) of the Code, Section 219 of the ITA or any similar Tax imposed by any jurisdiction described in clause (a) above, (c) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 2.13), any U.S. federal or Canadian withholding Tax that (i) is imposed on amounts payable to such Lender pursuant to a Law in effect at the time such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Recipient (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 Credit Parties with respect to such withholding tax pursuant to Section 4.04(a) or (ii) is attributable to such Recipient's failure to comply with Section 4.04(b) or Section 4.04(c), (d) any U.S. federal withholding Taxes under FATCA, (e) any Taxes imposed on a payment by or on account of any obligation of a Credit Party under any Credit Document: (A) (i) to a Person with which the Credit Party does not deal at arm's length (for the purposes of the ITA) at the time of making such payment or (ii) in respect of a debt or other obligation to pay an amount to a Person with whom the payer is not dealing at arm's length (for the purposes of the ITA) at the time of such payment and (B) on which the Tax is imposed by reason of such non-arm's length relationship and (f) any Taxes imposed on a Recipient by reason of such Recipient: (i) being a "specified shareholder" (as defined in subsection 18(5) of the ITA) of any Credit Party, or (ii) not dealing at arm's length (for the purposes of the ITA) with a "specified shareholder" (as defined in subsection 18(5) of the ITA) of any Credit Party.

"**FATCA**" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date of this Agreement (or any such amended or successor version), any intergovernmental agreement entered into in connection with the foregoing or any fiscal or regulatory legislation or rules adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

"**FCPA**" shall have the meaning provided in Section 7.15(d).

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

"**Fees**" shall mean all amounts payable pursuant to or referred to in Section 3.01.

"**Final Financing Orders**" shall mean collectively a final order of the U.S. Bankruptcy Court approving the Term Loan Facilities, with a similar order being rendered by the Canadian Bankruptcy Court as part of any "comeback hearing", both of which shall be in form and substance acceptable to the Required Lenders in their sole discretion (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof in form and substance acceptable to the Required Lenders in their sole discretion).

"**Final Financing Order Date**" shall mean the latest of the dates upon which entry of a Final Financing Order is made.

"**Financing Orders**" shall mean the Interim Financing Order, the Final Financing Orders and any other order of the Bankruptcy Courts in relation to the ABL DIP Facility.

"**Fixtures**" shall mean "fixtures" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Flood Insurance Laws**" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

"**Foreign Asset Sale**" shall have the meaning provided in Section 4.02(g).

"**Foreign Pension Plan**" shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States or Canada by the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States or Canada, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"**Foreign Recovery Event**" shall have the meaning provided in Section 4.02(g).

"**Foreign Subsidiaries**" shall mean each Subsidiary of the Borrower that is not a Domestic Subsidiary.

"**FSHCO**" shall mean any U.S. Subsidiary that has no material assets other than the Equity Interests in one or more CFCs.

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

"**GAAP**" shall mean generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" shall mean "general intangibles" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Goods**" shall mean "goods" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

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

"**Guaranteed Obligations**" shall have the meaning provided in Section 13.01.

"**Guaranty**" shall have the meaning provided in Section 13.01.

"**Guaranty Supplement**" shall have the meaning provided in Section 13.05.

"**Hazardous Materials**" shall mean (a) any petroleum or petroleum products or byproducts, hydrocarbons, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, polychlorinated biphenyls, and radon gas; (b) any chemicals, materials, substances or wastes defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous substances," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material, substance or waste regulated or for which liability may arise under any Environmental Law.

"**Indebtedness**" shall mean, as to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person (A) for borrowed money or (B) for the deferred purchase price of property or services, (ii) the maximum amount available to be drawn under all letters of credit, bankers' acceptances and similar obligations issued for the account of such Person and all unpaid drawings in respect of such letters of credit, bankers' acceptances and similar obligations, (iii) all Indebtedness of the types described in clause (i), (ii), (iv), (v), (vi), (vii) or (viii) of this definition secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person (*provided* that, if the 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 lesser of (x) the aggregate unpaid amount of Indebtedness secured by such Lien and (y) the fair market value of the property to which such Lien relates as determined in good faith by such Person), (iv) the aggregate amount of all Capitalized Lease Obligations of such Person, (v) all Contingent Obligations of such Person, (vi) all net obligations under any Swap Contracts and any Bank Product Debt or under any similar type of agreement, (vii) all Off-Balance Sheet Liabilities of such Person and (viii) all obligations in respect of Disqualified Stock. Notwithstanding the foregoing, Indebtedness shall not include (a) trade payables and accrued expenses incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person or (b) earn-outs and other contingent payments in respect of acquisitions except to the extent that the liability on account of any such earn-outs or contingent payment becomes fixed and is required by GAAP to be reflected as a liability on the consolidated balance sheet of the Borrower and its Subsidiaries.

"**Indemnified Person**" shall have the meaning provided in Section 12.01.

"**Indemnified Taxes**" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Credit Parties under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Ineligible Transferee**" shall mean (i) certain Persons identified as "Ineligible Transferees" in writing to the Administrative Agent by the Borrower on or prior to the date of this Agreement and (ii) operating companies which are bona fide competitors of the Borrower and such competitors' subsidiaries and controlling equity holders (other than bona fide debt funds) as may be identified by name in writing to the Administrative Agent prior to the date of this Agreement (but only with the consent of the Administrative Agent, not to be unreasonably withheld, by delivery of notice to the Administrative Agent setting forth such person or persons.

"**Initial Budget**" has the meaning specified in Section 5.01(g).

"**Initial CCAA Order**" means the Order of the Canadian Court in the Canadian Case, granting the Canadian Debtors the protection of the CCAA, and shall be acceptable in form and substance reasonably acceptable to the Required Lenders.

"**Instrument**" shall mean "instruments" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Inventory**" shall mean merchandise, inventory and goods, and all additions, substitutions and replacements thereof and all Accessions thereto, wherever located, together with all goods, supplies, incidentals, packaging materials, labels, materials and any other items used or usable in manufacturing, processing, packaging or shipping same, in all stages of production from raw materials through work in process to finished goods, and all products and proceeds of whatever sort and wherever located any portion thereof which may be returned, rejected, reclaimed or repossessed by the Collateral Agent from any Credit Party's customers, and shall specifically include

all "inventory" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York, as applicable.

"**Intellectual Property**" shall mean all: (a) intellectual property of every kind and nature in any jurisdiction throughout the world, including designs, Patents, Copyrights, Trademarks, Software, Trade Secrets, rights under Licenses, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing; (b) rights, priorities and privileges corresponding to any of the foregoing throughout the world, including as provided by international treaties or conventions, and all other rights of any kind whatsoever accruing thereunder or pertaining thereto; (c) Proceeds, income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect to any of the foregoing, including damages and payments for past and future infringements, misappropriations, or other violations thereof; and (d) rights to sue for past, present, and future infringements, misappropriations, or other violations of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing.

"**Intercompany Charge**" shall have the meaning given to such term in the Initial CCAA Order.

"**Interim Financing Order**" has the meaning specified in Section 5.01(j) and for purposes hereof shall be deemed to include the Initial CCAA Order.

"**Interim Financing Order Date**" shall mean the date of entry of the Interim Financing Order.

"**Interim Order Intercreditor Arrangements**" has the meaning specified in Section 5.01(j).

"**Investment Property**" shall mean "investment property" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Investments**" shall have the meaning provided in Section 9.05.

"**ITA**" shall mean the Income Tax Act (Canada), as amended from time to time.

"**Joint Venture**" shall mean any Person other than an individual or a Subsidiary of the Borrower (i) in which the Borrower or any of its Subsidiaries holds or acquires an ownership interest (by way of ownership of Equity Interests or other evidence of ownership) and (ii) which is engaged in a business permitted by Section 9.09.

**"KEIP / KERP Charge"** means the charge provided for in the Final Financing Order or subsequent Order under the Canadian Cases which charge shall not exceed the amount set forth in the Final Financing Order of the Canadian Bankruptcy Court to secure the obligations of the Credit Parties pursuant to payments to be made to key employees under a key employee retention plan subject to and in accordance with the terms of the Final Financing Order or subsequent Order under the Canadian Cases.

**"Laws"** shall mean any and all federal, state, provincial, local, foreign and supranational treaties, statutes, laws, judicial decisions, regulations, guidances, guidelines, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect.

"**Lender**" means (a) the Refinancing Term Lenders (other than any such Person that has ceased to be a party hereto by assignment of all of its Refinancing Term Loans and Refinancing Term Loan Commitments), (b) the Delayed Draw Lenders (other than any such Person that has ceased to be a party hereto by assignment of all of its Delayed Draw Term Loans and Delayed Draw Term Loan Commitments) and (c) any Person that becomes a "Lender" hereunder pursuant to Section 12.04(b).

"**Licenses**" means any and all licenses, agreements and similar arrangements in respect of the licensing or use of any Intellectual Property.

"**Lien**" shall mean any mortgage, pledge, hypothecation, collateral assignment, security deposit arrangement, encumbrance, hypothec, deemed or statutory trust, security conveyance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, and any lease having substantially the same effect as any of the foregoing).

"**Liquidity**" shall mean the sum of (a) unrestricted cash on the balance sheet of the Borrower and the other Credit Parties which are subject to a perfected first-priority lien of the ABL DIP Agent (or, after the payment in full of the ABL DIP Facility, the Administrative Agent), subject to the Carve-Out and the Administration Charge plus (b) the amount of "Availability" as such term is defined in the ABL DIP Credit Agreement as in effect as of the date hereof plus (c) after the Final Financing Order Date, the aggregate amount of undrawn Delayed Draw Term Loan Commitments then in effect.

"**Margin Stock**" shall have the meaning provided in Regulation U.

"**Material Adverse Effect**" shall mean a material adverse effect on (a) the condition (financial or otherwise), results of operations, business or properties of a Credit Party, (b) the ability of a Credit Party to duly and punctually pay or perform their obligations under this Agreement and/or any other Credit Document in accordance with the terms thereof, or (c) the practical realization of the benefits of the Agent's and each Lender's rights and remedies under this Agreement, the Credit Documents or any of the Financing Orders in each case, excluding the commencement, continuation and prosecution of the Cases and the consequences that would reasonably be expected to occur as a direct result thereof.

"**Maturity Date**" shall mean the earliest to occur of (i) the Scheduled Maturity Date, (ii) the consummation of a Sale Transaction, (iii) the acceleration of the Term Loans and the termination of all Commitments in accordance with this Agreement, (iv) three (3) Business Days from the Petition Date if the Interim Financing Order from each Bankruptcy Court, in form and substance acceptable to the Required Lenders in their reasonable discretion, is not entered into and/or (v) 30 days from the Interim Financing Order Date if the Final Financing Order from the U.S. Bankruptcy Court, in form and substance acceptable to the Required Lenders in their reasonable discretion, is not entered into (or, in each case of the foregoing, a later date that is agreed to in writing by the Lenders in their reasonable discretion).

"**Milestones**" shall have the meaning provided in Section 8.14.

"**Minimum Borrowing Amount**" shall mean $1,000,000.

"**Monitor**" means Ernst & Young LLP, the monitor appointed by the Canadian Bankruptcy Court in the Canadian Cases.

"**Moody's**" shall mean Moody's Investors Service, Inc.

"**Multiemployer Plan**" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA under which the Borrower or a Subsidiary of the Borrower has any obligation or liability, including on account of an ERISA Affiliate, or any Canadian Pension Plan that is a Multiemployer Plan as defined under applicable Canadian Law.

"**Net Debt Proceeds**" shall mean, with respect to any incurrence of Indebtedness for borrowed money, the gross cash proceeds (net of underwriting discounts and commissions and other reasonable costs associated therewith) received by the respective Person from such incurrence.

"**Net Equity Proceeds**" shall mean, with respect to any issuance of Equity Interests of the Borrower, the gross cash proceeds (net of underwriting discounts and commissions and other reasonable costs associated therewith) received by the Borrower from such issuance.

"**Net Recovery Event Proceeds**" shall mean, with respect to any Recovery Event, an amount in cash equal to the gross cash proceeds (net of reasonable costs and any taxes incurred in connection with such Recovery Event) received by the respective Person in connection with such Recovery Event.

"**Net Sale Proceeds**" shall mean, with respect to any Asset Sale, an amount in cash equal to the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such sale of assets, net of the reasonable costs of, and expenses associated with, such sale (including fees and commissions, payments of unassumed liabilities relating to the assets sold and required payments of any Indebtedness or other obligations (other than Indebtedness secured pursuant to this Agreement or the Security Documents) which is secured by the assets which were sold), and the incremental taxes paid or payable as a result of such Asset Sale.

"**Non-Consenting Lender**" shall have the meaning provided in Section 12.11(b).

"**Non-Defaulting Lender**" shall mean and include each Lender other than a Defaulting Lender.

"**Note**" shall have the meaning provided in Section 2.05.

"**Notice of Borrowing**" shall have the meaning provided in Section 2.03.

"**Notice Office**" shall mean the address for notices set forth on Schedule 2.03.

"**Obligations**" shall mean all now existing or hereafter arising debts, obligations, covenants, and duties of payment or performance of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to any Lender, Agent or Indemnified Person by any Credit Party arising out of this Agreement or any other Credit Document, including, without limitation, all obligations to repay principal or interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Term Loans, and to pay interest, fees, costs, charges, expenses, professional fees, and all sums chargeable to the Borrower or for which the Borrower is liable as indemnitor under the Credit Documents, whether or not evidenced by any note or other instrument.

"**OFAC**" shall have the meaning provided in Section 7.15(b).

"**Off-Balance Sheet Liabilities**" of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any Sale-Leaseback Transactions that do not create a liability on the balance sheet of such Person, (iii) any obligation under a Synthetic Lease or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

"**Officers' Certificate**" shall mean, as applied to any Person, a certificate executed on behalf of such Person by a Responsible Officer of such Person.

"**Order**" shall mean an issued and entered order of the U.S. Bankruptcy Court or the Canadian Court.

"**OSC Investigation**" shall mean the continuous disclosure review commenced by the Ontario Securities Commission on April 1, 2016.

"**Other Connection Taxes**" shall mean, with respect to any Recipient, Taxes that are imposed as a result of any present or former connection between such Recipient and the jurisdiction imposing such Tax (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Term Loan or Credit Document).

"**Other Taxes**" shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or property Taxes or similar Taxes arising from any payment made under, from the execution, delivery, registration, performance or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.13).

"**Patents**" shall mean all: (a) industrial designs, letters patent, certificates of inventions, all registrations and recordings thereof, and all applications for letters patent, including registrations, recordings and pending applications in the United States Patent and Trademark Office or the Canadian Intellectual Property Office, and (b) reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein and all improvements thereto.

"**Participant**" shall have the meaning provided in Section 12.04(d).

"**Participant Register**" shall have the meaning provided in Section 12.04(d).

"**Patriot Act**" shall have the meaning provided in Section 12.15.

"**Payment in Full**" or "**Paid in Full**" means, with respect to the Obligations, (i) the termination of the Commitments of all of the Lenders and (ii) indefeasible payment in full in Dollars of all Obligations (other (x) than contingent indemnification obligations and other obligations not then payable which expressly survive termination and (y), as to which no claim has been asserted and, in the case of clause (y), to the extent arrangements satisfactory to the applicable Lender shall have been made in respect of any such Obligations).

"**Payment Office**" shall mean the office of the Administrative Agent specified on Schedule 1.01 or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

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

"**Permits**" shall mean, to the extent permitted to be assigned by the terms thereof or by applicable law, all licenses, permits, rights, orders, variances, franchises or authorizations of or from any governmental authority or agency.

"**Permitted Cash Flow Test**" means, for the Borrower and its Subsidiaries, actual Cumulative Net Cash Flow falling below (a) $(18,502,000), with respect to the Variance Period ending November 25, 2016, (b) $(12,664,000), with respect to the Variance Period ending December 23, 2016, (c) $(7,953,000), with respect to the Variance Period ending January 20, 2017 and (b) $(6,923,000), with respect to the Variance Period ending February 17, 2017.

"**Permitted Liquidity Variance**" means, for the Borrower and its Subsidiaries, a negative variance in Liquidity compared to the forecasted Liquidity for the applicable week as set forth in the Initial Budget calculated with (a) a $7,500,000 cushion for each week, applicable during the period commencing from the Petition Date through week ending November 25, 2016, (b) a $10,000,000 cushion for each week, applicable during the period commencing from the week ending November 25, 2016 through week ending December 23, 2016 and (c) a $12,500,000 cushion for each week, applicable thereafter.

"**Permitted Encumbrance**" shall mean, with respect to any Real Estate of the Borrower or any of its Subsidiaries that is encumbered by a mortgage securing the Indebtedness under the Prepetition Term Loan Credit Agreement, such exceptions to title as are set forth in the mortgage title insurance policy delivered with respect thereto.

"**Permitted Liens**" shall have the meaning provided in Section 9.01.

"**Person**" shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

"**Petition Date**" has the meaning set forth in the recitals hereto.

"**Plan**" shall mean any pension plan as defined in Section 3(2) of ERISA other than a Foreign Pension Plan, a Canadian Employee Plan, a Canadian Statutory Plan or a Multiemployer Plan, which is maintained or contributed to by (or to which there is an obligation to contribute of) the Borrower or a Subsidiary of the Borrower or with respect to which the Borrower, a Subsidiary of the Borrower has, or may have, any liability.

"**Platform**" shall have the meaning provided in Section 8.01.

"**Post-Petition Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of the date hereof and effective as of the Final Financing Order Date, by and among the Administrative Agent, as the initial fixed asset administrative agent and Bank of America, N.A., as the ABL administrative agent.

"**Post-Petition Intercreditor Arrangements**" means the intercreditor arrangements contemplated by the Financing Orders and the Post-Petition Intercreditor Agreement.

"**PPSA**" shall mean the Personal Property Security Act (Ontario) or the Civil Code of Quebec; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any security interest or hypothec in any Collateral is governed by the PPSA as in effect in a Canadian jurisdiction other than Ontario, or the Civil Code of Quebec, "PPSA" shall mean the Personal Property Security Act as in effect from time to time in such other jurisdiction or the Civil Code of Quebec, as applicable, for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Prepayment Premium**" has the meaning set forth in Section 3.01(a).

"**Prepetition ABL Credit Agreement**" shall mean that certain ABL Credit Agreement dated as of April 15, 2014, as heretofore modified, supplemented, amended, restated (including any amendment and restatement thereof), extended or renewed and, to the extent permitted hereunder, by and among, *inter alios*, the Borrower, each of the other borrowers thereto, the lenders party thereto from time to time and Bank of America, N.A., as the administrative agent and collateral agent.

"**Prepetition ABL Facility**" shall mean the commitments under the Prepetition ABL Credit Agreement utilized in making loans thereunder.

"**Prepetition Term Loan Credit Agreement**" shall mean that certain Term Loan Credit Agreement dated as of April 15, 2014, as heretofore, modified, supplemented, amended, restated (including any amendment and restatement thereof), extended or renewed and, to the extent permitted hereunder, by and among the Borrower, the lenders party thereto from time to time and Bank of America, N.A., as the administrative agent and collateral agent.

"**Proceeds**" shall mean all "proceeds" as such term is defined in the PPSA or in the UCC as in effect in the State of New York on the date hereof, as applicable, and, in any event, shall also include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Collateral Agent or any Credit Party from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Credit Party from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any person acting under color of governmental authority) and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"**Professionals**" has the meaning specified in the definition of the term "Carve-Out" in the Financing Orders or, under the Canadian Cases, the persons who benefit from the Administration Charge.

"**Projections**" shall mean the detailed projected consolidated financial statements of the Borrower and its Subsidiaries (after giving effect to the Transaction) delivered to the Administrative Agent on or prior to the Signing Date.

"**PSG**" shall have the meanings assigned to such term in the preamble hereto.

"**Public Lender**" shall have the meaning provided in Section 8.01.

"**Real Property**" of any Person shall mean, collectively, the right, title and interest of such Person (including any leasehold, mineral or other estate) in and to any and all land, improvements and fixtures owned, leased or operated by such Person, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"**Recipient**" shall mean (a) the Administrative Agent and (b) any Lender, as applicable.

"**Recordable Intellectual Property**" means (i) any Patent issued by or applied for issuance with the United States Patent and Trademark Office or the Canadian Intellectual Property Office, (ii) any Trademark registered or applied for registration with the United States Patent and Trademark Office or the Canadian Intellectual Property Office, and (iii) any Copyright registered or applied for registration with the United States Copyright Office or the Canadian Intellectual Property Office.

"**Recovery Event**" shall mean the receipt by the Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation awards payable (i) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets constituting Collateral of the Borrower or any of its Subsidiaries (but not by reason of any loss of revenues or interruption of business or operations caused thereby) and (ii) under any policy of insurance required to be maintained under Section 8.03 in respect of Collateral, in each case to the extent such proceeds or awards do not constitute reimbursement or compensation for amounts previously paid by the Borrower or any of its Subsidiaries in respect of any such event.

"**Refinancing**" shall have the meaning provided in Section 5.02(c).

"**Refinancing Term Lender**" means any Lender with a Refinancing Term Loan Commitment or holding Refinancing Term Loans.

"**Refinancing Term Loan Commitment**" means, with respect to each Lender, the commitment of such Lender to make Refinancing Term Loans hereunder on the Closing Date. The amount of each Lender's Refinancing Term Loan Commitment as of the Signing Date (immediately prior to the funding of any Refinancing Term Loans) is the amount equal to the lesser of (A) the amount necessary to consummate the Refinancing and (B) $331,300,000,which is the amount set forth on Schedule 2.01(a).

"**Refinancing Term Loan Facility**" means Refinancing Term Loan Commitments utilized in making Refinancing Term Loans hereunder.

"**Refinancing Term Loans**" means the term loans made by the Lenders to the Borrower pursuant to Section 2.01(a).

"**Register**" shall have the meaning provided in Section 12.04(c).

"**Regulation T**" shall mean Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Regulation U**" shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Regulation X**" shall mean Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Related Indemnified Person**" of an Indemnified Person shall mean (1) any controlling Person or controlled Affiliate of such Indemnified Person, (2) the respective directors, officers, or employees of such Indemnified Person or any of its controlling Persons or controlled Affiliates and (3) the respective agents of such Indemnified Person or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnified Person, controlling Person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation or administration of this Agreement or the syndication of the Term Loans. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

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

"**Release**" shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, into, through or upon the Environment or within, from or into any building, structure, facility or fixture.

"**Required Lenders**" shall mean Non-Defaulting Lenders, the sum of whose outstanding principal of Term Loans as of any date of determination represent greater than 50% of the sum of all outstanding principal of Term Loans of Non-Defaulting Lenders at such time; *provided* that to the extent that there are only two (2) Lenders, each Lender shall be a Required Lender.

"**Requirement of Law**" shall mean, with respect to any Person, (i) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (ii) any statute, law, treaty, rule, regulation, order, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" shall mean, with respect to any Person, its chief executive officer, president, or any vice president, managing director, treasurer, controller or other officer of such Person having substantially the same authority and responsibility; *provided* that, with respect to compliance with financial covenants, "Responsible Officer" shall mean the chief financial officer, treasurer or controller of the Borrower, or any other officer of the Borrower having substantially the same authority and responsibility.

"**Returns**" shall have the meaning provided in Section 7.09.

"**RPMRR**" shall mean the Register of Personal and Movable Real Rights (Quebec).

"**S&P**" shall mean Standard & Poor's Ratings Services, a division of the McGraw Hill Company, Inc., and any successor owner of such division.

"**Sale Transaction**" shall have the meaning provided in Section 8.14(a).

"**Sale Transaction Restructuring**" shall mean the transactions expressly contemplated by Schedule 5.18 of the Biscuit Acquisition Agreement as in effect as of the date hereof or as otherwise agreed to in writing by the Required Lenders.

"**Sale-Leaseback Transaction**" shall mean any arrangements with any Person providing for the leasing by the Borrower or any of its Subsidiaries of real or personal property which has been or is to be sold or transferred by

the Borrower or such Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person in connection therewith.

"**Scheduled Maturity Date**" shall mean the date that is 120 days after the Petition Date.

"**SEC**" shall mean the Securities and Exchange Commission or any successor thereto.

"**Section 8.01 Financials**" shall mean the quarterly and monthly financial statements required to be delivered pursuant to Sections 8.01(a) and (b).

"**Secured Parties**" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders and each other agent or representative of the Lenders hereunder.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Securities Commission**" shall mean a securities commission or any other securities regulatory authority in Canada.

"**Security Document**" shall mean and include this Agreement, the Canadian Security Agreements and, after the execution and delivery thereof, each Additional Security Document and the Financing Orders.

"**Signing Date**" shall mean the first Business Day on which all of the conditions precedent set forth in Section 5.01 are satisfied or waived pursuant to the terms hereof.

"**Software**" shall mean all computer software, programs and databases (including, without limitation, source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all rights related thereto and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing.

"**Subsidiary**" shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% Equity Interest at the time.

"**Subsidiary Guarantor**" shall mean each of the Subsidiaries listed on the signature page hereto and each Domestic Subsidiary of the Borrower established, created or acquired after the date hereof which becomes a party to this Agreement in accordance with the requirements of this Agreement.

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

"**Synthetic Lease**" shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an "operating lease" by the lessee and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

"**Tangible Chattel Paper**" shall mean "tangible chattel paper" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Taxes**" shall mean any and all present or future taxes, levies, imposts, duties, deductions (including, without limitation, payroll deductions), charges, fees, assessments, liabilities or withholdings (including backup withholding) imposed by any Governmental Authority in the nature of a tax, including interest, penalties and additions to tax with respect thereto.

"**Term Loan Commitments**" shall mean with respect to any Lender, such Lender's Refinancing Term Loan Commitment and/or Delayed Draw Term Loan Commitment.

"**Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, (i) prior to the initial funding of the Refinancing Term Loans on the Closing Date, that Lender's Commitment, and (ii) after the initial funding of the Refinancing Term Loans on the Closing Date, the sum of (a) the aggregate outstanding principal amount of the Term Loans of that Lender and (b) the remaining Commitment of that Lender (to the extent such Commitments have not terminated or expired as of such date).

"**Term Loan Facilities**" means the Refinancing Term Loan Facility and the Delayed Draw Term Loan Facility.

"**Term Loans**" means the Refinancing Term Loans and the Delayed Draw Term Loans.

"**Term Priority Collateral**" shall have the meaning assigned to the term "Fixed Asset Priority Collateral" in the Post-Petition Intercreditor Arrangements as in effect as of the Closing Date.

"**Threshold Amount**" shall mean $500,000.

"**Trade Secrets**" shall mean all confidential and proprietary information, including, without limitation, know-how, show-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information.

"**Trademarks**" shall mean all: (a) trademarks, service marks, certification marks, domain names and associated URLs, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, slogans, other source or business identifiers, all registrations and recordings thereof, and all registrations and applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office and the Canadian Intellectual Property Office that are disclosed as such in the Biscuit Acquisition Agreement as in effect as of the date hereof, (b) all extensions or renewals of any of the foregoing, (c) goodwill associated therewith or symbolized thereby, and (d) rights and privileges arising under applicable law with respect to the use of any of the foregoing.

"**Transaction**" shall mean (i) the execution, delivery and performance by the Credit Parties of each of the Credit Documents to which any of them is an intended party and the transactions contemplated hereby and thereby and (ii) the filing of the Cases and the related Financing Orders.

"**Transaction Costs**" shall mean the fees, premiums and expenses payable by the Borrower and its Subsidiaries in connection with the transactions described in clauses (i) and (ii) of the definition of "Transaction."

"**UCC**" shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

"**Unfunded Pension Liability**" of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets of such Plan.

"**United States**" and "**U.S.**" shall each mean the United States of America.

"**U.S. Bankruptcy Court**" shall have the meaning provided in the recitals hereto.

"**U.S. Cases**" has the meaning set forth in the recitals hereto.

"**U.S. Debtors**" shall mean, collectively, the Borrower and each Domestic Subsidiary that is a debtor under the U.S. Cases.

"**U.S. Dollars**" and the sign "**$**" shall each mean freely transferable lawful money (expressed in dollars) of the United States.

"**U.S. Tax Compliance Certificate**" shall have the meaning provided in Section 4.04(c).

"**U.S. Trustee**" shall mean the Office of the United States Trustee for the District of Delaware.

"**Variance**" shall mean a difference in the amount contained in the Initial Budget with respect to disbursements, cash requirements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity, the Borrowing Base or other data therein compared to the actual disbursements, cash requirements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity, the Borrowing Base and other data, in each case, determined on a cumulative basis from the Petition Date.

"**Variance Period**" means the period commencing with the week in which the Petition Date occurred through and including the most recently ended four-week period thereafter (excluding, for the avoidance of doubt, the week in which the applicable Variance Report for such Variance Period is delivered).

"**Variance Report**" has the meaning specified in Section 8.01(i).

"**Wholly-Owned Domestic Subsidiary**" shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person that is a Domestic Subsidiary of such person.

"**Wholly-Owned Foreign Subsidiary**" shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person that is a Foreign Subsidiary of such Person.

"**Wholly-Owned Subsidiary**" shall mean, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (ii) any partnership, association, joint venture or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person owns 100% of the Equity Interests at such time (other than, in the case of a Foreign Subsidiary with respect to preceding clauses (i) or (ii), director's qualifying shares and/or other nominal amounts of shares required to be held by Persons other than the Borrower and its Subsidiaries under applicable law).

"**Work Fee**" means the fees paid by PSG to the Acquiror pursuant to the Work Fee Letter, which fees shall not be subject to reimbursement, set-off or counterclaim except as expressly contemplated by the terms of the Work Fee Letter and this Agreement.

"**Work Fee Letter**" means that certain Work Fee Letter, dated as of October 27, 2016, by and between PSG and the Acquiror.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 *Terms Generally*. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall"; and the words "asset" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. The words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement unless the context shall otherwise require. All references herein to Articles, Sections, paragraphs, clauses, subclauses, Exhibits and Schedules shall be deemed references to Articles, Sections, paragraphs, clauses and subclauses of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Unless otherwise expressly provided herein, (a) all references to documents, instruments and other agreements (including the Credit Documents and organizational documents) shall be deemed to include all subsequent amendments, restatements, amendments and restatements, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, supplements and other modifications are not prohibited by this Agreement and (b) references to any law, statute, rule or regulation shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). In addition to the definitions in Section 1.01, the following terms shall have the meanings set forth in the PPSA: Accessions, Certificated Security, Consumer Goods, Financial Asset, Futures Account, Futures Contract, Money, Security, Securities Account, Security Entitlement, Security Certificate, and Uncertificated Security.

Section 1.03 *Quebec Interpretation Matters*. For purposes of any assets, liabilities or entities located in the Province of Quebec (Canada) and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) "personal property" shall include "movable property", (ii) "real property" or "real estate" shall include "immovable property", (iii) "tangible property" shall include "corporeal property", (iv) "intangible property" shall include "incorporeal property", (v) "security interest", "mortgage" and "lien" shall include a "hypothec", "right of retention", "prior claim" and a resolutory clause, (vi) all references to filing, perfection, priority, remedies, registering or recording under the PPSA shall include publication under the Civil Code of Quebec, (vii) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or hypothec as against third parties, (viii) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (ix) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall include a "mandatary", (xi) "construction liens" shall include "legal hypothecs", (xii) "joint and several" shall include "solidary", (xiii) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault", (xiv) "beneficial ownership" shall include "ownership on behalf of another as mandatary", (xv) "easement" shall include "servitude", (xvi) "priority" shall include "prior claim", (xvii) "survey" shall include "certificate of location and plan", (xviii) "fee simple title" shall include "absolute ownership", (xix) "accounts" shall include "claims", and (xx) "guarantee" or "guarantor" shall include "suretyship" or "surety". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only.

## ARTICLE 2
## AMOUNT AND TERMS OF CREDIT

Section 2.01 *The Commitments*.

(a) Subject to the terms and applicable conditions set forth herein, each Refinancing Term Lender severally agrees to make Refinancing Term Loans in Dollars to the Borrower on the Closing Date in a single

drawing and in an aggregate principal amount not to exceed its Refinancing Term Loan Commitment; *provided* that, if for any reason the full amount of any Refinancing Term Lender's Refinancing Term Loan Commitment is not fully drawn on the Closing Date, the undrawn portion thereof shall automatically expire and be terminated and cancelled upon giving effect to the funding of the drawn Refinancing Term Loans on the Closing Date. Each Refinancing Term Lender's Refinancing Term Loan Commitment shall expire and be terminated immediately and without further action on the Closing Date after giving effect to the funding of such Refinancing Term Lender's Refinancing Term Loan Commitment on the Closing Date.

(b) Subject to the terms and applicable conditions set forth herein, each Delayed Draw Lender having a Delayed Draw Term Loan Commitment severally agrees to make one or more Delayed Draw Term Loans in Dollars to the Borrower on any Delayed Draw Borrowing Date in an aggregate principal amount specified in the applicable Notice of Borrowing not to exceed its then outstanding Delayed Draw Term Loan Commitment as of such Delayed Draw Borrowing Date; *provided* that, if for any reason the full amount of any Delayed Draw Lender's Delayed Draw Term Loan Commitment is not fully drawn on or prior to the Delayed Draw Termination Date, the undrawn portion thereof shall automatically expire and be terminated and cancelled upon the Delayed Draw Termination Date; *provided further* that, (x) there shall only be one Delayed Draw Borrowing Date during any five (5) Business Day period and (y) notwithstanding the occurrence of an Event of Default hereunder or a "termination date" as defined in the Final Financing Order, the Lenders shall make available a Delayed Draw Term Loan available to the Borrower to fund the Carve-Out in the lesser of (x) the Lenders' portion of the post-carve out amount (as defined in the Final Financing Order) or (y) the balance of any remaining undrawn Delayed Draw Commitments immediately prior to such default or termination. Each Delayed Draw Lender's Delayed Draw Term Loan Commitment shall expire and be terminated immediately and without further action on the Delayed Draw Termination Date after giving effect to the funding of such Delayed Draw Lender's Delayed Draw Term Loan Commitment on any Delayed Draw Borrowing Date that has occurred on or prior to such date.

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

(d) Amounts of Term Loans borrowed from time to time under this Section 2.01 that are repaid or prepaid may not be reborrowed. The Delayed Draw Term Loans and the Refinancing Term Loans shall constitute a single class of Term Loans for all purposes of this Agreement and the other Credit Documents.

Section 2.02 *Minimum Amount of Each Borrowing*. The aggregate principal amount of each Borrowing of Term Loans shall not be less than the Minimum Borrowing Amount and integral multiples of $500,000 in excess of that amount.

Section 2.03 *Notice of Borrowing*. Whenever the Borrower desires to make a Borrowing of Term Loans hereunder, the Borrower shall give the Administrative Agent at its Notice Office at least three (3) Business Days' prior written notice before 11:00 a.m. (New York City time) on such day (or such later time as the Administrative Agent shall agree in it its reasonable discretion). Each such notice (each, a "**Notice of Borrowing**"), shall be irrevocable and shall be in writing in the form of Exhibit A, appropriately completed to specify: (a) the aggregate principal amount of the Term Loans to be made pursuant to such Borrowing and (b) the date of such Borrowing (which shall be a Business Day). The Administrative Agent shall promptly give each Lender notice of such proposed Borrowing, of such Lender's proportionate share thereof (determined in accordance with Section 2.07) and of the other matters required by the immediately preceding sentence to be specified in the Notice of Borrowing.

Section 2.04 *Disbursement of Funds*. No later than 11:00 A.M. (New York City time) on the date specified in each Notice of Borrowing, each Lender will make available its pro rata portion (determined in accordance with Section 2.07) of each such Borrowing requested to be made on such date. All such amounts will be made available in U.S. Dollars and in immediately available funds at the Payment Office, and the Administrative Agent will make available to the Borrower at the Payment Office the aggregate of the amounts so made available by the Lenders by no later than 2:00 P.M. (New York City time). Unless the Administrative Agent shall have been notified by any Lender prior to the date of any Borrowing that such Lender does not intend to make available to the

Administrative Agent such Lender's portion of any Borrowing to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent also shall be entitled to recover on demand from such Lender or the Borrower interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower until the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (a) if recovered from such Lender, the overnight Federal Funds Rate for the first three days and at the interest rate otherwise applicable to such Term Loans for each day thereafter and (b) if recovered from the Borrower, the rate of interest applicable to the relevant Borrowing, as determined pursuant to Section 2.08. Nothing in this Section 2.04 shall be deemed to relieve any Lender from its obligation to make Term Loans hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any failure by such Lender to make Term Loans hereunder.

Section 2.05 *Notes.*

(a) The Borrower's obligation to pay the principal of, and interest on, the Term Loans made by each Lender shall be evidenced in the Register maintained by the Administrative Agent pursuant to Section 12.04(c), and shall, if requested by such Lender, also be evidenced by a promissory note duly executed and delivered by the Borrower substantially in the form of Exhibit B, with blanks appropriately completed in conformity herewith (each, a "**Note**" and, collectively, the "**Notes**").

(b) The Note issued to each requesting Lender with outstanding Term Loans shall (i) be executed by the Borrower, (ii) be payable to such Lender or its registered assigns and be dated the Closing Date (or, if issued after the Closing Date, be dated the date of issuance thereof), (iii) be in a stated principal amount equal to the Term Loans made by such Lender on the Closing Date (or, if issued after the Closing Date, be in a stated principal amount equal to the outstanding Term Loans of such Lender at such time) and be payable in the outstanding principal amount of Term Loans evidenced thereby, (iv) mature on the Maturity Date, (v) bear interest as provided in Section 2.08, (vi) be subject to voluntary prepayment as provided in Section 4.01, and mandatory repayment as provided in Section 4.02, and (vii) be entitled to the benefits of this Agreement and the other Credit Documents.

(c) *[Reserved].*

(d) Each Lender will note on its internal records the amount of each Term Loan made by it and each payment in respect thereof and prior to any transfer of any of its Notes will endorse on the reverse side thereof the outstanding principal amount of Term Loans evidenced thereby. Failure to make any such notation or any error in such notation shall not affect the Borrower's obligations in respect of such Term Loans.

(e) Notwithstanding anything to the contrary contained above in this Section 2.05 or elsewhere in this Agreement, Notes shall only be delivered to Lenders which at any time specifically request the delivery of such Notes. No failure of any Lender to request or obtain a Note evidencing its Term Loans to the Borrower shall affect or in any manner impair the obligation of the Borrower to pay the Term Loans (and all related Obligations) incurred by the Borrower that would otherwise be evidenced thereby in accordance with the requirements of this Agreement, and shall not in any way affect the security or guaranties therefor provided pursuant to the various Credit Documents. Any Lender that does not have a Note evidencing its outstanding Term Loans shall in no event be required to make the notations otherwise described in the preceding clause (b). At any time when any Lender requests the delivery of a Note to evidence any of its Term Loans, the Borrower shall promptly execute and deliver to the respective Lender the requested Note in the appropriate amount or amounts to evidence such Term Loans.

Section 2.06 *[Reserved].*

Section 2.07 *Pro Rata Borrowings*. All Borrowings of Term Loans under this Agreement shall be incurred from the Lenders pro rata on the basis of such Lenders' Commitments. No Lender shall be responsible for any default by any other Lender of its obligation to make Term Loans hereunder, and each Lender shall be obligated to make the Term Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Term Loans hereunder.

Section 2.08 *Interest*.

(a) The Borrower agrees to pay interest in respect of the unpaid principal amount of each Term Loan made to the Borrower hereunder from the date of Borrowing thereof until paid in full, at a rate per annum which shall be equal to the Applicable Rate.

(b) During the occurrence of an Event of Default and (other than with respect to amounts that are due and not paid, including overdue principal and interest, in respect of each of which Default Rate Interest will accrue automatically upon the occurrence and continuance of an Event of Default) after delivery of notice by the Administrative Agent, all Obligations (including any interest, fees or premiums) shall, in each case, accrue at a rate per annum equal to 2.00% per annum in excess of the relevant rate for such Obligations (the "**Default Rate Interest**"), with all such amounts to be payable on demand.

(c) Accrued (and theretofore unpaid) interest shall be calculated daily and payable monthly in arrears on (i) the first day of each month, (ii) the date of any prepayment or repayment thereof (on the amount prepaid or repaid), (iii) at maturity (whether by acceleration or otherwise) and (iv) after such maturity, on demand.

(d) For the purposes of the *Interest Act* (Canada), the yearly rate of interest to which any rate calculated on the basis of a period of time different from the actual number of days in the year (three hundred sixty (360) days, for example) is equivalent to the stated rate multiplied by the actual number of days in the year (three hundred sixty-five (365) or three hundred sixty-six (366), as applicable) and divided by the number of days in the shorter period (three hundred sixty (360) days, in the example), and the parties hereto acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest.

Section 2.09 *[Reserved]*.

Section 2.10 *Increased Costs*.

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

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

(ii) subject any Recipient to any Taxes (other than (x) Indemnified Taxes, (y) Taxes described in clauses (b) through (f) of the definition of Excluded Taxes and (z) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

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

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Term Loan or of maintaining its obligation to make any such Term Loan, or to increase the cost to such Lender or such other Recipient, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case

may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Term Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180)-day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.11 *[Reserved].*

Section 2.12 *[Reserved].*

Section 2.13 *Change of Lending Office and Replacement of Lenders.*

(a) If any Lender requests compensation under Section 2.10, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.04, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Term Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.10 or Section 4.04, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.10, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.04 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.13(a), the Borrower may replace such Lender in accordance with Section 12.20.

Section 2.14 *Security and Priority*. Upon, and subject to, the entry of the Final Financing Orders and the terms of the Post-Petition Intercreditor Arrangements, all of the Obligations of each Debtor Credit Party shall, subject to the Carve-Out, at the times noted above:

(a) Pursuant to Section 364(c)(1) of the Bankruptcy Code and after entry of the Final Financing Order, constitute allowed superpriority administrative expense claims against the Debtor Credit Parties (without the need to file any proof of claim) with priority over any and all claims against the Debtor Credit Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 363, 365, 503(a), 503(b), 506(c) (upon entry of the Final Financing Order by the U.S. Bankruptcy Court, to the extent therein approved), 507(a), 507(b) (other than allowed 507(b) claims of the lenders under the Prepetition ABL Credit Agreement and Prepetition Term Loan Credit Agreement as provided under the Interim Financing Order by the U.S. Bankruptcy Court or the Final Financing Order by the U.S. Bankruptcy Court, as applicable, including adequate protection obligations), 726, 1113 or 1114 of the Bankruptcy Code (including any adequate protection obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "**DIP Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property, whether existing on the Petition Date or thereafter acquired, of the Debtor Credit Parties and all proceeds thereof (excluding Avoidance Actions, but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof), subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law and (2) the Carve-out and the Administration Charge. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Financing Order by the U.S. Bankruptcy Court (or, after entry thereof, the Final Financing Order by the U.S. Bankruptcy Court) or any provision thereof is vacated, reversed, amended or otherwise modified, on appeal or otherwise. Pursuant to Section 364(c)(2) of the Bankruptcy Code, the Financing Orders and the Security Documents and Post-Petition Intercreditor Arrangements be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable first priority security interest and Lien on the Collateral of each Debtor Credit Party (i) to the extent such Collateral is not subject to valid, enforceable, perfected and non-avoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law, with all other Permitted Liens on such Collateral being junior in ranking except as expressly provided in Section 9.01 hereof and (ii) excluding claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (collectively "**Avoidance Actions**") but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof.

(b) Pursuant to Section 364(d)(1) of the Bankruptcy Code, the Security Documents, the Financing Orders and the Post-Petition Intercreditor Arrangements and subject to the terms thereof, be secured by a first lien, senior, valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all Term Priority Collateral of each Debtor Credit Party (excluding Avoidance Actions, but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof), which security interests and Liens on such Collateral shall in each case be subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable)and/or that have priority after the Petition Date by operation of Law and (2) the Carve-out and the Administration Charge, with all other Permitted Liens on the Term Priority Collateral being junior in ranking except as expressly provided in Section 9.01 hereof.

(c) Pursuant to Section 364(c)(3) of the Bankruptcy Code, the Security Documents, the Financing Orders and the Post-Petition Intercreditor Arrangements and subject to the terms thereof, be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all ABL Priority Collateral of each Debtor Credit Party (excluding Avoidance Actions, but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof), which security interests and Liens on such Collateral shall in each case be subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law, (2) the Permitted Liens of the ABL

Facilities and (3) the Carve-out and the Administration Charge, with all other Permitted Liens on the Term Priority Collateral being junior in ranking except as expressly provided in Section 9.01 hereof.

(d) Following the Final Financing Order Date, pursuant to Section 11.2 of the CCAA, the Security Documents and the Post-Petition Intercreditor Arrangements, be secured by a super-priority charge which shall rank in priority to all other security interests, trusts, Liens, hypothecs, charges and encumbrances, claims of secured creditors, statutory or otherwise, in favor of any Person, on the Collateral of each Canadian Debtor Credit Party, subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date the priority of which has not been adversely impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law, (2) with respect to the ABL Priority Collateral, the Permitted Liens securing the ABL Facilities, and (3) the Carve-out and the Administration Charge; with all other Permitted Liens on the Collateral being junior in ranking except as expressly provided in Section 9.01 hereof.

Section 2.15 *Collateral Security Perfection.* Following the Final Financing Order Date, the Borrower agrees to take, and cause each of its Subsidiaries to take, all actions that the Administrative Agent or the Required Lenders may reasonably request as a matter of nonbankruptcy law to perfect and protect the security interests and Liens granted by the Credit Parties for the benefit of the Secured Parties upon the Collateral and for such security interests and Liens to obtain the priority therefor contemplated hereby, including, without limitation, executing and delivering such documents and instruments, financing statements and providing such other instruments and documents in recordable form as the Administrative Agent or the Required Lenders may reasonably request, subject to any applicable limitations set forth in the Credit Documents. Following the Final Financing Order Date, the Borrower hereby irrevocably authorizes the Administrative Agent at any time and from time to time to file in any filing office in any UCC or PPSA jurisdiction (including the Province of Quebec) any initial financing statements and amendments thereto naming such Credit Party as "debtor" that (a) indicate the Collateral (i) as all assets of such Credit Party or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or the PPSA, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the UCC or similar provisions of the PPSA, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether such Credit Party is an organization, the type of organization and any organization identification number issued to such Credit Party and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Each Credit Party agrees to furnish any such information to the Administrative Agent and the Advisors promptly upon request. Notwithstanding the provisions of this Section 2.15, the Administrative Agent and the Lenders shall have the benefits of the Final Financing Order.

Section 2.16 *Payment of Obligations; No Discharge; Survival of Claims.*

(a) Subject to the provisions of Section 10.02, upon the maturity (whether by acceleration or otherwise) of any of the Obligations of the Credit Parties under this Agreement or any of the other Credit Documents, the Lenders and the other Secured Parties shall be entitled to immediate payment of such Obligations and to exercise of any and all remedies under, but subject to, the Financing Orders.

(b) The Borrower agrees that, to the extent that the Obligations have not been Paid in Full, (i) its Obligations arising hereunder shall not be discharged by the entry of any order of the Bankruptcy Courts, including but not limited to an order confirming any chapter 11 plan or plans filed in any or all of the Cases (and the Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the DIP Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Financing Orders and described in Section 2.14 and the Liens on any assets of any Debtor Credit Parties granted to the Administrative Agent pursuant to the Financing Orders and described in Section 2.14 shall not be affected in any manner by the entry of any order of the Bankruptcy Courts confirming any such plan.

Section 2.17 *Canadian Interest Considerations.* The parties hereto intend to comply with applicable law relating to usury. Notwithstanding any other provision of this Agreement or any other Credit Document, in no event shall any Credit Document require the payment or permit the collection of interest or other amounts in an amount or at a rate in excess of the amount or rate that is permitted by applicable law or in an amount or at a rate

that would result in the receipt by the Lender or the Agents of interest at a criminal rate, as the terms "interest" and "criminal rate" are defined under the *Criminal Code* (Canada). Where more than one applicable law applies to the Credit Parties, the Credit Parties shall not be obliged to make payment in an amount or at a rate higher than the lowest permitted amount or rate. If from any circumstance whatever, fulfilment of any provision of any Credit Document would result in exceeding the highest rate or amount permitted by applicable law for the collection or charging of interest, the obligation to be fulfilled shall be reduced to reflect the highest permitted rate or amount. If from any circumstance the Agents or the Lenders shall ever receive anything of value as interest or deemed interest under any Credit Document that would result in exceeding the highest lawful rate or amount of interest permitted by applicable law, the amount that would be excessive interest shall be applied to the reduction of the principal amount of the relevant Term Loan, and not to the payment of interest, or if the excessive interest exceeds the unpaid principal balance of the relevant Term Loan, the amount exceeding the unpaid balance shall be refunded to the Credit Parties. In determining whether or not the interest paid or payable under any specified contingency exceeds the highest lawful rate, the Credit Parties, the Agents and the Lenders shall, to the maximum extent permitted by applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and their effects, (iii) amortize, prorate, allocate and spread the total amount of interest throughout the term of the applicable Term Loan so that interest does not exceed the maximum amount permitted by applicable law, and/or (iv) allocate interest between portions of the Obligations to the end that no portion shall bear interest at a rate greater than that permitted by applicable law. For the purposes of the *Criminal Code* (Canada), if there is any dispute as to the calculation of the effective annual rate of interest, the determination of a Fellow of the Canadian Institute of Actuaries appointed by the Agents shall be conclusive.

## ARTICLE 3
## FEES; REDUCTIONS OF COMMITMENT

Section 3.01 *Fees.*

(a) *Unused Term Loan Commitment Fee*. From and after the entry of the Final Financing Order, the Borrower agrees to pay to each applicable Lender (other than any Defaulting Lender), through the Administrative Agent, on or before the date that is two (2) Business Days after the last Business Day of each month, on any Delayed Draw Borrowing Date (with respect to Delayed Draw Term Loan Commitments terminating on such date), and on the Maturity Date, in cash in Dollars, a commitment fee (the "**Unused Term Loan Commitment Fee**") on the daily average undrawn amount of the Delayed Draw Term Loan Commitment (whether or not then available) of such Lender during the preceding thirty (30) days or ending with, as applicable, the date on which the last of the Delayed Draw Term Loan Commitments of such Lender shall be terminated) at the rate per annum equal to 1.00% *per annum* which Unused Term Loan Commitment Fee shall not be subject to any set-off, withholding or deduction. All Unused Term Loan Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of three hundred sixty (360) days. The Unused Term Loan Commitment Fee due to each Lender shall commence to accrue on the date on which the Final Financing Order is entered and shall cease to accrue on the date on which the Delayed Draw Term Loan Commitments have been drawn or terminated pursuant to this Agreement.

(b) *Prepayment Premium*. In the event that, on or prior to the Scheduled Maturity Date, the Borrower pays, prepays, refinances, substitutes or replaces and/or otherwise makes a repayment in whole or in part of any Term Loans pursuant to Section 4.01(a) or pursuant to Section 4.02(a) or an Event of Default shall be in existence and the Obligations shall have been accelerated and become due and payable prior to the Scheduled Maturity Date, Borrower shall pay to the Administrative Agent, for the ratable account of each applicable Term Lender (including any Non-Consenting Lender whose Term Loans are repaid or replaced pursuant to Section 12.11(b)), a premium (the "**Prepayment Premium**") equal to (i) 1.00% of the aggregate principal amount of the Term Loans so paid, prepaid, repaid, refinanced, substituted or replaced that are Refinancing Term Loans and (ii) 2.50% of the amount of the Delayed Draw Term Loans so paid, prepaid, refinanced, substituted or replaced and/or otherwise repaid in whole or in part; provided that, the Prepayment Premium (x) may be credited against any Work Fee and (y) shall in each case be reduced to 0.00% upon the execution by the parties thereto of, and approval by the Bankruptcy Courts of, the Bidding Procedures Motion, and the entry by the Bankruptcy Courts of the corresponding orders. All such amounts shall be due and payable in full in cash on the date of the relevant prepayment.

(c) *Agent Fee*. The Borrower agrees to pay to the Administrative Agent an agency fee of $100,000 per annum, which shall be earned in full on the Signing Date and payable on the Closing Date. Such fee will be in all respects fully earned, due and payable on the applicable dates specified herein and be non-refundable.

(d) *Commitment Fee*. The Borrower agrees to pay to the Administrative Agent, for the account of each applicable Lender, a commitment fee (the "**Commitment Fees**") (x) in an amount equal to 1.00% of the aggregate principal amount of such Lender's Refinancing Term Loans made on the Closing Date, such fee to be accrued and earned on the Signing Date and due and payable on the Closing Date and (y) in an amount equal to 3.00% of the aggregate principal amount of such Lender's Delayed Draw Term Loan Commitments, such fee to be accrued and earned on the Signing Date and due and payable on the Closing Date. Such Commitment Fees will be in all respects fully earned, due and payable on the applicable dates specified herein and be non-refundable. The Commitment Fees for any Term Loans shall be paid out of the proceeds of such Term Loans made by the Term Lenders and not subject to any set-off, withholding or deduction.

(e) *Survival*. The obligations of the Borrower to the Administrative Agent pursuant to this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments or this Agreement, repayment of the Term Loans and the repayment, satisfaction or discharge of all other Obligations.

Section 3.02 *Mandatory Reduction of Commitments*. (a) In addition to any other mandatory commitment reductions pursuant to this Section 3.02, the Refinancing Term Loan Commitment shall terminate in its entirety on the Closing Date (after giving effect to the incurrence of Refinancing Term Loans on such date).

(b) In addition to any other mandatory commitment reductions pursuant to this Section 3.02, the Delayed Term Loan Commitment shall terminate (x) on each Delayed Draw Borrowing Date in an amount equal to any Delayed Draw Term Loans funded on such Delayed Draw Borrowing Date and (y) in its entirety on the Delayed Draw Termination Date (and, to the extent such date is also a Delayed Draw Borrowing Date, after giving effect to the incurrence of the relevant Delayed Draw Term Loans on such date).

(c) Each reduction to the Refinancing Term Loan Commitment and the Delayed Draw Term Loan Commitment pursuant to this Section 3.02 as provided above (or pursuant to Section 4.02) shall be applied proportionately to reduce the Refinancing Term Loan Commitment or the Delayed Draw Term Loan Commitment, as the case may be, of each Lender with such a Commitment.

## ARTICLE 4
## PREPAYMENTS; PAYMENTS; TAXES

Section 4.01 *Voluntary Prepayments.*

(a) The Borrower shall have the right to prepay the Term Loans, without premium or penalty (other than with respect to the Prepayment Premium pursuant to Section 3.01(b)), in whole or in part at any time and from time to time on the following terms and conditions: (i) the Borrower shall give the Administrative Agent at its Notice Office written notice of its intent to prepay the Term Loans and the amount of the Term Loans to be prepaid, which notice shall be given by the Borrower prior to 11:00 a.m.(New York City time) at least three (3) Business Days prior to the date of such prepayment (or, such shorter period as the Administrative Agent shall agree in its reasonable discretion), and be promptly transmitted by the Administrative Agent to each of the Lenders; (ii) each partial prepayment of Term Loans pursuant to this Section 4.01(a) shall be in an aggregate principal amount of at least $1,000,000 and integral multiples of $500,000 in excess of that amount, or such lesser amount as is acceptable to the Administrative Agent in its reasonable discretion; (iii) each prepayment pursuant to this Section 4.01(a) in respect of any Term Loans made pursuant to a Borrowing shall be applied pro rata among such Term Loans; and (iv) each prepayment of principal of Term Loans pursuant to this Section 4.01(a) shall be applied as directed by the Borrower in the applicable notice of prepayment delivered pursuant to this Section 4.01(a).

(b) In the event (i) of a refusal by a Lender to consent to certain proposed changes, amendments, waivers, discharges or terminations with respect to this Agreement which have been approved by the

Required Lenders as (and to the extent) provided in Section 12.11(b), or (ii) any Lender becomes a Defaulting Lender, the Borrower may, upon one (1) Business Days' prior written notice to the Administrative Agent at the Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders) repay all Term Loans, together with accrued and unpaid interest, Fees and other amounts owing to such Lender in accordance with, and subject to the requirements of said Section 12.11(b), so long as the consents, if any, required under Section 12.11(b) in connection with the repayment pursuant to clause (b) have been obtained.

Section 4.02 *Mandatory Repayments.*

(a) Subject to the Post-Petition Intercreditor Arrangements, in addition to any other mandatory repayments pursuant to this Section 4.02, within five (5) Business Days following each date on or after the Closing Date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any issuance or incurrence of Indebtedness (other than Indebtedness permitted to be incurred pursuant to Section 9.04), an amount equal to 100% of the Net Debt Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(e).

(b) Subject to the Post-Petition Intercreditor Arrangements, in addition to any other mandatory repayments pursuant to this Section 4.02, (i) within five (5) Business Days following each date on or after the Closing Date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any Asset Sale of Collateral (other than a Sale Transaction), an amount equal to 100% of the Net Sale Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(fe) and (ii) upon consummation of any Sale Transaction, an amount equal to the lesser of (A) the Net Sale Proceeds thereof or (B) the outstanding amount of all Obligations (including any interest, fees or premiums).

(c) Subject to the Post-Petition Intercreditor Arrangements, in addition to any other mandatory repayments pursuant to this Section 4.02, within five (5) Business Days following each date on or after the Closing Date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any issuances of Equity Interests by the Borrower, 100% of the Net Equity Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(e).

(d) Subject to the Post-Petition Intercreditor Arrangements, in addition to any other mandatory repayments pursuant to this Section 4.02, within five (5) Business Days following each date on or after the Closing Date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any Recovery Event, an amount equal to 100% of the Net Recovery Event Proceeds from such Recovery Event shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(f); provided that, notwithstanding the foregoing provisions of this clause (d), the Borrower may deliver within 5 Business Days of receipt of such Net Recovery Event Proceeds a certificate to the Administrative Agent setting forth that portion of such Net Recovery Event Proceeds that the Borrower and/or its Subsidiaries, as the case may be, intends to reinvest in the purchase of assets to replace such assets subject to the relevant Recovery Event, in each case to be used in the business of the Borrower and its Subsidiaries within 60 days following the date of receipt of such proceeds (and, in connection therewith, shall thereafter promptly provide such other information with respect to such reinvestment as the Administrative Agent may from time to time reasonably request); provided further that, (x) any such Net Recover Event Proceeds in excess of $2,500,000 shall be required to be deposited in escrow with the Administrative Agent pursuant to arrangements reasonably satisfactory to it and (y) if within 60 days after the date of receipt by the Borrower or any of its Subsidiaries of such Net Recovery Event Proceeds, the Borrower or any of its Subsidiaries have not so used all or a portion of such Net Recovery Event Proceeds otherwise required to be applied as a mandatory repayment pursuant to this sentence, the remaining portion of such Net Recovery Event Proceeds shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(e) on the last day of 60 day period.

(e) Each amount required to be applied pursuant to this Section shall be applied to repay the outstanding principal amount of Term Loans.

(f) In addition to any other mandatory repayments pursuant to this Section 4.02, all then outstanding Term Loans shall be Paid in Full on the Maturity Date for such Term Loans.

(g) Notwithstanding any other provisions of this Section 4.02, (i) to the extent that any or all of the Net Sale Proceeds of any Asset Sale by a Foreign Subsidiary (a "**Foreign Asset Sale**"), the Net Recovery Event Proceeds of any Recovery Event incurred by a Foreign Subsidiary (a "**Foreign Recovery Event**") are prohibited or delayed by applicable local law or applicable organizational documents of such Foreign Subsidiary from being repatriated to Canada, the portion of such Net Sale Proceeds or Net Recovery Event Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in this Section 4.02 but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law or applicable organizational documents of such Foreign Subsidiary will not permit repatriation to Canada (the Borrower hereby agreeing to use all commercially reasonable efforts to overcome or eliminate any such restrictions on repatriation and/or minimize any such costs of prepayment and/or use the other cash sources of the Borrower and its Subsidiaries to make the relevant prepayment), and on the Maturity Date, such repatriation will be immediately effected and such repatriated Net Sale Proceeds or Net Recovery Event Proceeds will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof and additional costs relating to such repatriation) to the repayment of the Term Loans pursuant to this Section 4.02 and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Sale Proceeds of any Foreign Asset Sale or Net Recovery Event Proceeds of any Foreign Recovery Event would have adverse tax cost consequences with respect to such Net Sale Proceeds or Net Recovery Event Proceeds, such Net Sale Proceeds or Net Recovery Event Proceeds so affected may be retained by the applicable Foreign Subsidiary.

(h) Notwithstanding any other provisions of this Section 4.02, except in the case of a mandatory prepayment of the type described in Section 4.02(d), each Lender shall have the right to reject its pro rata share of any mandatory prepayments described above, in which case the amounts so rejected may be retained by the Borrower.

(i) Each prepayment of the Term Loans under this Section shall be accompanied by any accrued interest to the date of such prepayment on the amount prepaid and all other amounts (including any accrued and unpaid fees and premiums (including any Prepayment Premium due as a result thereof)) in respect therewith then due and payable under this Agreement.

Section 4.03 *Method and Place of Payment*. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for or any counterclaim, withholding recoupment or setoff. Except as otherwise specifically provided herein, all payments under this Agreement and under any Note shall be made to the Administrative Agent or the account of the Lender or Lenders entitled thereto not later than 11:00 a.m. (New York City time) on the date when due and shall be made in U.S. Dollars in immediately available funds at the Payment Office of the Administrative Agent. Whenever any payment to be made hereunder or under any Note shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

Section 4.04 *Net Payments.*

(a) All payments made by or on account of any Credit Party under any Credit Document shall be made free and clear of, and without deduction or withholding for, any Taxes, except as required by applicable law (as determined in the good-faith discretion of the withholding agent). If any Indemnified Taxes or Other Taxes are required to be withheld or deducted from such payments, then the Credit Parties jointly and severally agree that (i) to the extent such deduction or withholding is on account of an Indemnified Tax or Other Tax, the sum payable by the Credit Parties shall be increased as necessary so that after making all required deductions or withholding (including deduction or withholdings applicable to additional sums payable under this Section 4.04), the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent will make such deductions or withholdings and (iii) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law. In addition, the Credit Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law. As soon as practicable after any payment of Indemnified Taxes or Other Taxes to a Governmental Authority, the Credit Parties will furnish to the Administrative Agent certified copies of tax receipts evidencing such payment by the applicable Credit Party, a copy of the return reporting such payment or other evidence of such

payment reasonably satisfactory to the Administrative Agent. The Credit Parties jointly and severally agree to indemnify and hold harmless the Administrative Agent and each Lender, and reimburse the Administrative Agent and each Lender, within ten (10) days of written request therefor, for the amount of any Indemnified Taxes (including any Indemnified Taxes imposed on amounts payable under this Section 4.04) payable or paid by the Administrative Agent or such Lender or required to be withheld or deducted from a payment to the Administrative Agent or such Lender, and any Other Taxes, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(b) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or a reduce rate of, withholding Tax. In addition, each Lender shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. Each Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documents required below in Section 4.04(c)) expired, obsolete or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its inability to do so.

(c) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower: (x) Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or prior to the Closing Date or, in the case of a Lender that is a Lender to the Borrower and that is an assignee or transferee of an interest under this Agreement pursuant to Section 12.04 (unless the relevant Lender was already a Lender hereunder immediately prior to such assignment or transfer), on the date of such assignment or transfer to such Lender, (d) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party or Form W-8ECI (or successor form), or (e) in the case of a Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," "a certificate substantially in the form of Exhibit C (any such certificate, a "**U.S. Tax Compliance Certificate**") and two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or successor form) certifying to such Lender's entitlement as of such date to a complete exemption from U.S. withholding tax with respect to payments of interest to be made under this Agreement and under any Note; or (f) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), two accurate and complete original signed copies of Internal Revenue Service Form W- 8IMY (or successor form) of the Lender, accompanied by Form W-8ECI, Form W-8BEN or W-8BEN-E, U.S. Tax Compliance Certificate, Form W-8IMY, and/or any other required information (or successor or other applicable form) from each beneficial owner that would be required under this Section 4.04(c) if such beneficial owner were a Lender (*provided* that, if the Lender is a partnership for U.S. federal income Tax purposes (and not a participating Lender), and one or more beneficial owners are claiming the portfolio interest exemption), the U.S. Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owners); (y) Each Lender that is a United States person, as defined in Section 7701(a)(30) of the Code, shall deliver to the Borrower and the Administrative Agent, at the times specified in Section 4.04(b), two accurate and complete original signed copies of Internal Revenue Service Form W-9, or any successor form that such Person is entitled to provide at such time, in order to qualify for an exemption from U.S. federal backup withholding requirements; and (z) if any payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) and/or Section 1472(b) of the Code), such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation

prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower or the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine, if necessary, the amount to deduct and withhold from such payment. Solely for purposes of this Section 4.04(c)(z), "**FATCA**" shall include any amendment made to FATCA after the Signing Date.

Notwithstanding any other provision of this Section 4.04, a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(d) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Credit Parties or with respect to which a Credit Party has paid additional amounts pursuant to Section 4.04(a), it shall pay to the relevant Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under Section 4.04(a) with respect to Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses, including any Taxes, of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the relevant Credit Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Credit Party (*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. Notwithstanding anything to the contrary in this 4.04(d), in no event will the Administrative Agent or any Lender be required to pay any amount to any Credit Party pursuant to this Section 4.04(d) the payment of which would place the Administrative Agent or any Lender in a less favorable net after-Tax position than such party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 4.04 shall not be construed to require any Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Credit Party or any other Person.

(e) Each party's obligations under this Section 4.04 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

## ARTICLE 5
## CONDITIONS PRECEDENT TO CREDIT EVENTS

Section 5.01 *Conditions to Commitments*. The effectiveness of the Commitments hereunder is subject to the satisfaction or waiver of the following conditions:

(a) *Signing Date; Credit Documents; Notes*. On or prior to the Signing Date, the Borrower, each Guarantor, the Administrative Agent and each of the Lenders on the date hereof shall have signed a counterpart of this Agreement in form and substance satisfactory to each Lender and the Administrative Agent (whether the same or different counterparts) and shall have delivered (by electronic transmission or otherwise) the same to the Administrative Agent.

(b) *Officer's Certificate*. On the Signing Date, the Administrative Agent shall have received an Officer's Certificate, dated the Signing Date and signed on behalf of the Borrower (and not in any individual capacity) by a Responsible Officer of the Borrower, certifying on behalf of the Borrower that the conditions in Section 6.03 have been satisfied on such date.

(c) *[Reserved]*.

(d) *Corporate Documents; Proceedings, etc.*

(i) On the Signing Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Signing Date, signed by a Responsible Officer of such Credit Party, and attested to by the Secretary or any Assistant Secretary of such Credit Party, in the form of Exhibit E with appropriate insertions, together with copies of the certificate or articles of incorporation and by-laws (or equivalent organizational documents), as applicable, of such Credit Party and the resolutions of such Credit Party referred to in such Officer's Certificate, and each of the foregoing shall be in form and substance reasonably satisfactory to the Administrative Agent.

(ii) On the Signing Date, the Administrative Agent shall have received good standing certificates and bring-down telegrams or facsimiles, if any, or equivalents, for the Credit Parties which the Administrative Agent reasonably may have requested, certified by proper governmental authorities.

(e) *Lien Searches*. On the Signing Date, each Credit Party shall have duly delivered:

(i) certified copies, each of a recent date, of (x) requests for information or copies (Form UCC-1), or equivalent reports as of a recent date, listing all effective financing statements that name the Borrower or any other Credit Party as debtor and that are filed in the jurisdictions referred to in Section 5.02(m)(ii), together with copies of such other financing statements that name the Borrower or any other Credit Party as debtor (none of which shall cover any of the Collateral except to the extent evidencing Permitted Liens), (y) United States Patent and Trademark Office and the United States Copyright Office searches reasonably requested by the Administrative Agent and (z) reports as of a recent date listing all effective tax and judgment liens with respect to the Borrower or any other Credit Party in each jurisdiction as the Agents may reasonably require; and

(ii) certified copies, each of a recent date, of (x) RPMRR, PPSA, Bank Act (Canada), or equivalent reports as of a recent date, listing all effective financing statements or other registrations that name the Borrower or any other Credit Party as debtor and that are filed in the jurisdictions referred to in clause (iii) above, together with copies of such other financing statements or other registrations that name the Borrower or any other Credit Party as debtor (none of which shall cover any of the Collateral except to the extent evidencing Permitted Liens), (y) Canadian Intellectual Property Office searches reasonably requested by the Administrative Agent and (z) reports as of a recent date listing all effective executions, writs and judgment liens with respect to the Borrower or any other Credit Party in each jurisdiction as the Agents may reasonably require.

(f) *Financial Statements; Pro Forma Balance Sheets; Projections*. On or prior to the Signing Date, the Agents and the Lenders shall have received (i) the audited consolidated balance sheets and related consolidated statements of operations, cash flows and shareholders' equity for the Borrower for the fiscal year ending May 31, 2016 or in lieu thereof, a draft of the consolidated financial statements in form and substance acceptable to the Lenders; (ii) the unaudited consolidated balance sheets and related statements of operations and cash flows of the Borrower the four-week period and fiscal quarter ending May 31, 2016 and for each subsequent four-week period and quarterly period of the Borrower, ended at least forty-five (45) days before the Signing Date and (iii) pro forma consolidated balance sheet and related statement of operations of the Borrower and its Subsidiaries as of and for the twelve-month period ending with the latest quarterly period of the Borrower covered by the financial statements referred to in clause (ii), all of which shall be prepared in accordance with GAAP.

(g) *Budget*. The Administrative Agent and the Lenders shall have received a cash flow forecast in form and substance reasonably satisfactory to the Lenders depicting on a weekly basis receipts and disbursements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity and the Borrowing Base for each weekly period through the Scheduled Maturity Date (including the week in which the Petition Date occurred) dated as of the Petition Date and delivered to the Administrative Agent as the "Final Budget" prior to the Signing Date (the "**Initial Budget**"), together with a good faith estimate of all borrowings of Term Loans to be made within the first week following the Closing Date.

(h) *Fees, etc*. On the Signing Date, the Borrower shall have paid to the Agents and each Lender all costs, fees and expenses (including, without limitation, legal fees and expenses to the extent invoiced at least two (2) Business Days prior the Signing Date) and other compensation payable to the Agents or such Lender hereunder or otherwise payable in respect of the Transaction to the extent then due.

(i) *Commencement of Cases; First Day Financing Orders.* On or prior to the Signing Date, the Debtor Credit Parties shall have commenced the Cases, and the Borrower and each of its Subsidiaries identified on Schedule 5.01(i) to be a Debtor shall be a debtor and a debtor-in-possession. All of the "first day orders" or "second day orders" entered by the Bankruptcy Courts on or about the time of commencement of the Cases (and, if any such orders shall not have been entered by the Bankruptcy Courts, the form of such orders submitted to the Bankruptcy Courts for approval) and all payments approved by the Bankruptcy Courts in any such orders, including the Interim Financing Order or otherwise shall be in form and substance reasonably satisfactory to the Lenders.

(j) *Entry of Interim Financing Order.* The Administrative Agent and the Lenders shall have received a signed copy of an order of the Bankruptcy Courts, in form and substance reasonably satisfactory to the Lenders (it being understood and agreed that an order in the form of the orders attached as Exhibit L shall, if entered by the Bankruptcy Courts, be deemed satisfactory to the Lenders) and such order shall have been entered not later than three (3) Business Days following the Petition Date (or such later date as the Lenders may agree in writing) (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof, the "**Interim Financing Order**"), which Interim Financing Order shall, among other things, (i) authorize the Credit Documents and the Commitments in the amounts and on the terms set forth herein, (ii) set forth certain intercreditor arrangements (the "**Interim Order Intercreditor Arrangements**") with respect to the Liens securing the Prepetition Term Loan Credit Agreement and the Liens securing the obligations under the ABL Facilities, including (except in the case of the Canadian Cases) adequate protection (unless waived by the Lenders to be determined at the final hearing), (iii) approve the ABL DIP Facility and (iv) grant the DIP Superpriority Claims and other Liens on the assets of the Debtor Credit Parties referred to herein and in the other Credit Documents and which Interim Financing Order shall be in full force and effect and shall not have been amended, modified, stayed, vacated, terminated or reversed; *provided* that (x) if such Interim Financing Order is the subject of a pending appeal in any respect, none of such Interim Financing Order, the initial extensions of credit, or the performance by the Borrower of any of the Obligations shall be the subject of a presently effective stay pending appeal, (y) the Borrower, the Administrative Agent and the Lenders shall be entitled to rely in good faith upon such Interim Financing Order, notwithstanding objection thereto or appeal therefrom by any interested party and (z) the Borrower, the Administrative Agent and the Lenders shall be permitted and required to perform their respective obligations in compliance with this Agreement notwithstanding any such objection or appeal unless the relevant order has been stayed by a court of competent jurisdiction. The Debtors shall be in compliance in all respects with the Interim Financing Order.

(k) *No Appointment of Trustee.* No trustee or responsible officer or examiner (other than a fee examiner) having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1104 of the Bankruptcy Code shall have been appointed or elected, with respect to any of the Credit Parties, any of their Subsidiaries or their respective properties.

(l) *No Unstayed Actions.* There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Borrower) threatened in any court or before any arbitrator or governmental instrumentality against any Debtor Credit Party, except for (i) the Cases or the consequences that would normally result from the commencement, continuation and prosecution of the Cases, (ii) any objections or pleadings that may have been filed in the Cases relating to authorization to enter into the Credit Documents and incur the Obligations, (iii) as could not reasonably be expected to have a Material Adverse Effect and (iv) the OSC Investigation and the SEC Investigation.

(m) *ABL DIP Facility*. The ABL DIP Facility shall have been entered into and be in full force and effect.

Section 5.02 *Conditions to Refinancing Term Loans*. The obligation of each Lender to make Refinancing Term Loans is subject at the time of the making of such Refinancing Term Loans to the satisfaction or waiver of the following conditions:

(a) *Signing Date*. The Signing Date shall have occurred.

(b) *Officer's Certificate*. On the Closing Date, the Administrative Agent shall have received an Officer's Certificate, dated the Closing Date and signed on behalf of the Borrower (and not in any individual capacity) by a Responsible Officer of the Borrower, certifying on behalf of the Borrower that all of the conditions in Article 6 have been satisfied on such date.

(c) *Termination of the Prepetition Term Loan Credit Agreement.* The Borrower and its Subsidiaries shall have repaid in full by applying all of the proceeds of the Refinancing Term Loans, all Indebtedness outstanding under the Prepetition Term Loan Credit Agreement, together with all accrued but unpaid interest, fees and other amounts owing thereunder (other than contingent indemnification obligations not yet due and payable) and (i) all commitments to lend or make other extensions of credit thereunder shall have been terminated and (ii) all security interests and hypothecs in respect of, and Liens securing, the Indebtedness and other obligations thereunder created pursuant to the security documentation relating thereto shall have been terminated and released (or arrangements therefor reasonably satisfactory to the Administrative Agent shall have been made) subject to any post-repayment junior adequate protection liens provided for in the Financing Orders (collectively, the "**Refinancing**"), and the Administrative Agent shall have received all such releases as may have been reasonably requested by the Administrative Agent, which releases shall be in form and substance reasonably satisfactory to Administrative Agent, including, without limiting the foregoing, (x) proper termination statements (Form UCC-3 or the appropriate equivalent) and discharges for filing under the UCC, the PPSA or equivalent statute or regulation of each jurisdiction where a financing statement or application for registration (Form UCC-1 or the appropriate equivalent) was filed with respect to the Borrower or any of its Subsidiaries in connection with the security interests created with respect to the Prepetition Term Loan Credit Agreement and (y) terminations or reassignments of any security interest in, or Lien on, any patents, trademarks, copyrights and other Intellectual Property of the Borrower or any of its Subsidiaries solely to the extent that such security interests or Liens are granted pursuant to the Prepetition Term Loan Credit Agreement.

(d) *Fees, etc*. On the Closing Date, the Borrower shall have paid to the Agents and each Lender all costs, fees and expenses (including, without limitation, legal fees and expenses to the extent invoiced at least eight (8) Business Days prior the Closing Date) and other compensation payable to the Agents or such Lender or otherwise payable in respect of the Transaction to the extent then due.

(e) *Patriot Act and Canadian AML Acts.* The Agent shall have received at least two (2) days prior to the Closing Date from the Credit Parties all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Canadian AML Acts, in each case to the extent requested in writing at least ten (10) days prior to the Closing Date.

(f) *No Material Adverse Effect*. Since the Petition Date, there has been no event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(g) *Most Recent Budget*. The Administrative Agent shall have received the most recent Budget and Variance Report required to be delivered prior to the applicable Borrowing Date pursuant to Sections 8.01(h) and (i), respectively, and such Variance Report shall confirm that the Credit Parties are in compliance with Section 9.11. The borrowing of the Refinancing Term Loans shall comply with Section 9.11 in a manner reasonably satisfactory to the Required Lenders.

(h) *Post-Closing Obligations*. All post-closing obligations under Section 8.12 required to be completed on or prior to the entry of the Final Financing Order shall have been completed.

(i) *Milestones*. The Borrower shall be in compliance with Section 8.14 in a manner satisfactory to the Required Lenders.

(j) *ABL DIP Facility*. The ABL DIP Facility shall be in full force and effect.

(k) *Final Financing Orders*. The Administrative Agent and the Lenders shall have received a copy of the Final Financing Orders in substantially the form of the Interim Financing Order (or similar order by the Canadian Bankruptcy Court as part of any "comeback hearing"), among other things, (i) approving the Term Loans (including, for the avoidance of doubt, the Post-Petition Intercreditor Arrangements and the Post-Petition Intercreditor Agreement contemplated thereby)), (ii) granting and/or confirming, as applicable, the DIP Superpriority Claims, (iii) reaffirming the Credit Documents and granting the Liens on the assets of the Debtor Credit Parties securing the Obligations with the priorities contemplated by Section 2.14, with only such modifications as are satisfactory to the Required Lenders in their sole discretion, entered by the Bankruptcy Courts with respect to the Borrower and the other Debtor Credit Parties after a final hearing under Bankruptcy Rule 4001(c)(2) and the CCAA, which Final Financing Orders or judgment are in effect and not vacated, reversed or stayed.

(l) *Opinions of Counsel*. On the Closing Date, the Administrative Agent shall have received an opinion addressed to the Administrative Agent and each of the Lenders and dated the Signing Date in form and substance reasonably satisfactory to the Administrative Agent from (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, special U.S. counsel to the Credit Parties, (ii) Stikeman Elliott LLP, special Canadian counsel to the Credit Parties and (iii) local counsel to the Credit Parties reasonably satisfactory to the Administrative Agent practicing in those jurisdictions in which the Credit Parties are organized (if organized other than under the laws of Delaware and New York).

(m) *Security Matters*. On the Closing Date, each Credit Party shall have duly delivered:

(i) the Canadian Security Agreements;

(ii) proper financing statements (Form UCC-1 or the equivalent) authorized for filing under the UCC or other appropriate filing offices of each jurisdiction as may be reasonably necessary or desirable to perfect the security interests purported to be created by the this Agreement and/or any Security Document, including appropriate assignments or notices with the United States Patent and Trademark Office, the United States Copyright Office, or the Canadian Intellectual Property Office, as applicable; and

(iii) RPMRR registrations and PPSA financing statements filed under the PPSA of each jurisdiction or other appropriate filing offices as may be reasonably necessary or desirable to perfect the security interests purported to be created by the this Agreement and/or any Security Document (including any Additional Security Documents).

Section 5.03 *Conditions to Delayed Draw Term Loans*. The obligation of each Lender to make any Delayed Draw Term Loan is subject at the time of the making of such Delayed Draw Term Loans to the satisfaction or waiver of the following conditions:

(a) *Closing Date*. The Closing Date shall have occurred and the Refinancing shall have been consummated.

(b) *Officer's Certificate*. The Administrative Agent shall have received an Officer's Certificate, dated the Closing Date and signed on behalf of the Borrower (and not in any individual capacity) by a Responsible Officer of the Borrower, certifying on behalf of the Borrower that all of the conditions in Article 6 have been satisfied on such date.

(c) *Fees and Expenses*. All reasonable and documented out-of-pocket costs, fees, expenses required to be paid to the Administrative Agent and the Lenders (including, without limitation, the reasonable and documented out-of-pocket costs, fees and expenses of any counsel, financial advisor or consultant to the Administrative Agent and Lenders, but subject in all respects to the limitations on fees and expenses of counsel and other advisors set forth in Section 12.01(a)) on or before any Delayed Draw Borrowing Date, to the extent invoiced at least eight (8) Business Days prior to such Delayed Draw Borrowing Date, shall have been paid, including, without limitation, any fees payable on such Delayed Draw Borrowing Date pursuant to Section 3.01; *provided* that,

such amounts may be funded with the proceeds of the Delayed Draw Term Loans requested to be made on such Delayed Draw Borrowing Date.

(d) *Delayed Draw Termination Date*. The Delayed Draw Borrowing Date shall occur no later than the Delayed Draw Termination Date.

(e) *No Material Adverse Effect*. Since the Petition Date, there has been no event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(f) *Most Recent Budget; Variance Report*. The Administrative Agent shall have received the most recent Budget and Variance Report required to be delivered prior to the applicable Delayed Draw Borrowing Date pursuant to Sections 8.01(h) and (i), respectively, and such Budget shall have been approved by the Required Lenders and such Variance Report shall confirm that the Credit Parties are in compliance with Section 9.11. The borrowing of the Delayed Draw Term Loans shall comply with Section 9.11 in a manner reasonably satisfactory to the Required Lenders.

(g) *Post-Closing Obligations*. All post-closing obligations under Section 8.12 required to be completed on or prior to the applicable Delayed Draw Borrowing Date shall have been completed.

(h) *Milestones*. The Borrower shall be in compliance with Section 8.14 in a manner satisfactory to the Required Lenders.

(i) *Maximum Free Cash Balance*. After giving effect to any disbursement of Delayed Draw Term Loans, the cash balance of the Borrower and its Subsidiaries, on a consolidated basis, shall not be in an amount greater than $15,000,000, as determined based on the most recent Budget actually approved by the Required Lenders prior to the applicable Delayed Draw Borrowing Date.

(j) *ABL DIP Facility*. The ABL DIP Facility shall be in full force and effect.

Without limiting the generality of the provisions of the last paragraph of Section 11.03, for purposes of determining compliance with the conditions specified in this Article 5, each Lender that has signed and delivered this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to Signing Date and/or proposed Borrowing Date, as applicable, specifying its objection thereto.

## ARTICLE 6
## CONDITIONS PRECEDENT TO ALL CREDIT EVENTS

The obligation of each Lender to any Credit Event on and after the Signing Date is subject to the satisfaction of the following conditions:

Section 6.01 *Notice of Borrowing*. Prior to the making of each Term Loan on and after the Closing Date, the Administrative Agent shall have received a Notice of Borrowing meeting the requirements of Section 2.03.

Section 6.02 *Representations and Warranties*. The representations and warranties of the Credit Parties set forth in the Credit Documents shall be true and correct in all material respects on and as of the respective Borrowing Date with the same effect as though such representations and warranties had been made on such Borrowing Date (or, with respect to any representation or warranty that is itself modified or qualified by materiality or a "Material Adverse Effect" standard, such representation or warranty shall be true and correct in all respects), except to the extent 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 (or, with respect to any representation or warranty that is itself modified or qualified by materiality or a "Material Adverse Effect" standard, such representation or warranty shall be true and correct in all respects as of such earlier date)).

Section 6.03 *No Default*. At the time of, and immediately after, such Borrowing, no Event of Default or Default shall have occurred and be continuing or would result therefrom. For the avoidance of doubt, no Borrowing shall be permitted if any Event of Default or Default exists and is continuing, unless waived in accordance with Section 12.11.

Section 6.04 *Approval by Bankruptcy Courts*. The making of such Borrowing shall not result in the aggregate principal amount of the Term Loans made under this Agreement outstanding hereunder exceeding the amount authorized at such time by the Interim Financing Order and the Final Financing Order.

Section 6.05 *Effective Financing Orders*. The Interim Financing Order and the Final Financing Order (which shall be in form and substance reasonably satisfactory to the Required Lenders), shall be in full force and effect and shall not have been (i) vacated, reversed, terminated or stayed or (ii) except as expressly permitted by the Credit Documents, modified or amended in any manner without the prior written consent of the Required Lenders. The Debtors shall be in compliance in all respects with the Interim Financing Order and the Final Financing Order.

## ARTICLE 7
## REPRESENTATIONS, WARRANTIES AND AGREEMENTS

In order to induce the Lenders to enter into this Agreement, provide the Commitments hereunder and to make the Term Loans, the Borrower makes the following representations, warranties and agreements, in each case after giving effect to the Transaction.

Section 7.01 *Organizational Status*. The Borrower and each of its Subsidiaries (a) is a duly organized and validly existing corporation, partnership, limited liability company or unlimited liability company, as the case may be, in good standing under the laws of the jurisdiction of its organization, (b) has the corporate, partnership, limited liability company or unlimited holding company power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage and (c) is, to the extent such concepts are applicable under the laws of the relevant jurisdiction, duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except for failures to be so qualified which, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

Section 7.02 *Power and Authority*. Subject to the entry of the Financing Orders, each Credit Party has the corporate, partnership, limited liability company or unlimited liability company power and authority, as the case may be, to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is party and has taken all necessary corporate, partnership, limited liability company or unlimited liability company action, as the case may be, to authorize the execution, delivery and performance by it of each of such Credit Documents. Subject to the entry of the Financing Orders, each Credit Party thereof has duly executed and delivered each of the Credit Documents to which it is party, and each of such Credit Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

Section 7.03 *No Violation*. Subject to the entry of the Financing Orders, the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions thereof, (i) will contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental instrumentality, (ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of any Credit Party or any of its respective Subsidiaries pursuant to the terms of, any indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other material agreement, contract or instrument, in each case to which any Credit Party or any of its Subsidiaries is a party or by which it or any of its property or assets is bound or to which it may be subject (except, in the case of preceding clauses (i) and (ii), other than in the case of any contravention, breach, default and/or conflict, that would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect or that was effective immediately prior to the

Petition Date) or (iii) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of any Credit Party or any of its respective Subsidiaries.

Section 7.04 *Approvals*. Subject to the entry of the Financing Orders and except to the extent the failure to obtain or make the same would not reasonably be expected to have a Material Adverse Effect, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (x) those that have otherwise been obtained or made on or prior to the Signing Date and which remain in full force and effect on the Signing Date and (y) filings which are necessary to perfect the security interests or hypothecs created under the Security Documents), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, the execution, delivery and performance of any Credit Document.

Section 7.05 *Financial Statements; Financial Condition; Projections*.

(a) The unaudited consolidated financial statements of the Borrower as of May 31, 2016 and the consolidated, unaudited financial statements of the Company and its Subsidiaries as of and for the three months ended August 31, 2016 (including all related notes and schedules) (a) fairly presented in all material respects the consolidated financial position of the Borrower and its consolidated Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations, their consolidated cash flows for the respective periods then ended and changes in stockholders' equity for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto, in each case which are not material) and (b) have been prepared in all material respects in conformity with GAAP (except, in the case of the unaudited statements, as permitted by the SEC and Canadian Securities Law) applied on a consistent basis during the periods involved (in each case, except as may be indicated therein or in the notes thereto); provided that The Audit Committee (as defined in the Biscuit Acquisition Agreement as in effect as of the date hereof) has an ongoing investigation in connection with the finalization of the Company's financial statements and the related certification process, so accordingly, the Company's fiscal 2016 annual financial statements have not been audited by KPMG LLP, and Sellers' disclosure with respect to the Company's financial statements is qualified by the information provided to Buyer in respect of such investigation, the lack of an audit in respect of such financial statements and the ongoing investigation.

(b) The Projections and the Initial Budget have been prepared in good faith and are based on assumptions that were believed by the Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent.

(c) After giving effect to the Transaction (but for this purpose assuming that the Transaction and the related financing had occurred prior to May 31, 2016), since May 31, 2016 there has been no Material Adverse Effect, and there has been no change, event or occurrence that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 7.06 *Litigation*. Except with respect to the OSC Investigation and the SEC Investigation, there are no actions, suits or proceedings pending or, to the knowledge of any Credit Party, threatened (a) with respect to the Transaction or any Credit Document or (b) that either individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect.

Section 7.07 *True and Complete Disclosure*.

(a) All written information (taken as a whole) furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender (including, without limitation, all such written information contained in the Credit Documents) for purposes of or in connection with this Agreement, the other Credit Documents or any transaction contemplated herein or therein does not, and all other such written information (taken as a whole) hereafter furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender will not, on the date as of which such written information is dated or certified, contain any material misstatement of fact or omit to state any material fact necessary to make such information (taken as a whole) not

misleading in any material respect at such time in light of the circumstances under which such written information was provided.

(b) Notwithstanding anything to the contrary in the foregoing clause (a) of this Section 7.07, none of the Credit Parties makes any representation, warranty or covenant with respect to any information consisting of statements, estimates, forecasts and projections regarding the future performance of the Borrower or any of its Subsidiaries, or regarding the future condition of the industries in which they operate other than that such information has been (and in the case of such information furnished after the Signing Date, will be) prepared in good faith based upon assumptions believed to be reasonable at the time of preparation thereof.

Section 7.08 *Use of Proceeds; Margin Regulations*.

(a) The proceeds of all Term Loans are used solely in accordance with the Budget or the Financing Orders. Without limiting the foregoing, the proceeds of (i) the Refinancing Term Loans shall be used solely to consummate the Refinancing and (ii) the Delayed Draw Term Loans shall be used solely (x) to pay administration costs incurred in connection with the Cases and (y) to fund working capital and general corporate purposes of the Credit Parties.

(b) No part of any Credit Event (or the proceeds thereof) will be used to, directly or indirectly, and whether immediately, incidentally, or ultimately, purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock or to refund indebtedness originally incurred for such purpose. Neither the making of any Term Loan nor the use of the proceeds thereof nor the occurrence of any other Credit Event will violate the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 7.09 *Tax Returns and Payments*. Except as would not reasonably be expected to result in a Material Adverse Effect, (a) the Borrower and each of its Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all Tax returns, statements, forms and reports for taxes (the "Returns") required to be filed by, or with respect to the income, properties or operations of, the Borrower and/or any of its Subsidiaries, (b) the Returns accurately reflect in all material respects all liability for Taxes of the Borrower and its Subsidiaries for the periods covered thereby, and *(c)* the Borrower and each of its Subsidiaries have paid all Taxes payable by them, other than those that are being contested in good faith by appropriate proceedings and fully provided for as a reserve on the financial statements of the Borrower and its Subsidiaries in accordance with GAAP. There is no action, suit, proceeding, investigation, audit or claim now pending or, to the knowledge of the Borrower or any of its Subsidiaries, threatened in writing by any authority regarding any material amount of Taxes relating to the Borrower or any of its Subsidiaries.

Section 7.10 *ERISA*. No ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a Material Adverse Effect. Each Plan is in compliance in form and operation with its terms and with the applicable provisions of ERISA, the Code and other applicable law, except for such non-compliance that would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is in the form of a prototype document that is the subject of a favorable opinion letter.

(a) There exists no Unfunded Pension Liability with respect to any Plan, except as would not reasonably be expected to have a Material Adverse Effect.

(b) If any of the Borrower, Subsidiary of the Borrower or ERISA Affiliate were to withdraw from any Multiemployer Plan in a complete withdrawal as of the date this assurance is given, the withdrawal liability that would be incurred would not reasonably be expected to have a Material Adverse Effect.

(c) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so

asserted successfully, would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(d) The Borrower, any Subsidiary of the Borrower and any ERISA Affiliate have made all material contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan except where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect or where a Multiemployer Plan is considered, under applicable Laws, as a defined benefit plan.

(e) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Foreign Pension Plan and Canadian Employee Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities; (ii) all contributions required to be made with respect to a Foreign Pension Plan, each Canadian Employee Plan and Canadian Statutory Plan have been timely made; and (iii) neither the Borrower nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan or Canadian Employee Plan.

(f) Neither the Borrower nor any of its Subsidiaries maintains, contributes to, or has any liability or contingent liability with respect to, any Canadian Defined Benefit Plan as of the Signing Date, and at any time thereafter, neither the Borrower nor any of its Subsidiaries will maintain, participate in, contribute to, or have any liability or contingent liability with respect to, any Canadian Defined Benefit Plan.

(g) The Borrower and its Subsidiaries are in substantial compliance with all applicable Laws pertaining to their employees.

Section 7.11 *The Security Documents*. (a) Article 14 hereof, together with the Financing Orders, is effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest or hypothec (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law) in all right, title and interest of the Credit Parties in the Collateral, and upon the entry of the Financing Orders, the Collateral Agent, for the benefit of the Secured Parties, has (to the extent provided hereunder and in the Financing Orders) a fully perfected first priority security interest or hypothec in all right, title and interest in all of the Collateral, subject to the Post-Petition Intercreditor Arrangements and subject to no other Liens other than Permitted Liens. Notwithstanding anything herein to the contrary, the Credit Parties shall not be required to take any action to perfect any security interest in any Collateral consisting of Intellectual Property under the laws of any jurisdiction outside of the United States or Canada or any other Collateral under the laws of any jurisdiction outside of the United States and Canada.

(b) The provisions of the Canadian Security Agreements are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest or hypothec (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law)) in all right, title and interest of the Credit Parties in the Collateral (as described therein), upon the timely and proper filing of financing statements (or other local equivalent) listing each applicable Credit Party, as a debtor, and Collateral Agent, as secured party, with the registry of the applicable governmental entity of the jurisdiction of organization of such Credit Party or where the applicable Collateral is located, as applicable, upon which the security interests or hypothecs created under the Canadian Security Agreements in favor of the Collateral Agent, for the benefit of the Secured Creditors, constitute perfected security interests or hypothecs in the Collateral (as described therein (other than Collateral in which a security interest or hypothec cannot be perfected under the PPSA as in effect at the relevant time in the relevant jurisdiction or by the taking of the foregoing actions) with the priority set forth in the Financing Orders and the Post-Petition Intercreditor Arrangements, subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions.

Section 7.12 *Properties*. The Borrower and each of its Subsidiaries has good and marketable title or valid leasehold interest in the case of Real Property, and good and valid title in the case of tangible personal property and intangible property, to all material tangible and intangible properties owned by it, including all material property reflected in the most recent historical balance sheets referred to in Section 7.05(a) (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business or as permitted by the terms of this Agreement (or, to the extent disposed or disposed of prior to the Closing Date, the Prepetition Term Loan Credit Agreement)), free and clear of all Liens, other than Permitted Liens.

Section 7.13 *Capitalization*. All outstanding shares of capital stock of the Borrower have been duly and validly issued and are fully paid and non-assessable (other than any assessment on the shareholders of the Borrower that may be imposed as a matter of law). The Borrower does not have outstanding any capital stock or other securities convertible into or exchangeable for its capital stock or any rights to subscribe for or to purchase, or any options for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its capital stock.

Section 7.14 *Subsidiaries*. On and as of the Signing Date and after giving effect to the consummation of the Transaction, the Borrower has no Subsidiaries other than those Subsidiaries listed on Schedule 7.14. Schedule 7.14 correctly sets forth, as of the Signing Date and after giving effect to the Transaction, the percentage ownership (direct and indirect) of the Borrower in each class of capital stock of each of its Subsidiaries and also identifies the direct owner thereof.

Section 7.15 *Compliance with Statutes, OFAC Rules and Regulations; Patriot Act and Canadian AML Acts; FCPA*.

(a) Each of the Borrower and each of its Subsidiaries is in compliance with all applicable statutes, regulations and orders of (including any laws relating to terrorism, money laundering or embargoed persons, the Bank Secrecy Act as amended by Title III of the PATRIOT Act, and the Canadian AML Acts), and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including, without limitation, applicable statutes, regulations, orders, directions and restrictions relating to environmental standards and controls).

(b) None of the Borrower or any Subsidiary is in violation of any of the foreign assets control regulations of the Office of Foreign Assets Control ("**OFAC**") of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or any other relevant sanctions authority applicable in countries where the Borrower or its Subsidiaries do business (collectively, "**Sanctions**"), and none of the Borrower or any Subsidiary or any Affiliate thereof is in violation of and shall not violate any of the country or list based economic and trade sanctions.

(c) None of the Borrower or any Subsidiary will, directly or indirectly, use the proceeds of the Term Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Term Loans, whether as lender, underwriter, advisor, investor, or otherwise).

(d) The Borrower and each Subsidiary is in compliance in all material respects with the Foreign Corrupt Practices Act, 15 U.S.C.§§ 78dd-1, *et seq.,* as amended, and the rules and regulations thereunder ("**FCPA**"), the *Corruption of Foreign Public Officials Act* (Canada) and any foreign counterpart thereto applicable to the Borrower or such Subsidiary, and have instituted and maintain policies and procedures designed to ensure continued compliance therewith. Neither the Borrower nor, to the knowledge of the Borrower, or any Subsidiary, any director, officer, agent, employee, or other person acting on behalf of the Borrower or any of its Subsidiaries, is aware of or has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (i) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (ii) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (iii) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to the Borrower or any Subsidiary or to

any other Person, in violation of FCPA or the Corruption of Foreign Public Officials Act (Canada). No part of the proceeds of the Term Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity in violation of the FCPA or any other applicable anti-corruption law.

Section 7.16 *Investment Company Act*. None of the Borrower or any of its Subsidiaries is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, required to be registered as such.

Section 7.17 *Environmental Matters*.

(a) The Borrower and each of its Subsidiaries are and have been in compliance with all applicable Environmental Laws and the requirements of any permits or certificates of approval issued under such Environmental Laws. There are no pending or, to the knowledge of any Credit Party, threatened Environmental Claims and no liabilities under any applicable Environmental Laws relating to the Borrower or any of its Subsidiaries or any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries (including any such claim or liability arising out of the ownership, lease or operation by the Borrower or any of its Subsidiaries of any Real Property formerly owned, leased or operated by the Borrower or any of its Subsidiaries but no longer owned, leased or operated by the Borrower or any of its Subsidiaries). There are no facts, circumstances, conditions or occurrences with respect to the business or operations of the Borrower or any of its Subsidiaries, or any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries (including any Real Property formerly owned, leased or operated by the Borrower or any of its Subsidiaries but no longer owned, leased or operated by the Borrower or any of its Subsidiaries) that would be reasonably expected (x) to form the basis of an Environmental Claim against the Borrower or any of its Subsidiaries, (y) to cause any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries to be subject to any restrictions on the ownership, lease, occupancy or transferability of such Real Property by the Borrower or any of its Subsidiaries under any applicable Environmental Law or (z) to give rise to liability under any applicable Environmental Law.

(b) Hazardous Materials have not at any time been generated, used, treated or stored on, or transported to or from, or Released on or from, any Real Property currently or formerly owned, leased or operated by the Borrower or any of its Subsidiaries where such generation, use, treatment, storage, transportation or Release has (i) violated or would be reasonably expected to violate any applicable Environmental Law, (ii) given rise to or would be reasonably expected to give rise to an Environmental Claim or (iii) given rise to or would be reasonably expected to give rise to liability under any applicable Environmental Law.

(c) Notwithstanding anything to the contrary in this Section 7.17, the representations and warranties made in this Section 7.17 shall be untrue only if the effect of any or all conditions, violations, claims, restrictions, failures and noncompliances of the types described above would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

For purposes of this Section 7.17, the terms **"Borrower"** and "**Subsidiary**" shall include any business or business entity (including a corporation) which is, in whole or in part, a predecessor of the Borrower or any Subsidiary.

Section 7.18 *Labor Relations*. Except to the extent the same has not, either individually or in the aggregate, had and would not reasonably be expected to have a Material Adverse Effect, (i) there are no strikes, lockouts, slowdowns or other labor disputes pending against the Borrower or any of its Subsidiaries or, to the knowledge of each Credit Party, threatened against the Borrower or any of its Subsidiaries, (ii) the hours worked by and payments made to employees of the Borrower or any of its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, provincial, local, or foreign law dealing with such matters and (iii) to the knowledge of each Credit Party, no wage and hour department investigation has been made of the Borrower or any of its Subsidiaries.

Section 7.19 *Intellectual Property*.

(a) The Licenses disclosed as such in the Biscuit Acquisition Agreement as in effect as of the date hereof sets forth a complete and accurate list of all material Licenses that each Credit Party owns. Each Grantor represents and warrants that it is the sole owner of all right, title and interest in all Recordable Intellectual Property listed thereto. The Borrower and each of its Subsidiaries owns or has the right to use all the Intellectual Property used in, held for use in, or necessary for the present conduct of its respective business, without any conflict with the Intellectual Property rights of any Person, except for such failures to own or have the right to use and/or conflicts as have not had, and would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. Neither the Borrower nor any of its Subsidiaries has infringed, misappropriated or otherwise violated any Intellectual Property rights of any Person and no claim or litigation alleging any of the foregoing is pending or, to the knowledge of the Borrower, threatened, except in each case as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. No Person has contested any right, title or interest of any the Borrower or any of its Subsidiaries in, or relating to, any Intellectual Property except as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. No Person is infringing, misappropriating or otherwise violating any Intellectual Property rights of the Borrower or any of its Subsidiaries and no claim or litigation alleging any of the foregoing is pending, except in each case as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. The Borrower and each of its Subsidiaries has taken all commercially reasonable actions to maintain and protect all of its Intellectual Property, as deemed necessary in its reasonable business judgment, including making timely filings and payments except as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates. Notwithstanding the foregoing, the Borrower and its Subsidiaries may self-insure with respect to such risks with respect to which companies of established reputation engaged in similar businesses in the same general area usually self-insure.

(b) Each Credit Party represents and warrants that all such Recordable Intellectual Property is subsisting and has not been abandoned and, to such Grantor's knowledge, valid and enforceable, and there are no pending or, to such Grantor's knowledge, threatened, third-party claims that (i) any of said registrations of Recordable Intellectual Property are invalid or unenforceable or (ii) seeks to limit the Credit Party's ownership interest in any Recordable Intellectual Property, and such Credit Party is not aware that there is any reason that any of said registrations of Recordable Intellectual Property are invalid or unenforceable, and is not aware that there is any reason that any of said applications of Recordable Intellectual Property will not mature into registrations, other than would not reasonably be expected to be material to the operations of the Credit Parties taken as a whole. To knowledge of each Credit Party, none of the Trade Secrets of any Credit Party has been used, divulged, disclosed or appropriated to the detriment of such Credit Party for the benefit of any other Person other than other Credit Parties, other than would not reasonably be expected to be material to the operations of the Credit Parties taken as a whole.

(c) The Intellectual Property disclosed as such in the Biscuit Acquisition Agreement sets forth a complete and accurate list of all Recordable Intellectual Property that each Credit Party owns. Each Grantor represents and warrants that it is the sole owner of all right, title and interest in all Recordable Intellectual Property listed theretosets forth a complete and accurate list of all material Licenses to which any Credit Party is a party. No Credit Party is in breach or default of any License, other than as has not, and would not, reasonably be expected to be material to the operations of the Credit Party taken as a whole.

Section 7.20 *No Default*. No Default has occurred and is continuing, or would result from the consummation of the transactions contemplated by this Agreement or any other Credit Document.

Section 7.21 *Financing Orders*.

(a) The Interim Financing Order or, at all times after its entry by the Bankruptcy Courts, the Final Financing Order, is in full force and effect, and has not been vacated, reversed, terminated, stayed modified or amended in any manner without the reasonable written consent of the Required Lenders.

(b) Upon the occurrence of the Maturity Date (whether by acceleration or otherwise) of any of the Obligations, the Lenders shall, subject to the provisions of Article 10 and the applicable provisions of the applicable Financing Order, be entitled to immediate payment of such Obligations, and to enforce the remedies provided for hereunder in accordance with the terms hereof and such Financing Order, as applicable, without further application to or order by the Bankruptcy Courts.

(c) If either the Interim Financing Order or the Final Financing Order is the subject of a pending appeal in any respect, none of such Financing Order, the making of the Term Loans or the performance by Borrower or any other Credit Party of any of its obligations under any of the Credit Documents shall be the subject of a presently effective stay pending appeal. The Borrower, the Administrative Agent and the Secured Parties shall be entitled to rely in good faith upon the Financing Orders, notwithstanding objection thereto or appeal therefrom by any interested party. The Borrower, the Administrative Agent and the Lenders shall be permitted and required to perform their respective obligations in compliance with this Agreement notwithstanding any such objection or appeal unless the relevant Financing Order has been stayed by a court of competent jurisdiction.

Section 7.22 *Appointment of Trustee or Examiner; Liquidation*. No order has been entered in any of the Cases (i) for the appointment of a Chapter 11 trustee or a trustee in bankruptcy under the Bankruptcy and Insolvency Act (Canada), (ii) for the appointment of a responsible officer or examiner (other than a fee examiner) having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1104 of the Bankruptcy Code or (iii) to convert any of the Cases to a case under Chapter 7 of the Bankruptcy Code or to dismiss any of the Cases.

Section 7.23 *Perfection of Security Interests*. Upon entry of each of the Interim Financing Order and the Final Financing Order, as applicable, each such Financing Order shall be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid, enforceable and perfected security interest and hypothec in the Collateral of the Debtor Credit Parties and proceeds thereof, as contemplated thereby, as described in Section 2.14.

Section 7.24 *Superpriority Claims; Liens*. Upon the entry of each of the Interim Financing Order and the Final Financing Order, each such Financing Order and the Credit Documents are sufficient to provide the DIP Superpriority Claims and security interests and Liens on the Collateral of the Debtor Credit Parties described in, and with the priority provided in, Section 2.14.

## ARTICLE 8
## AFFIRMATIVE COVENANTS

The Borrower and each of its Subsidiaries hereby covenants and agrees that on and after the Signing Date and until all Commitments are terminated and the Term Loans and Notes (in each case together with interest thereon), Fees and all other Obligations incurred hereunder and thereunder, are Paid in Full:

Section 8.01 *Information Covenants*. The Borrower will furnish to the Administrative Agent for distribution to each Lender:

(a) *Quarterly Financial Statements*. Within forty-five (45) days after the close of each of the first three quarterly accounting periods in each fiscal year of the Parent, (i) the consolidated balance sheet of the Parent and its Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period, in each case setting forth comparative figures for the corresponding quarterly accounting period in the prior fiscal year and comparable forecasted figures for such quarterly accounting period based on the corresponding forecasts delivered pursuant to Section 8.01(j), all of which shall be certified by a Responsible Officer of the Parent that they fairly present in all material respects in accordance with GAAP the financial condition of the Parent and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) management's discussion and analysis of the important operational and financial developments during such quarterly accounting period. If the Parent has filed (within the time period required above) an interim financial report and related management's discussion and analysis with any Securities

Commission pursuant to National Instrument 51-102 adopted by the Canadian Securities Administrators ("**NI 51-102**") for any fiscal quarter described above, then to the extent that such interim financial report and related management's discussion and analysis contains any of the foregoing items, the Lenders shall accept such filings in lieu of such items.

(b) *Monthly Financials*. Within fifteen (15) days after the close of each of the first two monthly accounting periods in each fiscal quarter of the Borrower, (a) the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such monthly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows for such monthly accounting period and for the elapsed portion of the fiscal year ended with the last day of such monthly accounting period, in each case setting forth comparative figures for the corresponding monthly accounting period in the prior fiscal year and comparable forecasted figures for such monthly accounting period based on the corresponding forecasts delivered pursuant to Section 8.01(j), all of which shall be certified by a Responsible Officer of the Borrower that they fairly present in all material respects in accordance with GAAP the financial condition of the Borrower and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (b) management's discussion and analysis of the important operational and financial developments during such monthly accounting period.

(c) *Officer's Certificates*. At the time of the delivery of any Section 8.01 Financials, the delivery of any Budget and the delivery of any Variance Report (and in any case, no less frequently than on a weekly basis), a Compliance Certificate, certifying on behalf of the Borrower that no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof.

(d) *Notice of Default, Litigation and Material Adverse Effect*. Promptly after any officer of the Borrower or any of its Subsidiaries obtains knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default or an Event of Default or any default or event of default under the Prepetition Term Loan Credit Agreement (until Payment in Full), the ABL Facilities (until Payment in Full) and/or any post-petition debt instrument in excess of the Threshold Amount (including the ABL DIP Facility), (ii) any litigation or governmental investigation or proceeding pending against the Borrower or any of its Subsidiaries (x) which, either individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect or (y) with respect to any Credit Document, or (iii) any other event, change or circumstance that has had, or would reasonably be expected to have, a Material Adverse Effect.

(e) *Other Reports and Filings*. Promptly after the filing or delivery thereof, copies of all financial information, proxy materials and reports, if any, which the Borrower or any of its Subsidiaries shall publicly file with a Securities Commission or the SEC and/or the Bankruptcy Courts.

(f) *Environmental Matters*. Promptly after any officer of the Borrower or any of its Subsidiaries obtains knowledge thereof, notice of one or more of the following environmental matters to the extent that such environmental matters, either individually or when aggregated with all other such environmental matters, would reasonably be expected to have a Material Adverse Effect:

(i) any pending or threatened Environmental Claim relating to the Borrower or any of its Subsidiaries or any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries;

(ii) any condition or occurrence on or arising from any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries that (i) results in noncompliance by the Borrower or any of its Subsidiaries with any applicable Environmental Law or (ii) would reasonably be expected to form the basis of an Environmental Claim against or give rise to liability under any applicable Environmental Law of the Borrower or any of its Subsidiaries or any such Real Property;

(iii) any condition or occurrence on any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries that could reasonably be expected to cause such Real Property to be

subject to any restrictions on the ownership, lease, occupancy, use or transferability by the Borrower or any of its Subsidiaries of such Real Property under any Environmental Law; and

(iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries as required by any Environmental Law or any governmental or other administrative agency and all notices received by the Borrower or any of its Subsidiaries from any government or governmental agency under, or pursuant to, Environmental Law which identify the Borrower or any of its Subsidiaries as potentially responsible parties for remediation costs or which otherwise notify the Borrower or any of its Subsidiaries of potential liability under Environmental Law.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the Borrower's or such Subsidiary's response thereto.

(g) *Notices to Holders of Other Material Debt*. Contemporaneously with the sending or filing thereof, the Borrower will provide to the Administrative Agent for distribution to each of the Lenders, any notices provided to, or received from, holders of the ABL Facilities and/or the Prepetition Term Loan Credit Agreement.

(h) *Budget*. (i) on or before the third Business Day of every fourth week (commencing on the third Business Day of the fourth week following the week in which the Petition Date occurs), a proposed budget for the current week and the immediately following consecutive 12 weeks (collectively 13 weeks) depicting on a weekly basis receipts and disbursements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity and the Borrowing Base;

(i) *Variance Report*. On or before the fourth Business Day of each week (commencing on the fourth Business Day of the week in which the Signing Date occurs), a Variance Report certified by the Borrower's chief financial officer, chief restructuring officer (or officer with equivalent duties), which shall be in a form reasonably acceptable to the Administrative Agent and the Required Lenders (each, a "**Variance Report**"), for the period commencing with the week in which the Petition Date occurs through the week ending immediately prior to the week in which the Variance Report was delivered (i) showing, for the Borrower and its Subsidiaries, actual results during such period for the following items: (w) Cash Receipts (including detailed line items aggregating thereto), (x) Cash Disbursements (including detailed line items aggregating thereto), (y) Cash Receipts less Cash Disbursements and (z) professional fees, (ii) showing Cumulative Net Cash Flow for such period, (iii) noting therein weekly and cumulative Variances, on a line-item basis (including for Cash Receipts, Cash Disbursements, Cash Receipts less Cash Disbursements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity, the Borrowing Base, professional fees and other amounts, line items and data aggregating to Cash Receipts and Cash Disbursements), from amounts set forth for such period in the Initial Budget, in each case, on a weekly and cumulative basis and (iv) providing a reasonably detailed written explanation of all material Variances, including a description of the Variances and whether they are permanent or if temporary, the approximate timing of their remedy;

(j) *Orders; Notices*. (i) as soon as practicable, but in no event later that two (2) Business Days, in advance of filing with either of the Bankruptcy Courts or delivering to any official committee appointed in any of the Cases (or the Professionals to any such committee) or to the U.S. Trustee, as the case may be, any proposed Order, material pleadings related to any of the Term Loans contemplated hereby, authorization for the use of cash collateral, any disposition of Collateral having a value in excess of $250,000 for any such Disposition that is not contemplated by the most recent Budget then in effect, any debtor-in-possession financing other than to the extent such provides for the Payment in Full of the Obligations, any plan of reorganization or liquidation for any of the Cases and/or any disclosure statement related thereto (except that with respect to any emergency pleading or document for which, despite the Debtors' commercially reasonable efforts, such advance notice is impracticable, the Debtors shall be required to furnish such documents no later than concurrently with such filings or deliveries thereof, as applicable) and (ii) substantially simultaneously with the filing with the Bankruptcy Courts or delivering to any official committee appointed in any of the Cases (or the Professionals to any such committee) or the U.S. Trustee, as the case may be, all material written notices, filings, motions, pleadings or other formally communicated

written information (not covered by subclause (i) above or Section 8.01(e)) concerning the financial condition of the Borrower or any Subsidiary or other Indebtedness of the Credit Parties;

(k) *Intellectual Property*. In the event that any Guarantor, either itself or through any agent, employee, licensee or designee, files an application for or otherwise acquires any Recordable Intellectual Property following the date hereof, then the provisions of this Agreement shall automatically apply thereto and any such Intellectual Property (other than any Excluded Collateral) shall automatically constitute part of the Collateral and shall be subject to the Collateral Agent's security interest, without further action by any party. Such Guarantor shall, along with the quarterly financial statements required to be delivered pursuant to Section 8.01(a), provide complete and accurate lists of such Recordable Intellectual Property (other than domain names) and execute and deliver any and all appropriate agreements, assignments, notices instruments, documents and papers as necessary or desirable to evidence and perfect the Collateral Agent's security interest in such Recordable Intellectual Property provided that such agreements, instruments, documents and papers (the "**IP Security Documents**").

(l) *Other Information*. From time to time, such other information (financial or otherwise) with respect to the Borrower or any of its Subsidiaries as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request.

The Borrower hereby acknowledges that (a) the Administrative Agent may make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers, and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided that, to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.14); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

Section 8.02 *Books, Records and Inspections*. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit officers and designated representatives of the Administrative Agent or any Lender to visit and inspect, under guidance of officers of the Borrower or such Subsidiary, any of the properties of the Borrower or such Subsidiary, and to examine the books of account of the Borrower or such Subsidiary and discuss the affairs, finances and accounts of the Borrower or such Subsidiary with, and be advised as to the same by, its and their officers and independent accountants, all upon reasonable prior notice and at such reasonable times and intervals and to such reasonable extent as the Administrative Agent or any such Lender may reasonably request; *provided* that the Administrative Agent shall give the Borrower an opportunity to participate in any discussions with its accountants; *provided further* that in the absence of the existence of an Event of Default, (a) only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 8.02 and (b) the Administrative Agent shall not exercise its inspection rights under this Section 8.02 more often than two times during any fiscal year and only one such time shall be at the Borrower's expense; *provided*, *further*, *however*, that when an Event of Default exists, the Administrative Agent or any Lender and their respective designees may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice.

Section 8.03 *Maintenance of Property; Insurance*.

(a) The Borrower will, and will cause each of its Subsidiaries to, (a) keep all tangible property necessary to the business of the Borrower and its Subsidiaries in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, (b) maintain with financially sound and reputable insurance companies insurance on all such property and against all such risks as is consistent and in accordance with industry practice for companies similarly situated owning similar properties and engaged in similar businesses as the Borrower and its Subsidiaries, and (c) furnish to the Administrative Agent, upon its request therefor, full information as to the insurance carried. The provisions of this Section 8.03 shall be deemed supplemental to, but not duplicative of, the provisions of any Security Documents that require the maintenance of insurance.

(b) If at any time the improvements on Real Property constituting Collateral are located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrower shall, or shall cause the applicable Credit Party to maintain, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and deliver to the Administrative Agent evidence of such insurance in form and substance reasonably acceptable to the Administrative Agent.

(c) The Borrower will, and will cause each of its Subsidiaries to, at all times keep its property insured in favor of the Collateral Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by the Borrower and/or such Subsidiaries) (a) shall be endorsed to the Collateral Agent's reasonable satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as loss payee, mortgagee and/or additional insured), (b) if agreed by the insurer (which agreement the Borrower shall use commercially reasonable efforts to obtain), shall state that such insurance policies shall not be canceled without at least thirty (30) days' prior written notice thereof (or, with respect to non-payment of premiums, ten (10) days' prior written notice) by the respective insurer to the Collateral Agent; *provided*, that the requirements of this Section 8.03(c) shall not apply to (x) insurance policies covering (i) directors and officers, fiduciary or other professional liability, (ii) employment practices liability, (iii) workers compensation liability, (iv) automobile and aviation liability, (v) health, medical, dental and life insurance, and (vi) (such other insurance policies and programs as the Collateral Agent may approve; and (y) self-insurance programs and (c) shall be deposited with the Collateral Agent.

(d) If the Borrower or any of its Subsidiaries shall fail to maintain insurance in accordance with this Section 8.03, or the Borrower or any of its Subsidiaries shall fail to so endorse and deposit all policies or certificates with respect thereto, after any applicable grace period, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance, and the Credit Parties jointly and severally agree to reimburse the Administrative Agent for all reasonable costs and expenses of procuring such insurance.

Section 8.04 *Existence; Franchises*. The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and, in the case of the Borrower and its Subsidiaries, its and their rights, franchises, licenses, permits, and Intellectual Property, in each case to the extent material; *provided*, *however*, that nothing in this Section 8.04 shall prevent (a) sales of assets and other transactions by the Borrower or any of its Subsidiaries in accordance with Section 9.02, (b) the abandonment by the Borrower or any of its Subsidiaries of any rights, franchises, licenses, permits, or Intellectual Property that the Borrower reasonably determines are no longer beneficial to the operations of the Borrower and its Subsidiaries or (c) the withdrawal by the Borrower or any of its Subsidiaries of its qualification as a foreign corporation, partnership, limited liability company or unlimited liability company, as the case may be, in any jurisdiction if such withdrawal would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Borrower will, and will cause each of its Subsidiaries to, conduct its business and affairs without any known infringement, misappropriation or other violation of any Intellectual Property of any other Person except as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole.

Section 8.05 *Compliance with Statutes, etc.* The Borrower will, and will cause each of its Subsidiaries to, comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all

governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 8.06 *Compliance with Environmental Laws*.

(a) The Borrower will comply, and will cause each of its Subsidiaries to comply, with all Environmental Laws and certificates of approval and permits applicable to, or required by, the ownership, lease, operation or use of Real Property now or hereafter owned, leased or operated by the Borrower or any of its Subsidiaries, except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and will keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws (other than Liens imposed on leased Real Property resulting from the acts or omissions of the owner of such leased Real Property or of other tenants of such leased Real Property who are not within the control of the Borrower or any of its Subsidiaries). Except as have not had, and would not reasonably be expected to have, a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries will generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of, Hazardous Materials on any Real Property now or hereafter owned, leased or operated by the Borrower or any of its Subsidiaries, or transport or permit the transportation of Hazardous Materials to or from any such Real Property, except for Hazardous Materials generated, used, treated, stored, Released or disposed of at any such Real Properties or transported to or from such Real Properties in compliance with all applicable Environmental Laws.

(b) (a) After the receipt by the Administrative Agent or any Lender of any notice of the type described in Section 8.01(f), (b) at any time that the Borrower or any of its Subsidiaries are not in compliance with Section 8.06(a) or (c) at any time when an Event of Default is in existence, the Credit Parties will (in each case) jointly and severally provide, at the written request of the Administrative Agent, an environmental site assessment report, including a phase I and phase II report if required by the Administrative Agent, concerning any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries (in the event of (i) or (ii) that is the subject of or could reasonably be expected to be the subject of such notice or noncompliance), prepared by an environmental consulting firm reasonably approved by the Administrative Agent, indicating the presence or absence of Hazardous Materials, compliance or non-compliance with all Environmental Laws and permits thereunder, and the reasonable worst case cost of any removal or remedial action in connection with any such Hazardous Materials on or non-compliance with Environmental Laws in connection with such Real Property. If the Credit Parties fail to provide the same within thirty (30) days after such request was made, the Administrative Agent may order the same, the reasonable cost of which shall be borne by the Borrower, and the Credit Parties shall grant and hereby grant to the Administrative Agent and the Lenders and their respective agents access to such Real Property and specifically grant the Administrative Agent and the Lenders an irrevocable non-exclusive license to undertake such an environmental assessment at any reasonable time upon reasonable notice to the Borrower, all at the sole expense of the Credit Parties (who shall be jointly and severally liable therefor).

Section 8.07 *ERISA*.

(a) As soon as possible and, in any event, within ten (10) Business Days after the Borrower or any Subsidiary of the Borrower knows of the occurrence of any of the following, the Borrower will deliver to the Administrative Agent a certificate of a Responsible Officer of the Borrower setting forth the full details as to such occurrence and the action, if any, that the Borrower, such Subsidiary or an ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given or filed by the Borrower, such Subsidiary, the Plan administrator or such ERISA Affiliate to or with the PBGC or any other Governmental Authority, or a Plan participant and any notices received by the Borrower, such Subsidiary or such ERISA Affiliate from the PBGC or any other Governmental Authority, or a Plan participant with respect thereto: that (i) an ERISA Event has occurred that is reasonably expected to result in a Material Adverse Effect; (ii) there has been an increase in Unfunded Pension Liabilities since the date the representations hereunder are given, or from any prior notice, as applicable, in either case, which is reasonably expected to result in a Material Adverse Effect; (iii) there has been an increase in the estimated withdrawal liability under Section 4201 of ERISA, if the Borrower, any Subsidiary of the Borrower

and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans which is reasonably expected to result in a Material Adverse Effect, (iv) the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate adopts, or commences contributions to, any Plan subject to Section 412 of the Code, or adopts any amendment to a Plan subject to Section 412 of the Code which is reasonably expected to result in a Material Adverse Effect, (mm) that a contribution required to be made with respect to a Foreign Pension Plan has not been timely made which failure is reasonably likely to result in a Material Adverse Effect; or (v) that a Foreign Pension Plan has been or is reasonably expected to be terminated, reorganized, partitioned or declared insolvent and such event is reasonably expected to result in a Material Adverse Effect. The Borrower will also deliver to the Administrative Agent, upon request by the Administrative Agent, a complete copy of the most recent annual report (on Internal Revenue Service Form 5500-series, including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information) filed with the Internal Revenue Service or other Governmental Authority of each Plan that is maintained or sponsored by the Borrower or a Subsidiary.

(b) As soon as possible and, in any event, within ten (10) Business Days after the Borrower or any Subsidiary of the Borrower knows of the occurrence of any of the following, the Borrower will deliver to the Administrative Agent a certificate of a Responsible Officer of the Borrower setting forth the full details as to such occurrence and the action, if any, that the Borrower or such Subsidiary is required or proposes to take, together with any notices required or proposed to be given or filed by the Borrower, such Subsidiary or the Canadian Pension Plan administrator to or with any Governmental Authority, or a Canadian Pension Plan participant and any notices received by the Borrower or such Subsidiary from any Governmental Authority, or a Canadian Pension Plan participant with respect thereto: (a) that a contribution required to be made with respect to a Canadian Employee Plan or Canadian Statutory Plan has not been timely made which failure is reasonably likely to result in a Material Adverse Effect; or (b) that a Canadian Pension Plan has been or is reasonably expected to be terminated, reorganized, partitioned or declared insolvent and such event is reasonably expected to result in a Material Adverse Effect. The Borrower will also deliver to the Administrative Agent, upon request by the Administrative Agent, a complete copy of the most recent annual report (including, to the extent required, any financial or actuarial statements or reports and opinions and other supporting statements, certifications, schedules and information) filed with each Governmental Authority in respect of each Canadian Pension Plan that is maintained or sponsored by the Borrower or a Subsidiary.

Section 8.08 *Performance of Obligations*. The Borrower will, and will cause each of its Subsidiaries to, perform all of its obligations under the terms of each mortgage, indenture, security agreement, loan agreement or credit agreement and each other agreement, contract or instrument by which it is bound, except such non-performances as, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

Section 8.09 *Payment of Taxes*. The Borrower will timely pay and fully discharge prior to or when due, and will cause each of its Subsidiaries to pay and discharge, all material amounts of post-petition Taxes (and prepetition Taxes, unless the payment thereof is not authorized by the Bankruptcy Courts, to the extent such Taxes have priority to the DIP Superiority Claims and the payment thereof has been approved by a Financing Order) imposed upon it or upon its income or profits or upon any properties belonging to it, and all material lawful claims which, if unpaid, might become a Lien or charge upon any properties of the Borrower or any of its Subsidiaries not otherwise permitted under Section 9.01(i); *provided* that neither the Borrower nor any of its Subsidiaries shall be required to pay any such Tax which is being contested in good faith and by appropriate proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP.

Section 8.10 *Use of Proceeds*. The Borrower will use the proceeds of the Term Loans solely in accordance with Section 7.08(a) hereof. In addition, no portion of any Term Loans shall be used to, directly or indirectly, and whether immediately, incidentally, or ultimately, purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock or to refund indebtedness originally incurred for such purpose. Neither the making of any Term Loan nor the use of the proceeds thereof shall violate the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 8.11 *Additional Security; Further Assurances; etc.*

(a) The Borrower will, and will cause each of its Subsidiaries of the Borrower to, grant to the Collateral Agent for the benefit of the Secured Parties security interests in such assets and properties of the Borrower and such Subsidiaries of the Borrower as are not covered by the original Security Documents and as may be reasonably requested from time to time by the Administrative Agent or the Required Lenders (collectively, as may be amended, modified or supplemented from time to time, the "**Additional Security Documents**"); *provided* that security interests shall not be required with respect to any assets or properties to the extent that such security interests would result in a material adverse tax consequence to the Borrower or its Subsidiaries, as reasonably determined by the Borrower and notified in writing to the Administrative Agent. All security interests shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and (subject to exceptions as are reasonably acceptable to the Administrative Agent) shall constitute, upon taking all necessary perfection action (which the Credit Parties agree to promptly take) valid and enforceable perfected security interests (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law), subject to the Post-Petition Intercreditor Arrangements, superior to and prior to the rights of all third Persons and subject to no other Liens except for Permitted Liens. The Additional Security Documents or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect (subject to exceptions as are reasonably acceptable to the Administrative Agent) the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Security Documents and all Taxes, fees and other charges payable in connection therewith shall be paid in full. Notwithstanding any other provision in this Agreement or any other Credit Document, no Foreign Subsidiary shall be required to pledge any of its assets to secure any obligations of the Borrower under the Credit Documents or guarantee the obligations of the Borrower under the Credit Documents.

(b) Subject to the terms of the Post-Petition Intercreditor Arrangements, with respect to any person that is or becomes a Subsidiary after the Signing Date, promptly (a) deliver to the Collateral Agent the certificates, if any, representing all (or such lesser amount as is required) of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Credit Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Credit Party (to the extent required pursuant to this Agreement and/or the Security Documents), (b) cause such new Subsidiary (other than an Excluded Subsidiary) (i) to execute a joinder agreement hereto in a form reasonably acceptable to the Administrative Agent and (ii) to take all actions necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the applicable Security Document to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent and (c) at the request of the Administrative Agent, deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the other Lenders, of counsel to the Credit Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 8.11 as the Administrative Agent may reasonable request.

(c) The Borrower will, and will cause each of the other Credit Parties that are Subsidiaries of the Borrower to, at the expense of the Borrower, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent, promptly, upon the reasonable request of the Administrative Agent or the Collateral Agent, at Borrower's expense, any additional Security Document or document or instrument supplemental to or confirmatory of the Security Documents, including opinions of counsel, or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary for the continued validity, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except for Permitted Liens or as otherwise permitted by the applicable Security Document.

(d) If the Administrative Agent reasonably determines that it or the Lenders are required by law or regulation to have appraisals prepared in respect of any Real Property, the Borrower will, at its own expense, provide to such appraisals to the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent.

(e) The Borrower agrees that each action required by clauses (a) through (d) of this Section 8.11 shall be completed as soon as reasonably practicable, but in no event later than ninety (90) days after such action is required to be taken pursuant to such clauses or requested to be taken by the Administrative Agent or the Required Lenders (or such longer period as the Administrative Agent shall otherwise agree), as the case may be; *provided* that, in no event will the Borrower or any of its Subsidiaries be required to take any action, other than using its commercially reasonable efforts, to obtain consents from third parties with respect to its compliance with this Section 8.11.

Section 8.12 *Post-Closing Actions*. The Borrower agrees that it will, or will cause its relevant Subsidiaries to, complete each of the actions described on Schedule 8.12 as soon as commercially reasonable and by no later than the date set forth in Schedule 8.12 with respect to such action or such later date as the Administrative Agent may reasonably agree.

Section 8.13 *Lenders and Advisor Calls; Meetings with Senior Management.*

(a) Commencing on the second week that commences after the Petition Date, arrange for, once per week, upon reasonable prior notice (unless such notice is waived in writing by the Administrative Agent or the Required Lenders), a conference call with the Administrative Agent, the Advisors, the Lenders (and their respective professional advisors) and their respective professional advisors, discussing and analyzing (i) the financial condition and results of operations of each of the Credit Parties for the prior week, status of the Cases and progress in achieving the milestones set forth in Section 8.14, and (ii) the Budget, any Variance Report and the financial statements for the prior fiscal quarter delivered pursuant to Section 8.01(a).

(b) Arrange for, once a week, a conference call, among the Administrative Agent and senior management of the Borrower, with respect to any matter reasonably requested by the Administrative Agent, the Required Lenders or Advisors.

Section 8.14 *Milestones*. Ensure that each of the milestones set forth below is achieved in accordance with the applicable timing referred to below (or such later dates as approved by the Required Lenders):

(a) on the Petition Date, the Credit Parties shall file a motion to approve bidding procedures and stalking horse protections (including any break-up fee or expense reimbursement, the "**Bid Protections**") for the Acquiror (the "**Bidding Procedures Motion**") in respect of any 363 sale transaction under the U.S. Cases and/or an asset sale transaction under the CCAA Cases (any of the foregoing, a "**Sale Transaction**" and a Sale Transaction with the Acquiror, the "**Acquiror Sale Transaction**"), in form and substance reasonably acceptable to the Required Lenders and as soon as reasonably possible, whether before or as part of the Bid Procedure Order (as defined below), the Credit Parties shall obtain from each Bankruptcy Court approval of cross-border protocols, in form and substance reasonably acceptable to the Required Lenders;

(b) within three (3) business days after the Petition Date, the Credit Parties shall obtain from each Bankruptcy Court, and any other necessary court, entry of the Interim Financing Order, in form and substance reasonably acceptable to the Required Lenders;

(c) within twenty-one (21) days after the Petition Date, the Credit Parties shall obtain, in each case in form and substance reasonably acceptable to the Required Lenders, entry from each Bankruptcy Court of an order approving the Bidding Procedures Motion and the Bid Protections specified therein (the "**Bid Procedures Order**");

(d) within thirty (30) days after the Interim Financing Order Date, the Credit Parties shall obtain, in each case in form and substance reasonably acceptable to the Required Lenders, entry of the Final Financing Order by the U.S. Bankruptcy Court approving the Term Loan Facilities on a final basis;

(e) on or prior to January 4, 2017, the bid deadline set forth in the Bid Procedures Order shall occur;

(f) on or prior to January 9, 2017, if qualifying bids are received in accordance with the Bid Procedures Order, the Credit Parties shall hold an auction with respect to the Sale Transaction;

(g) on or prior to January 16, 2017 the Credit Parties shall obtain entry of court orders of the Bankruptcy Courts authorizing the Sale Transaction to the successful bidder in accordance with the Bid Procedures Order, in each case in form and substance reasonably acceptable to the Required Lenders; and

(h) on or prior to February 16, 2017, the Sale Transaction shall close and all Obligations hereunder shall be Paid in Full; provided that, such February 16 date shall be extended until February 28, 2017 (and in any event no later than one (1) Business Day prior to the Scheduled Maturity Date) to the extent necessary for the Sale Transaction to obtain regulatory approval.

Section 8.15 *Financing Orders*. Comply in all respects, after entry thereof, with all requirements and obligations set forth in the Financing Orders, as each such order is amended and in effect from time to time in accordance with this Agreement.

Section 8.16 *Bankruptcy Pleadings, Etc*. Promptly after the same is available, copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of any of the Credit Parties with the Bankruptcy Courts, or distributed by or on behalf of any of the Credit Parties to any committee or Monitor appointed in the Cases, providing copies of the same to the Lenders and counsel for the Administrative Agent; *provided* that such documents may be made available by posting on a website maintained (x) by the Borrower and identified to the Lenders and the Administrative Agent in connection with the Cases or (y) by the Monitor.

## ARTICLE 9
## NEGATIVE COVENANTS

The Borrower and each of its Subsidiaries hereby covenant and agree that on and after the Signing Date and until all Commitments are terminated and the Term Loans and Notes (in each case, together with interest thereon), Fees and all other Obligations incurred hereunder and thereunder, are Paid in Full:

Section 9.01 *Liens*. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible) of the Borrower or any of its Subsidiaries, whether now owned or hereafter acquired, or sell accounts receivable with recourse to the Borrower or any of its Subsidiaries) or authorize the filing of, any financing statement under the UCC or PPSA with respect to any Lien or any other similar notice of any Lien under any similar recording or notice statute; *provided* that the provisions of this Section 9.01 shall not prevent the creation, incurrence, assumption or existence of, or any filing in respect of, the following (Liens described below are herein referred to as "**Permitted Liens**"):

(i) Liens for Taxes, assessments or governmental charges or levies not overdue or Liens for Taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP (or, for Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);

(ii) Liens in respect of property or assets of the Borrower or any of its Subsidiaries imposed by law that were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, contractors', materialmen's and mechanics' liens and other similar Liens arising in the ordinary course of business, and which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or assets, and for which adequate reserves have been established in accordance with GAAP;

(iii) Liens in existence on the Signing Date, plus modifications, renewals, replacements, refinancings and extensions of such Liens, provided that (x) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase from that amount outstanding at the

time of any such renewal, replacement or extension, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension and (y) any such renewal, replacement or extension does not encumber any additional assets or properties of the Borrower or any of its Subsidiaries (other than after-acquired property that is affixed or incorporated into the property encumbered by such Lien on the Signing Date and the proceeds and products thereof) unless such Lien is permitted under the other provisions of this Section 9.01;

(iv) (v) Liens created pursuant to the Credit Documents, (w) Liens securing obligations (as defined in the Prepetition ABL Facility) and the credit documents related thereto and incurred pursuant to Section 9.04(i)(x), (x) Liens securing obligations (as defined in the ABL DIP Facility) and the credit documents related thereto and incurred pursuant to Section 9.04(i)(y), (y) on or prior to the Closing Date, Liens securing obligations (as defined in the Prepetition Term Loan Credit Agreement) and the credit documents related thereto and incurred pursuant to Section 9.04(i)(z) and (z) the Administration Charge, the ABL Charge, the D&O Charge, the KEIP / KERP Charge and the Intercompany Charge; *provided* that, in the case of Liens securing such Indebtedness under the ABL Facilities, such Liens are subject to the Post-Petition Intercreditor Arrangements;

(v) Leases, subleases, licenses or sublicenses (including licenses or sublicenses of Intellectual Property) granted to other Persons in the ordinary course of business and consistent with past practice and not materially interfering with the conduct of the business of the Borrower or any of its Subsidiaries;

(vi) Liens upon assets of the Borrower or any of its Subsidiaries subject to Capitalized Lease Obligations to the extent such Capitalized Lease Obligations are permitted by Section 9.04(iv), *provided* that (x) such Liens serve only to secure the payment of Indebtedness and/or other monetary obligations arising under such Capitalized Lease Obligation and (y) the Lien encumbering the asset or assets giving rise to such Capitalized Lease Obligation does not encumber any asset of the Borrower or any of its Subsidiaries other than the proceeds of the assets giving rise to such Capitalized Lease Obligations;

(vii) Liens placed upon equipment, machinery or other fixed assets acquired or constructed after the Signing Date and used in the ordinary course of business of the Borrower or any of its Subsidiaries and placed at the time of the acquisition or construction thereof by the Borrower or such Subsidiary or within ninety (90) days thereafter to secure Indebtedness incurred to pay all or a portion of the purchase or construction price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition or construction of any such equipment, machinery or other fixed assets or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided that (x) the Indebtedness secured by such Liens is permitted by Section 9.04(iv) and (y) in all events, the Lien encumbering the equipment, machinery or other fixed assets so acquired or constructed does not encumber any other asset of the Borrower or such Subsidiary; provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender on customary terms;

(viii) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar charges or encumbrances and minor title deficiencies, which individually or in the aggregate do not materially interfere with the conduct of the business of the Borrower or any of its Subsidiaries;

(ix) Liens arising from precautionary UCC, PPSA or other similar financing statement filings regarding operating leases or consignments entered into in the ordinary course of business;

(x) attachment and judgment Liens, to the extent and for so long as the underlying judgments and decrees do not constitute an Event of Default pursuant to Section 10.01(i);

(xi) statutory and common law landlords' liens under leases to which the Borrower or any of its Subsidiaries is a party;

(xii) Liens (other than Liens imposed under ERISA or in respect of any Canadian Pension Plan) incurred in the ordinary course of business in connection with workers' compensation claims, unemployment insurance and social security benefits and Liens securing the performance of bids, tenders, leases and contracts in the ordinary course of business, statutory obligations, surety, stay, customs or appeal bonds, performance bonds and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit) incurred in the ordinary course of business;

(xiii) deposits or pledges to secure bids, tenders, contracts (other than contracts for the repayment of borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds and other obligations of like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit), and as security for the payment of rent, in each case arising in the ordinary course of business and consistent with past practice;

(xiv) any interest or title of a lessor, sublessor, licensee, sublicensee, licensor or sublicensor under any lease, sublease, or license or sublicense agreement (including software and other technology licenses) in the ordinary course of business and consistent with past practice;

(xv) with respect to any Real Estate, Permitted Encumbrances;

(xvi) Liens on Collateral in favor of any Credit Party securing intercompany Indebtedness permitted by Section 9.04, provided that any Liens securing Indebtedness that is required to be subordinated pursuant to Section 9.05 shall be subordinated to the Liens created pursuant to the Security Documents;

(xvii) Liens on specific items of inventory or other goods (and proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods, and pledges or deposits in the ordinary course of business;

(xviii) Liens on insurance policies and the proceeds thereof (whether accrued or not) and rights or claims against an insurer, in each case securing insurance premium financings permitted under Section 9.04(vi);

(xix) Liens that may arise on inventory or equipment of the Borrower or any of its Subsidiaries in the ordinary course of business and consistent with past practice as a result of such inventory or equipment being located on premises owned by Persons other than the Borrower and its Subsidiaries;

(xx) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(xxi) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection and (ii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(xxii) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence or issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any

Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business and consistent with past practice;

(xxiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business;

(xxiv) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business of the Borrower and the Subsidiaries complies, and (ii) any zoning or similar law or right reserved to or vested in, or any development agreement, site plan agreement, subdivision agreement or other similar agreement with any Governmental Authority to control or regulate the use of any real property lease, license, franchise, grant or permit that does not materially interfere with the ordinary conduct of the business of the Borrower or any Subsidiary;

(xxv) any cash deposits securing the Borrower's or any of its Subsidiaries' obligations to any utility providers;

(xxvi) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxvii) the right reserved to or vested in any Governmental Authority by any statutory provision or by the terms of any lease, license, franchise, grant or permit of the Borrower or any Subsidiary to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

(xxviii) deposits made in the ordinary course of business to secure liability to insurance carriers; and

(xxix) Liens not otherwise permitted by the foregoing clauses (i) through (xvii), to the extent attaching to properties and assets with an aggregate fair market value not in excess of, and securing liabilities not in excess of $500,000 in the aggregate at any time outstanding.

In connection with the granting of Liens of the type described in this Section 9.01 by the Borrower or any of its Subsidiaries, the Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate by it in connection therewith (including, without limitation, by executing appropriate lien releases or lien subordination agreements in favor of the holder or holders of such Liens, in either case solely with respect to the item or items of equipment or other assets subject to such Liens).

Section 9.02 *Consolidation, Merger, or Sale of Assets, etc.* The Borrower will not, and will not permit any of its Subsidiaries to, wind up, liquidate or dissolve its affairs or enter into any partnership, joint venture, or transaction of merger, amalgamation or consolidation, or convey, sell, lease or otherwise dispose of all or any part of its property or assets, or enter into any Sale-Leaseback Transactions of any Person, except that:

(i) each of the Borrower and its Subsidiaries may sell or discount, in each case in the ordinary course of business and consistent with past practice, accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof and not as part of any financing transaction;

(ii) each of the Borrower and its Subsidiaries may grant licenses, sublicenses, leases or subleases to other Persons not materially interfering with the conduct of the business of the Borrower or any of its Subsidiaries, including of Intellectual Property, in each case, in the ordinary course of business and consistent with past practice;

(iii) each of the Borrower and its Subsidiaries may make sales or leases of (x) inventory and goods held for sale, in each case, in the ordinary course of business and consistent with past practice and (y) assets (other than Intellectual Property) with a fair market value, in the case of this clause (y), of less than $1,500,000 in the aggregate;

(iv) each of the Borrower and its Subsidiaries may sell or otherwise dispose of (i) outdated, obsolete, surplus or worn out property and (ii) property no longer used or useful in the conduct of the business of the Borrower and its Subsidiaries, in each case, in the ordinary course of business and consistent with past practice;

(v) each of the Borrower and its Subsidiaries may make transfers of property subject to casualty or condemnation proceedings upon the occurrence of the related Recovery Event;

(vi) each of the Borrower and its Subsidiaries may abandon Intellectual Property rights in the ordinary course of business and consistent with past practice, which in the reasonable good faith determination of the Borrower or a Subsidiary are no longer material to the Borrower or any of its Subsidiaries;

(vii) each of the Borrower and its Subsidiaries may make dispositions resulting from foreclosures by third parties on properties of the Borrower or any of its Subsidiaries and acquisitions by the Borrower or any of its Subsidiaries resulting from foreclosures by such Persons or properties of third parties;

(viii) each of the Borrower and its Subsidiaries may terminate leases and subleases;

(ix) each of the Borrower and its Subsidiaries may use cash and Cash Equivalents to make payments that are otherwise permitted under Sections 9.03 and 9.07;

(x) each of the Borrower or its Subsidiaries may sell or otherwise dispose of property, for reasonably equivalent value, to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such sale or disposition are promptly applied to the purchase price of such replacement property;

(xi) sales, dispositions or contributions of property (x) between Credit Parties, (viii) between Subsidiaries (other than Credit Parties), (y) by Subsidiaries that are not Credit Parties to the Credit Parties or (z) by the Credit Parties to any Subsidiary that is not a Credit Party; *provided* that any such sale, disposition or contribution of property, shall in each case constitute an Investment in such Subsidiary equal to the fair market value so sold, disposed of or contributed;

(xii) the sale of the Credit Parties' assets that the Required Lenders reasonably agree constitute the Credit Parties' "soccer business" pursuant to terms and conditions acceptable to the Required Lenders;

(xiii) transfers of property that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement; *provided* that the proceeds of such dispositions are applied in accordance with Section 4.02(e); and

(xiv) the Borrower and any of its Subsidiaries may complete transaction steps expressly contemplated as part of a Sale Transaction Restructuring (and if approval of a Bankruptcy Court is required, to the extent so approved by an Order).

To the extent the Required Lenders waive the provisions of this Section 9.02 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 9.02 (other than to the Borrower or a Subsidiary thereof), such Collateral shall be sold free and clear of the Liens created by the Security Documents, and the

Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate in order to effect the foregoing to the extent contemplated by Section 11.10.

Section 9.03 *Dividends*. The Borrower will not, and will not permit any of its Subsidiaries to, authorize, declare or pay any Dividends with respect to the Borrower or any of its Subsidiaries, except that any Subsidiary of the Borrower may pay Dividends or return capital or make distributions and other similar payments with regard to its Equity Interests to the Borrower or to other Subsidiaries of the Borrower which directly or indirectly own equity therein;

Section 9.04 *Indebtedness*. The Borrower will not, and will not permit any of its Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(i) (w) Indebtedness incurred pursuant to this Agreement and the other Credit Documents, (x) Indebtedness incurred pursuant to the Prepetition ABL Facility in an aggregate principal amount not to exceed (I) the amount thereunder outstanding as of the Petition Date minus (II) any such amounts in clause (I) prepaid from time to time after the Petition Date, (y) Indebtedness incurred pursuant to the ABL DIP Facility in an aggregate principal amount not to exceed $200,000,000 in the aggregate and (z) on or prior to the Closing Date, Indebtedness incurred pursuant to the Prepetition Term Loan Credit Agreement in an aggregate principal amount not to exceed (I) the amount thereunder outstanding as of the Petition Date minus (II) any such amounts in clause (I) prepaid from time to time after the Petition Date;

(ii) Indebtedness under Swap Contracts entered into with respect to other Indebtedness permitted under this Section 9.04 so long as the entering into of such Swap Contracts are bona fide hedging activities in the ordinary course of business and consistent with past practice and are not for speculative purposes;

(iii) intercompany Indebtedness among the Borrower and its Subsidiaries to the extent permitted by Section 9.05(vi);

(iv) Indebtedness of the Borrower and its Subsidiaries consisting of Capitalized Lease Obligations and purchase money Indebtedness (including obligations in respect of mortgages, industrial revenue bonds, industrial development bonds and similar financings) described in Section 9.01(vi); provided that, in no event shall the aggregate principal amount of Capitalized Lease Obligations and the principal amount of all such Indebtedness incurred or assumed in each case after the Signing Date permitted by this clause (iii) exceed $500,000 in the aggregate;

(v) Indebtedness outstanding on the Signing Date and disclosed as material Indebtedness under the Biscuit Acquisition Agreement as in effect as of the date hereof ("**Existing Indebtedness**");

(vi) Indebtedness incurred in the ordinary course of business to finance insurance premiums or take-or-pay obligations contained in supply arrangements;

(vii) Indebtedness incurred in the ordinary course of business in respect of netting services, overdraft protections, employee credit card programs, automatic clearinghouse arrangements and other similar services in connection with cash management and deposit accounts and Indebtedness in connection with the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, including, in each case, Bank Product Debt;

(viii) additional Indebtedness of the Borrower and its Subsidiaries not to exceed the $500,000 in aggregate principal amount;

(ix) Contingent Obligations for customs, stay, performance, appeal, judgment, replevin and similar bonds and suretyship arrangements, and completion guarantees and other obligations of a like nature, all in the ordinary course of business;

(x) Contingent Obligations to insurers required in connection with worker's compensation and other insurance coverage incurred in the ordinary course of business;

(xi) guarantees made by the Borrower or any of its Subsidiaries of Indebtedness of the Borrower or any of its Subsidiaries permitted to be outstanding under this Section 9.04; *provided* that such guarantees are permitted by Section 9.05;

(xii) customary Contingent Obligations in connection with sales, other dispositions and leases permitted under Section 9.02 (but not in respect of Indebtedness for borrowed money or Capitalized Lease Obligations) including indemnification obligations with respect to leases, and guarantees of collectability in respect of accounts receivable or notes receivable for up to face value;

(xiii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within two (2) Business Days of its incurrence;

(xiv) (x) severance, pension and health and welfare retirement benefits or the equivalent thereof to current and former employees of the Borrower or its Subsidiaries incurred in the ordinary course of business, (y) Indebtedness representing deferred compensation or stock-based compensation to employees of the Borrower and the Subsidiaries, and (z) Indebtedness consisting of promissory notes issued by any Credit Party to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by Section 9.03;

(xv) (x) guarantees made by the Borrower or any of its Subsidiaries of obligations (not constituting debt for borrowed money) of the Borrower or any of its Subsidiaries that are Credit Parties owing to vendors, suppliers and other third parties incurred in the ordinary course of business and (y) Indebtedness of any Credit Party as an account party in respect of trade letters of credit issued in the ordinary course of business;

(xvi) guarantees made by a Foreign Subsidiary of Indebtedness of any other Foreign Subsidiary permitted to be outstanding under this Section 9.04;

(xvii) guarantees of Indebtedness of directors, officers and employees of the Borrower or any of its Subsidiaries in respect of expenses of such Persons in connection with relocations and other ordinary course of business purposes not to exceed $1,000,000 at any time outstanding;

(xviii) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xvii) above.

Section 9.05 *Advances, Investments and Term Loans*. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, lend money or credit or guaranty the Indebtedness of any Person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other Person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or hold any cash or Cash Equivalents, or make any advances (each of the foregoing, an "**Investment**" and, collectively, "**Investments**" and with the value of each Investment being measured at the fair market value thereof determined as of the time made and without giving effect to subsequent changes in value or any write-ups, write-downs or write-offs thereof but giving effect to any cash return or cash distributions received by the Borrower and its Subsidiaries with respect thereto as of the time made), except that the following shall be permitted:

(i) the Borrower and its Subsidiaries may acquire and hold accounts receivable owing to any of them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms of the Borrower or such Subsidiary;

(ii) the Borrower and its Subsidiaries may acquire and hold cash and Cash Equivalents; *provided* that, Foreign Subsidiaries may not hold more than $500,000 of any cash or Cash Equivalents at any time;

(iii) the Borrower and its Subsidiaries may hold the Investments held by them on the Signing Date and described on Schedule 9.05(iii), and any modification, replacement, renewal or extension thereof that does not increase the principal amount thereof unless any additional Investments made with respect thereto are permitted under the other provisions of this Section 9.05;

(iv) the Borrower and its Subsidiaries may acquire and hold Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers, and Investments received in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(v) the Borrower and its Subsidiaries may enter into Swap Contracts to the extent permitted by Section 9.04(ii);

(vi) (v) the Borrower and any Subsidiary may make intercompany loans to and other investments in Credit Parties, (w) any Foreign Subsidiary may make intercompany loans to and other investments in the Borrower or any of its Subsidiaries so long as in the case of such intercompany loans to Credit Parties, all payment obligations of the respective Credit Parties are subordinated to their obligations under the Credit Documents on terms reasonably satisfactory to the Administrative Agent and the Required Lenders, (x) the Credit Parties may make intercompany loans to, guarantees on behalf of, and other investments in Subsidiaries that are not Credit Parties so long as the aggregate amount of outstanding loans, guarantees and other Indebtedness made pursuant to this subclause (vi)(x) does not exceed $500,000, (y) any Subsidiary that is not a Credit Party may make intercompany loans to, and other investments in, any other Subsidiary that is also not a Credit Party and (z) Credit Parties may make intercompany loans to, guarantees on behalf of, and other investments in, Subsidiaries that are not Credit Parties to fund the operating expenses of such Subsidiaries in an amount not to exceed $100,000 during any fiscal year of the Borrower ;

(vii) loans and advances by the Borrower and its Subsidiaries to officers, directors and employees of the Borrower and its Subsidiaries in connection with (i) relocations and other ordinary course of business purposes (including travel and entertainment expenses) shall be permitted and (ii) any such Person's purchase of Equity Interests of the Borrower; *provided* that no cash is actually advanced pursuant to this clause (ii) unless immediately repaid;

(viii) extensions of trade credit may be made in the ordinary course of business and consistent with past practice, Investments received in satisfaction or partial satisfaction of previously extended trade credit from financially troubled account debtors, Investments consisting of prepayments to suppliers made in the ordinary course of business and loans or advances made to distributors in the ordinary course of business;

(ix) Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

(x) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit;

(xi) the licensing, sublicensing or contribution of Intellectual Property pursuant to arrangements with Persons other than the Borrower and the Subsidiaries in the ordinary course of business

and consistent with past practice for fair market value, as determined by the Borrower or such Subsidiary, as the case may be, in good faith;

(xii) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case, in the ordinary course of business and consistent with past practice;

(xiii) advances of payroll payments to employees of the Borrower and its Subsidiaries in the ordinary course of business consistent with past practice; and

(xiv) the Borrower and any of its Subsidiaries may complete transaction steps expressly contemplated as part of a Sale Transaction Restructuring (and if approval of a Bankruptcy Court is required, to the extent so approved by an order of the Bankruptcy Court).

Section 9.06 *Transactions with Affiliates*. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any transaction or series of related transactions with any Affiliate of the Borrower or any of its Subsidiaries, other than on terms and conditions not less favorable to the Borrower or such Subsidiary as would reasonably be obtained by the Borrower or such Subsidiary at that time in a comparable arm's-length transaction with a Person other than an Affiliate, except:

(i) Dividends may be paid to the extent provided in Section 9.03;

(ii) to the extent not otherwise prohibited by this Agreement, transactions between or among the Borrower and any of its Subsidiaries shall be permitted (including equity issuances); provided that, transactions among Credit Parties, on the one hand and Subsidiaries of the Borrower that are not Credit Parties, on the other, shall be on on terms and conditions not less favorable to the relevant Credit Party as would reasonably be obtained by such Credit Party at that time in a comparable arm's-length transaction with a Person other than an Affiliate; and

(iii) transactions described on Schedule 9.06(iii).

Section 9.07 *Limitations on Payments of Indebtedness; Amendments to the Certificate of Incorporation, By-Laws and Certain Other Agreements, etc.* The Borrower will not, and will not permit any of its Subsidiaries to:

(i) Pay, prepay, redeem, purchase, defease or otherwise satisfy (a) any Indebtedness or other obligation that is subordinated in right of payment to the Obligations or secured by a Lien on any Collateral that is junior to the Liens on such Collateral securing the Obligations or (b) any Indebtedness or other obligation that was incurred prior to the Petition Date, in each case, whether by way of "adequate protection" under the Bankruptcy Code or otherwise, except for (i) payments made pursuant to the Financing Orders or, to the extent not in violation of the Financing Orders, any other order of the Bankruptcy Courts then in effect that is reasonably satisfactory to the Required Lenders or (ii) payments made in accordance with the Budget (subject to the Permitted Cash Flow Test).

(ii) amend, modify or change its certificate or articles of incorporation (including, without limitation, by the filing or modification of any certificate or articles of designation), certificate of formation, limited liability company agreement or by-laws (or the equivalent organizational documents), as applicable, or any agreement entered into by it with respect to its Equity Interests, or enter into any new agreement with respect to its Equity Interests, unless such amendment, modification, change or other action contemplated by this Section 9.07 could not reasonably be expected to be adverse in any material respect to the interests of the Lenders.

(iii) agree, consummate or permit to exist (A) any changes or amendments to the borrowing base of any ABL Facility (or to any underlying definitions or components thereof) that would result in an increase of the extension of credit under such ABL Facility, (B) any increases in the availability

for the applicable borrowers thereunder of advances under any ABL Facility, (C) any increase in pricing (whether in the form of interest rates, margins, commissions, fees, original issue discount or otherwise) other than as a result of the application of default rate interest under any ABL Facility, or (D) any repayment or "exit" premiums, fees or other similar costs (it being understood that the foregoing shall not limit the discretionary rights and ability of the Administrative Agent to (x) impose or establish Reserves (as defined in the ABL Facilities as in effect on the date hereof), (y) establish or modify any discretionary component of the eligibility criteria under the borrowing base of any ABL Facility (including any component definitions thereof) that would not result in an increase of the extension of credit under such ABL Facility and/or increase the availability for the applicable borrowers thereunder of advances under any ABL Facility, or (z) decrease advance rates).

Section 9.08 *Limitation on Certain Restrictions on Subsidiaries*. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any such Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by the Borrower or any of its Subsidiaries, or pay any Indebtedness owed to the Borrower or any of its Subsidiaries, (b) make loans or advances to the Borrower or any of its Subsidiaries or (c) transfer any of its properties or assets to the Borrower or any of its Subsidiaries, except for such encumbrances or restrictions existing under or by reason of:

(i) applicable law;

(ii) this Agreement and the other Credit Documents or the documents governing the ABL Facilities and on or prior to the Closing Date, the Prepetition Term Loan Credit Agreement;

(iii) customary provisions restricting subletting or assignment of any lease governing any leasehold interest of the Borrower or any of its Subsidiaries;

(iv) customary provisions restricting assignment of any licensing agreement (in which the Borrower or any of its Subsidiaries is the licensee) or other contract entered into by the Borrower or any of its Subsidiaries in the ordinary course of business;

(v) restrictions on the transfer of any asset pending the close of the sale of such asset;

(vi) encumbrances or restrictions on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(vii) any agreement or instrument relating to Indebtedness of a Foreign Subsidiary incurred pursuant to Section 9.04 to the extent such encumbrance or restriction only applies to such Foreign Subsidiary;

(viii) an agreement effecting a refinancing, replacement or substitution of Indebtedness issued, assumed or incurred pursuant to an agreement or instrument referred to in clause (vii) above; *provided* that the provisions relating to such encumbrance or restriction contained in any such refinancing, replacement or substitution agreement are no less favorable to the Borrower or the Lenders in any material respect than the provisions relating to such encumbrance or restriction contained in the agreements or instruments referred to in such clause (vii);

(ix) restrictions on the transfer of any asset subject to a Lien permitted by Section 9.01 (in the case of Liens securing Indebtedness for borrowed money, subject to clause (xii) below);

(x) restrictions and conditions imposed by the terms of the documentation governing any Indebtedness of a Subsidiary of the Borrower that is not a Credit Party, which Indebtedness is permitted by Section 9.04 (but solely as such restrictions and conditions pertain to such Subsidiaries that are not Credit Parties);

(xi) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 9.05 and applicable solely to such joint venture; and

(xii) restrictions imposed by the Financing Orders.

Section 9.09 *Business*. The Borrower will not permit at any time the business activities taken as a whole conducted by the Borrower and its Subsidiaries to be materially different from the business activities taken as a whole conducted by the Borrower and its Subsidiaries on the Signing Date.

Section 9.10 *Negative Pledges*. The Borrower shall not, and shall not permit any of its Subsidiaries to, agree or covenant with any Person to restrict in any way its ability to grant any Lien on its assets in favor of the Lenders, other than pursuant to the Post-Petition Intercreditor Arrangements and other than:

(i) any covenants contained in this Agreement or any other Credit Documents or that exist on the Signing Date;

(ii) covenants existing under (x) the Prepetition ABL Credit Agreement, and, solely on or prior to the Closing Date, the Prepetition Term Loan Credit Agreement as in effect on the Petition Date and the other credit documents pursuant thereto and/or (y) the ABL DIP Credit Agreement and the other credit documents pursuant thereto;

(iii) covenants and agreements permitted under Section 9.08(ix);

(iv) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment thereof;

(v) covenants and agreements made in connection with any agreement relating to secured Indebtedness permitted by this Agreement but only if such covenant or agreement applies solely to the specific asset or assets to which such Lien relates;

(vi) restrictions imposed by applicable law;

(vii) customary restrictions and conditions contained in agreements relating to any sale of assets or Equity Interests pending such sale, provided such restrictions and conditions apply only to the Person or property that is to be sold;

(viii) contractual obligations binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Subsidiary;

(ix) restrictions imposed by the Financing Orders;

(x) restrictions on any Foreign Subsidiary pursuant to the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred hereunder;

(xi) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; and

(xii) any restrictions on Liens imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i), (ii), (iii) and (ix) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive with respect to such encumbrance and other restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 9.11 *Budget Compliance; Borrowing Base Covenant*. The Borrower shall not, and shall not permit any of its Subsidiaries to:

(a) Except as otherwise provided herein or previously and expressly approved by the Required Lenders in writing (including via email or other electronic transmission), permit the proceeds of Term Loans to be used for any use other than a use permitted by Section 8.10, it being understood that (x) neither the Administrative Agent nor the Lenders shall have any duty to monitor such compliance and (y) the line items in the Budget for payment of amortization of principal, interest, expenses and other amounts to the Secured Parties are estimates only, and the Borrower remains obligated to pay any and all Obligations in accordance with the terms of the Credit Documents.

(b) Commencing with the week ending November 25, 2016, permit the actual Cumulative Net Cash Flow as set forth in the Variance Report delivered for such Variance Period pursuant to Section 8.01(i) to be less than the Cumulative Net Cash Flow for such Variance Period as set forth in the Initial Budget by an amount in excess of the Permitted Cash Flow Test.

(c) Without the express written consent of the Required Lenders, make any Cash Disbursements with respect to (x) any Indebtedness or (y) other obligations, in any such case, arising on or before the Petition Date owed by the Borrower or any other Debtor Credit Party, unless such Cash Disbursements (I) are in accordance with the Budget (subject to the Permitted Cash Flow Test) and (II) do not violate Section 9.07(i) or (III) constitute an Event of Default under Section 10.01(m).

(d) To the extent actual Liquidity is less than the Liquidity in the Budget less Permitted Liquidity Variance as of the last day of any week, permit the Borrowing Base as determined as of any applicable date of determination, to be less than 90% of the Borrowing Base for such date as set forth in the Initial Budget.

Section 9.12 *Final Bankruptcy Court Financing Order; Administrative Priority; Lien Priority; Payment of Claims*. The Borrower shall not, and shall not permit any of its Subsidiaries to:

(a) At any time, seek or consent to any reversal, modification, amendment, stay, vacation or termination of (i) any "first day orders" or "second day orders" entered by the Bankruptcy Courts in any of the Cases, if such reversal, modification, amendment, stay or vacation could have an adverse effect on the rights of the Secured Parties under this Agreement, (ii) the Interim Financing Order or (iii) the Final Financing Order.

(b) At any time, seek or consent to a priority for any administrative expense or unsecured claim against the Borrower or any other Debtor Credit Party (now existing or hereafter arising) of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in, or arising or ordered under, Sections 105(a), 326, 328, 330, 331, 363, 503(a), 503(b), 506(c), 507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code equal or senior to the priority of the Secured Parties in respect of the Obligations, except for the Carve-Out as provided in Section 2.14 or in the Financing Orders.

(c) At any time, seek or consent to a priority of any Liens against the Borrower or any other Debtor Credit Party that is equal or senior to the priority of the Liens granted to the Secured Parties, except as provided in Section 2.14 or the Financing Orders or that constitutes Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not adversely impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law or as expressly provided for in Section 9.01.

(d) Prior to the date on which the Obligations have been Paid in Full (or otherwise satisfied) and the Commitments have been cancelled and terminated, file with the Bankruptcy Courts any alternative debtor-in-possession financing proposal that does not provide for the Obligations to be Paid in Full.

Section 9.13 *Appointment of Chief Restructuring Officer*. Except as otherwise provided herein or approved by the Required Lenders (it being agreed that a chief restructuring officer employed by Alvarez and

Marsal shall be deemed reasonably acceptable to the Required Lenders), the Borrower shall not, and shall not permit any of its Subsidiaries to, appoint a chief restructuring officer with respect to any Debtor.

Section 9.14 *Critical Vendor Payments*. Except as otherwise provided herein or approved by the Required Lenders, the Borrower shall not, and shall not permit any of its Subsidiaries to, make payments to critical vendors or otherwise file any critical vendor motions seeking payments with the Bankruptcy Courts, in each case, in an aggregate amount or, with respect to the Canadian Cases, in excess of the amounts, as applicable, specified in "first day" or "second day" orders that have been confirmed in writing as being reasonably acceptable to the Required Lenders.

Section 9.15 *Actions in Cases*. The Borrower shall not, and shall not permit any of its Subsidiaries to, bring a motion in the Cases that could constitute a Default or an Event of Default pursuant to Article 10 of this Agreement.

ARTICLE 10
EVENTS OF DEFAULT

Section 10.01 *Events of Default*. Any of the following shall constitute an Event of Default:

(a) *Payments*. The Borrower shall (i) default in the payment when due of any principal of any Term Loan or any Note or (ii) default, and such default shall continue unremedied for five (5) or more Business Days, in the payment when due of any interest on any Term Loan or Note, or any Fees or any other amounts owing hereunder or under any other Credit Document; or

(b) *Representations, etc*. Any representation, warranty, certification or statement made or deemed made by any Credit Party herein or in any other Credit Document or in any certificate delivered to the Administrative Agent or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or

(c) *Covenants*. The Borrower or any of its Subsidiaries shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 8.01, 8.02, 8.03, 8.04 (as to the Credit Parties), 8.08, 8.09, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16 or Article 9 or (ii) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement or in any other Credit Document (other than those set forth in Sections 10.01(a) and 10.01(b)), and such default shall continue unremedied for a period of 5 Business Days after the earlier of (A) written notice thereof to the defaulting party by the Administrative Agent or the Required Lenders and (b) knowledge thereof by the Borrower or any Subsidiary; or

(d) *Default Under Other Agreements*. (i) The Borrower or any of its Subsidiaries shall (x) default in any payment of any Indebtedness incurred after the Petition Date (other than the Obligations) beyond the period of grace, if any (but whether or not all required notices have been delivered) (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), provided in an instrument or agreement under which such Indebtedness was created or (y) default in the observance or performance of any agreement or condition relating to any such Indebtedness (other than the Obligations) (but whether or not all required notices have been delivered) (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its stated maturity, or (ii) any Indebtedness incurred after the Petition Date (other than the Obligations) of the Borrower or any of its Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof, *provided* that (x) it shall not be a Default or an Event of Default under this Section 10.01(d) unless the aggregate principal amount of all Indebtedness as described in preceding clauses (i) and (ii) is at least equal to the Threshold Amount, (y) the preceding clause (ii) shall not apply to Indebtedness that becomes due as a result of a voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is otherwise permitted hereunder and (z) such defaults shall include any

such default under the ABL Facilities and/or the Prepetition Term Loan Credit Agreement, without regard to the Threshold Amount (other than any default of event of default that result directly from the filing of the Cases); or

(e) *Bankruptcy, etc*. Except for the commencement of a proceeding for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court or under Debtor Relief Laws in the Canadian Bankruptcy Court that does not or would not constitute an Event of Default under Section 10.01(t) hereunder and that is, within ten (10) days of the filing thereof, jointly administered with the Cases (it being agreed that, during any such ten (10)-day period, any such proceeding shall not constitute a Default), any Subsidiary of the Borrower (other than a Debtor) shall commence a voluntary case or proceeding concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "**Bankruptcy Code**") or under the provisions of the Bankruptcy and Insolvency Act (Canada) or the Companies' Creditors Arrangement Act (Canada) or any other bankruptcy, insolvency or other similar law or makes an assignment in bankruptcy, makes a proposal to its creditors or files notice of its intention to do so, institutes any other proceeding under applicable law seeking to adjudicate it a bankrupt or an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, receivership compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors, composition of it or its debts or any other similar relief; or an involuntary case or proceeding is commenced against such Person, and the petition is not controverted within twenty-one (21) days, or is not dismissed within thirty (30) days, after commencement of the case; or such Person applies for the appointment of, or the taking of possession by a custodian (as defined in the Bankruptcy Code), receiver, receiver- manager, interim receiver, trustee, monitor, liquidator or other similar official, or such official is appointed for, or takes charge of, all or substantially all of the property of such Person, or such Person commences any other proceeding under any reorganization, bankruptcy, insolvency, arrangement, winding-up, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to such Person, or there is commenced against such Person any such proceeding which remains undismissed for a period of thirty (30) days, or such Person is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or such Person suffers any appointment of any custodian, receiver, receiver-manager, interim receiver, trustee, monitor or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of thirty (30) days; or such Person makes a general assignment for the benefit of creditors; or any corporate, limited liability company or similar action is taken by such Person for the purpose of effecting any of the foregoing; or

(f) *ERISA*. (a) An ERISA Event has occurred with respect to a Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect; (b) there is or arises Unfunded Pension Liability which has resulted or would reasonably be expected to result in a Material Adverse Effect; (c) there is or arises any potential withdrawal liability under Section 4201 of ERISA, if the Borrower, any Subsidiary of the Borrower or the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans which has resulted or would reasonably be expected to result in a Material Adverse Effect; or (d) a Foreign Pension Plan or Canadian Pension Plan has failed to comply with, or be funded in accordance with, its applicable law which has resulted or would reasonably be expected to result in a Material Adverse Effect; or

(g) *Security Documents*. Any of the Security Documents shall cease to be in full force and effect, or shall cease to give the Collateral Agent for the benefit of the Secured Parties the Liens, rights, powers and privileges purported to be created thereby (including, without limitation (to the extent provided therein), a perfected security interest or hypothec in, and Lien on, all of the Collateral (other than Collateral with an aggregate fair market value not in excess of the Threshold Amount), in favor of the Collateral Agent, superior to and prior to the rights of all third Persons (except as permitted by Section 9.01), and subject to no other Liens (except as permitted by Section 9.01)); or

(h) *Guaranties*. Article 13 or any provision thereof shall cease to be in full force or effect as to any Subsidiary Guarantor, or any Subsidiary Guarantor or any Person acting for or on behalf of such Subsidiary Guarantor shall deny or disaffirm such Subsidiary Guarantor's obligations under Article 13 or any Subsidiary Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to Article 13; or

(i) *Judgments*. One or more judgments or decrees shall be entered against the Borrower or any Subsidiary (other than any Excluded Subsidiary) of the Borrower involving in the aggregate for the Borrower

and its Subsidiaries a liability or liabilities (not paid or fully covered by a reputable and solvent insurance company with respect to judgments for the payment of money) and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of 30 consecutive days, and (i) the aggregate amount of all such judgments and decrees (to the extent not paid or fully covered by such insurance company) equals or exceeds the Threshold Amount or (ii) such judgments, individually and in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect; or

(j) *[Reserved]*; or

(k) *Actual or Asserted Impairment*. At any time after the execution thereof, (i) any Credit Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof) or shall be declared null and void or (ii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability or shall contest in writing the validity or perfection of any Lien in any material portion of the Collateral purported to be covered by the Security Documents.

(l) *Bankruptcy-Related Events*.

(i) A court order shall have been entered dismissing any of the Cases or converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, or in the case of the Canadian Cases, converted to a liquidation proceeding or bankruptcy under the Bankruptcy and Insolvency Act (Canada), or the Borrower or any other Debtor shall file a motion or other pleading seeking the dismissal or conversion of any of the Cases under Section 1112 of the Bankruptcy Code or otherwise; or

(ii) A trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or a responsible officer or examiner (other than a fee examiner) having expanded powers is appointed or elected in the Cases, the Borrower or any other Debtor applies for or consents to any such appointment, or the U.S. Bankruptcy Court shall have entered an order providing for such appointment, or a receiver, interim receiver, receiver and manager or trustee in bankruptcy is appointed by the Canadian Bankruptcy Court; or

(iii) (A) The Final Financing Order (in form and substance reasonably satisfactory to the Required Lenders) shall not have been entered by the U.S. Bankruptcy Court on or prior to the date occurring thirty (30) days after the Interim Financing Order Date (or such later date as the Required Lenders may approve in their reasonable discretion), (B) either Bankruptcy Court shall have entered an order staying, reversing, vacating or terminating the Interim Financing Order or, after entry thereof, the Final Financing Order or extending, modifying, supplementing or amending the Interim Financing Order or, after entry thereof, the Final Financing Order, in any such case, other than in form and substance reasonably satisfactory to the Required Lenders, (C) subject to the Post-Petition Intercreditor Arrangements and the Financing Orders, an order of the Bankruptcy Courts shall be entered granting a Lien on the Collateral that is senior to or *pari passu* with the Liens on such Collateral securing the Obligations; (D) the Interim Financing Order and/or the Final Financing Order shall cease to create, as applicable, valid and perfected Liens, as provided in Section 2.14, on the Collateral of the Debtors or otherwise cease to be valid and binding and in full force and effect, (E) the Borrower or any other Credit Party shall fail to comply with any provision of the Interim Financing Order or, after the entry thereof, the Final Financing Order, other than any such failure to comply which is not material and is remedied within 2 Business Days, (F) the Borrower or any other Credit Party is enjoined, restrained or in any way prevented by order of a court of competent jurisdiction from continuing or conducting all or any material part of its business or affairs, (G) the Financing Orders shall cease to be in full force and effect or or (H) a final non-appealable order in the Cases shall be entered surcharging any of the Collateral under Section 506(c) of the Bankruptcy Code or the CCAA against the Secured Parties or the Debtors shall file or support any motion supporting such surcharging under Section 506(c) of the Bankruptcy Code or the CCAA; or

(iv) The Bankruptcy Courts shall have entered an order in any of the Cases (A) denying or terminating use of cash collateral by any of the Debtors, and the Debtors have not obtained use of cash collateral (consensually or non-consensually), (B) granting relief from any stay or proceeding (including, without limitation, the automatic stay under Section 362 of the Bankruptcy Code or the CCAA) so as to

allow any third party to proceed with foreclosure (or the granting of a deed in lieu of foreclosure or the like) against any assets of the Debtors with a value in excess of $500,000 in the aggregate or the Equity Interests in any Credit Party or in any Subsidiary whose Equity Interest (or portion thereof) has been pledged as security for the Obligations or permit third parties to exercise other remedies that would have a Material Adverse Effect or (C) without the prior written consent of the Required Lenders, authorizing financing for any of the Credit Parties under Section 364 of the Bankruptcy Code or the CCAA (other than the ABL DIP Facilities and the other transactions contemplated by the Credit Documents) unless such financing is expressly permitted hereunder or such order contemplates Payment in Full of the Obligations upon consummation thereof; or

(v) The filing or support of any pleading by any Credit Party or other Debtor seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (iv) above, unless such filing or any pleading is in connection with the enforcement of the Credit Documents against any Secured Party; or

(vi) The filing of a motion in any of the Cases by the Borrower or any other Debtor to (A) use DIP Cash Collateral under Section 363(c) of the Bankruptcy Code or the CCAA without the consent of the Required Lenders or (B) file any plan of liquidation unless such plan contemplates a Payment in Full of all Obligations; or

(m) *Material Payments*. Any material payments are made in respect of pre-petition obligations of any Debtor other than (i) to the extent permitted by the Interim Financing Order (or the Final Financing Order, when applicable), (ii) to the extent permitted by any "first day order" or "second day order" entered by the Bankruptcy Courts that is in form and substance reasonably satisfactory to the Required Lenders, or (iii) as otherwise permitted hereunder; or

(n) *Consolidation*. Any Credit Party consolidating or combining with any other Person except to the extent expressly permitted hereunder; or

(o) *Claim Status*. Other than in respect of the Obligations, the Carve-Out or as otherwise permitted under the Credit Documents, an order is entered by the Bankruptcy Courts granting superpriority administrative expense claim status in the Cases pursuant to Section 364(c)(1) of the Bankruptcy Code on a *pari passu* or senior basis to the claims against the Debtors of the Secured Parties under the Credit Documents, or the filing by any Credit Party of a motion or application seeking entry of such an order; or

(p) *Plan of Reorganization*. A Chapter 11 plan or any other plan, a plan of compromise or arrangement in the Canadian Cases that does not provide for the Payment in Full of the Obligations shall be confirmed in any of the Cases, or any of the Credit Parties or any of their Subsidiaries shall file, propose, support or fail to contest in good faith the filing or confirmation of such a plan unless such plan contemplated a Payment in Full of all Obligations; or

(q) *Avoidance; Disgorgement; etc*. The Bankruptcy Courts shall (i) enter an order avoiding or requiring disgorgement by the Secured Parties of any amounts received in respect of the Obligations, (ii) enter an order authorizing or directing payment of any claim or claims under Section 506(c) or 552(b) of the Bankruptcy Code against or with respect to any of the Collateral or (iii) enter an order resulting in marshaling of any Collateral or precluding the attachment of Liens securing the Obligations to post-petition property based on the "equities of the case" under Section 552(b) of the Bankruptcy Code; or

(r) *[Reserved]*; or

(s) *Material Impairment.* If any Credit Party shall file a motion, pleading or proceeding that challenges the rights and remedies of any of the Administrative Agent or the Lenders under the Credit Documents in any of the Cases or that is inconsistent with the Credit Documents, in any such case, to the extent the relief sought thereby or such determination could reasonably be expected to result in a material impairment of the rights or interests of the Lenders, other than a challenge to whether an Event of Default has, in fact, occurred and is continuing; or

(t) *Non-Debtor Proceedings*. (i) Any Domestic Subsidiary that is not a Debtor (or a Debtor as a result thereof) institutes or consents to the institution of any proceeding under any Debtor Relief Law or (ii) any Foreign Subsidiary that is a Credit Party institutes or consents to the institution of a proceeding for relief under Chapter 11 of the Bankruptcy Code, and, in any event set forth in clause (i) or (ii) above, within twenty (20) days after the occurrence thereof, the court overseeing such proceeding has not entered an order subjecting such non-Debtor to the Interim Financing Order (or, after entry thereof, the Final Financing Order) and such other orders as the Required Lenders may reasonably require (it being agreed that, during any such thirty (30)-day period after any event set forth in clause (i) or (ii) above, such event shall not constitute a Default).

(u) *Additional Financing*. The Borrower or any other Debtor shall file a motion in any of the Cases to obtain, or the Bankruptcy Courts shall enter an order to approve, any additional financing under Sections 364(c) or (d) of the Bankruptcy Code (including, without limitation, any indebtedness secured by a Lien on any Collateral equal or senior to the priority of the Liens securing the Obligations) unless (i) such financing and, if applicable, any Liens securing such financing are expressly permitted hereunder or (ii) such motion or order, as applicable, contemplates Payment in Full of the Obligations upon consummation thereof.

(v) *Priming Liens*. At any time, the Borrower any other Credit Party or any Debtor seeks or consents to a priority of any Liens against the Borrower or any other Credit Party that is equal or senior to the priority of the Liens granted to the Secured Parties, except (i) as provided in the Financing Orders, (ii) with respect to a Permitted Lien or (iii) such motion or order, as applicable contemplates Payment in Full of the Obligations upon consummation thereof.

(w) *Post-Petition Intercreditor Arrangements*. Following the Final Financing Order Date (i) the Liens securing the Obligations shall cease to have the priorities contemplated in Section 2.14 and/or in the Post-Petition Intercreditor Arrangements or any such provision thereof, (ii) the Post-Petition Intercreditor Arrangements shall be invalidated or otherwise cease, for any reason, to be obligations in full force and effect, and valid, binding and enforceable obligations of the Persons (other than the Lenders or the Administrative Agent) subject thereto, (iii) any Person (other than the Lenders or the Administrative Agent) shall breach any obligations under the Post-Petition Intercreditor Arrangements or any Person (other than the Lenders or the Administrative Agent) shall repudiate its obligations thereunder and/or state that any such obligations are not in full force and effect, valid, binding and enforceable against any such Person, (iv) any Person (other than the Lenders or the Administrative Agent) shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Post-Petition Intercreditor Arrangements, or (B) that any of such Post-Petition Intercreditor Arrangements exist for the benefit of any Secured Party; or (v) any Person (other than the Lenders or the Administrative Agent) thereof or any other Person fails to observe or perform any of the provisions of the Post-Petition Intercreditor Arrangements applicable to it.

Section 10.02 *Remedies Upon Event of Default*. Following the Final Financing Order Date, subject in all respects to the Financing Orders, including any notice requirement thereunder as applicable, if any Event of Default shall have occurred and be continuing, the Administrative Agent may, with the consent of the Required Lenders, and shall, upon the written request of the Required Lenders, in each case by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, any Lender or the holder of any Note to enforce its claims against any Credit Party: (i) declare the Commitments terminated, whereupon all Commitments of each Lender shall forthwith terminate immediately; (ii) declare the principal of and any accrued interest, any premiums and/or fees (including any applicable Prepayment Premium) in respect of all Term Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party; (iii) enforce, as Collateral Agent, all of the Liens and security interests created pursuant to the Security Documents; and (iv) enforce the terms of Article 13.

ARTICLE 11
THE ADMINISTRATIVE AGENT

Section 11.01 *Appointment and Authority.*

(a) Each of the Lenders hereby irrevocably appoints 9938982 Canada Inc. to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders and neither the Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "Collateral Agent" under the Credit Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 11.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article 11 (including Section 11.05, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Credit Documents) as if set forth in full herein with respect thereto.

Section 11.02 *Rights as a Lender*. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.03 *Exculpatory Provisions*. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or

any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.02 and Section 12.11) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

(e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 11.04 *Reliance by Administrative Agent*. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Term Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.05 *Delegation of Duties*. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 11.06 *Resignation of Administrative Agent*.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not

a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 4.04(e) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 11.07 *Non-Reliance on Administrative Agent and Other Lenders.* Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 11.08 *[Reserved].*

Section 11.09 *Administrative Agent May File Proofs of Claim; Credit Bidding.* In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Term Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders

and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 3.01 and Section 11.04) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 3.01 and Section 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or under the provisions of the Bankruptcy and Insolvency Act (Canada) or the Companies' Creditors Arrangement Act (Canada), or any similar Laws in any other jurisdictions to which a Credit Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that, any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (c) of Section 12.11), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 11.10 *Collateral and Guaranty Matters.* Without limiting the provisions of this Section 11.10, the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Credit Document (i) upon termination of the Commitments and Payment in Full of all Obligations (other than

contingent indemnification obligations), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Credit Document to a Person that is not a Credit Party, (iii) that constitutes Excluded Property, or (iv) if approved, authorized or ratified in writing in accordance with Section 12.11;

(b) to release any Subsidiary Guarantor from its obligations under Article 13 if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Credit Documents; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Credit Document to the holder of any Lien on such property that is permitted by Section 9.01(vi).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under Article 13 pursuant to this Section 11.10. In each case as specified in this Section 11.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Subsidiary Guarantor from its obligations under Article 13, in each case in accordance with the terms of the Credit Documents and this Section 11.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

As part of its duties as the Collateral Agent under the Credit Documents, the Collateral Agent (x) is, for the purposes of holding any security granted under the Security Documents governed by the laws of the Province of Quebec, hereby appointed by the Lenders, and (y) hereby agrees to act as hypothecary representative within the meaning of Article 2692 of the Civil Code of Quebec, for all present and future Lenders. Any Person who becomes a Lender shall, by its execution of an Assignment and Assumption Agreement, be deemed to have consented to and confirmed the Collateral Agent as the Person acting as hypothecary representative holding the aforementioned Security Documents. The appointment of a successor Collateral Agent pursuant to this Agreement shall also constitute the appointment of a successor hypothecary representative hereunder. Notwithstanding the provisions of Section 12.08, the provisions of this subsection shall be governed by the laws of the Province of Quebec and the federal laws of Canada applicable therein.

Section 11.11 *Rights as a Lender.* The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.12 *Reliance by Administrative Agent.* The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Term Loan. The Administrative Agent may consult with legal counsel (who may be counsel for

the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.13 *[Reserved]*.

Section 11.14 *Withholding Taxes*. To the extent required by any applicable law (as determined in the good-faith discretion of the withholding agent), the Administrative Agent may withhold from any payment to any lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service, the Canada Revenue Agency or any other authority of the United States, Canada or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within ten (10) days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Section 4.04 and without limiting or expanding the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Credit Document against any amount due the Administrative Agent under this Section 11.14. The agreements in this Section 11.14 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

## ARTICLE 12
## MISCELLANEOUS

Section 12.01 *Payment of Expenses, etc.*

(a) The Credit Parties hereby jointly and severally agree to (i) following the Final Financing Order Date, pay all reasonable invoiced out-of-pocket costs and expenses of (x) the Administrative Agent for fees and documented expenses of any advisors and professionals engaged by the Administrative Agent (including, without limitation, the reasonable fees and disbursements of Kirkland & Ellis LLP, and Blake, Cassels & Graydon LLP and, if reasonably necessary, one local counsel in any other relevant jurisdiction, but excluding the monthly fees and disbursements of any financial advisor(s)) in connection with the preparation, execution and delivery of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein, the administration hereof and thereof and any amendment, waiver or consent relating hereto or thereto (whether or not effective) and/or those associated with collateral monitoring, collateral reviews and appraisals, environmental reviews, of (y) the Administrative Agent and each Lender but, in no event, more than one firm of outside counsel for the Lenders (or if reasonably necessary, one firm of local counsel in any local jurisdiction), in connection with the enforcement of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a “work-out” or pursuant to any insolvency or bankruptcy proceedings (and, in each case, in the case of an actual or perceived conflict of interest, where the party affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel, for each such affected party similarly situated); (ii) pay and hold each Agent and each Lender harmless from and against any and all Other Taxes with respect to the foregoing matters and save each Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to such Agent or such Lender) to pay such Other Taxes; and (iii) indemnify each Agent, each Lender and each other Secured Party and each of their respective Affiliates, successors and assigns, and the partners, officers, directors, employees, trustees, agents, advisors, controlling persons, investment advisors and other representatives of each of the foregoing (each, an “**Indemnified Person**”) but, in no event, more than one firm of outside counsel for the Lenders (or if reasonably necessary, one firm of local counsel in any local jurisdiction), from and against and hold each of them harmless against (and will reimburse each Indemnified Person as the same are incurred for) any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions,

judgments, suits, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements and documented out-of- pocket expenses) incurred by, imposed on, assessed or asserted against any of them as a result of, or arising out of, or in any way related to, or by reason of, (I) any investigation, litigation or other proceeding (whether or not any Agent, any Lender or other Secured Party is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Credit Party) related to the entering into and/or performance of this Agreement or any other Credit Document or the proceeds of any Term Loans hereunder or the consummation of the Transaction or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents, or (II) the actual or alleged presence of Hazardous Materials in the Environment relating in any way to any Real Property owned, leased or operated, at any time, by the Borrower, any of its Subsidiaries or any of their respective predecessors; the generation, storage, transportation, handling, treatment, use, Release or threat of Release of Hazardous Materials by or on behalf of the Borrower, any of its Subsidiaries or any of their respective predecessors at any location, whether or not owned, leased or operated by the Borrower or any of its Subsidiaries or any of their respective predecessors; the non-compliance by the Borrower or any of its Subsidiaries or any of their respective predecessors with any Environmental Law (including applicable permits thereunder); or any Environmental Claim or liability under any applicable Environmental Laws related to the Borrower or any of its Subsidiaries or any of their respective predecessors or relating in any way to any Real Property at any time owned, leased or operated by the Borrower or any of its Subsidiaries or any of their respective predecessors (but excluding in each case any losses, liabilities, claims, damages or expenses, (III) to the extent incurred by reason of the gross negligence or willful misconduct of the applicable Indemnified Person or any of its Related Indemnified Persons, (IV) to the extent incurred by reason of any material breach of the obligations of such Indemnified Person under this Agreement or the other Credit Documents (in the case of each of preceding clauses (III) and (IV), as determined by a court of competent jurisdiction in a final and non-appealable decision) or (V) that do not involve or arise from an act or omission by the Borrower or other Credit Parties or any of their respective affiliates and is brought by an Indemnified Person against an Indemnified Person (other than claims against any Agent in its capacity as such or in its fulfilling such role). To the extent that the undertaking to indemnify, pay or hold harmless any Agent, any Lender or any other Secured Party or other Indemnified Person set forth in the preceding sentence may be unenforceable because it violates any law or public policy, the Credit Parties shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law. Notwithstanding the foregoing, this Section 12.01(a) shall not apply with respect to Taxes other than any Taxes that represent losses, liabilities, claims and damages arising from a non-Tax claim. All amounts due under this Section 12.01(a) shall be paid within ten (10) Business Days of receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail.

(b) To the fullest extent permitted by applicable law, each of the Credit Parties shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnified Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan or Letter of Credit or the use of the proceeds thereof. No Indemnified Person referred to above shall be liable for any damages arising from the use by others of any information or other materials distributed to such party by such Indemnified Person through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Person as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(c) To the extent that the Credit Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section 12.01 to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Affiliate thereof, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Affiliate, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the aggregate Term Loan Commitments at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Term Loan Exposure (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), *provided*, *further* that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or against

any Affiliate thereof acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.01(c).

Section 12.02 *Right of Setoff*. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, subject to the Financing Orders and the Post-Petition Intercreditor Arrangements, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) (other than accounts used exclusively for payroll, payroll taxes, fiduciary and trust purposes, and employee benefits) and any other Indebtedness at any time held or owing by the Administrative Agent or such Lender (including, without limitation, by branches and agencies of the Administrative Agent or such Lender wherever located) to or for the credit or the account of the Borrower or any of its Subsidiaries against and on account of the Obligations and liabilities of the Credit Parties to the Administrative Agent or such Lender under this Agreement or under any of the other Credit Documents, including, without limitation, all interests in Obligations purchased by such Lender pursuant to Section 12.06(b), and all other claims of any nature or description arising out of or connected with this Agreement or any other Credit Document, irrespective of whether or not the Administrative Agent or such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

Section 12.03 *Notices; Effectiveness; Electronic Communications*.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 1.01; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in an administrative questionnaire in form and substance reasonably satisfactory to the Administrative Agent (an "**Administrative Questionnaire**") (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower 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.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

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

(d) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Notices of Borrowing) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 12.04 *Successors and Assigns*

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 12.04(b), (ii) by way of participation in accordance with the provisions of Section 12.04(d), or (iii) by way of pledge or assignment of a security interest or hypothec subject to the restrictions of Section 12.04(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent

expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. No lender may assign or transfer any of its rights or obligations hereunder to an Ineligible Transferee. The list of all Ineligible Transferees shall be made available to all Lenders. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Ineligible Transferees. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is an Ineligible Transferees or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to, or the restrictions on any exercise of rights or remedies of, any Ineligible Transferees.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Term Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Term Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in subsection (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Term Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Term Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption Agreement, as of the Trade Date, shall not be less than $1,000,000 unless each of the Administrative Agent and, so long as no Event of Default under Sections 10.01(a) or (e) has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loans or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Default or an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any unfunded Commitment if such assignment is to a Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption Agreement, together with a processing and recordation fee in the amount of $3,500; *provided* that, the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. Except as expressly provided herein, no such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to an Ineligible Transferee or (D) to a natural Person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Term Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Term Loans in accordance with its Term Loan Exposure. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 2.10, Section 2.12, Section 4.04 and Section 12.01 with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section 12.04.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Notice Office in the United States of America a copy of each Assignment and Assumption Agreement delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than an Ineligible Transferee, a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Term Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.14 without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (i), (ii) and (iii) of the first proviso to Section 12.11 or clause (1) of the second proviso to Section 12.11, in each case, that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Section 2.10, Section 2.12 and Section 4.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; *provided* that such Participant (A) agrees to be subject to the provisions of Section 2.13 as if it were an assignee under subsection (b) of this Section and (B) shall not be entitled to receive any greater payment under Section 2.10 or Section 4.04 (subject to the requirements and limitations therein, including Section 4.04(b)-(c) (it being understood that the documentation required under Section 4.04(b)-(c) shall be delivered to the participating Lender)), than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.13 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.02 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 12.06(b) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loans or other obligations under the Credit Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or in connection with an enquiry by the Canada Revenue Agency in accordance with the provisions of the ITA. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest or hypothec in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 12.05 *No Waiver; Remedies Cumulative*.

(a) No failure or delay on the part of the Administrative Agent, the Collateral Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower or any other Credit Party and the Administrative Agent, the Collateral Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege

hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Credit Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Collateral Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Collateral Agent or any Lender to any other or further action in any circumstances without notice or demand.

(b) Notwithstanding anything to the contrary contained herein or in any other Credit Document, the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 10.02 for the benefit of all the Lenders; *provided*, *however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Credit Documents, (b) any Lender from exercising setoff rights in accordance with Section 12.02 (subject to the terms of Section 12.11(f)), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and *provided*, *further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Credit Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.05 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 12.11(f), any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 12.06 *Payments Pro Rata*.

(a) The Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of any Credit Party in respect of any Obligations of such Credit Party, it shall, except as otherwise provided in this Agreement, distribute such payment to the Lenders (other than any Lender that has consented in writing to waive its pro rata share of such payment) pro rata based upon their respective shares, if any, of the Obligations with respect to which such payment was received.

(b) Each of the Lenders agrees that, if it should receive any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents, or otherwise) which is applicable to the payment of the principal of, or interest on, the Term Loans or Fees, of a sum which with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such Obligation then owed and due to such Lender bears to the total of such Obligation then owed and due to all of the Lenders immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations of the respective Credit Party to such Lenders in such amount as shall result in a proportional participation by all of the Lenders in such amount; *provided* that if all or any portion of such excess amount is thereafter recovered from such Lender, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

(c) Notwithstanding anything to the contrary contained herein, the provisions of the preceding Sections 12.06(a) and (b) shall be subject to (x) the express provisions of this Agreement which require, or permit, differing payments to be made to Non-Defaulting Lenders as opposed to Defaulting Lenders, (y) the express provisions of this Agreement which permit disproportionate payments with respect to various of the class of Term Loans as, and to the extent, provided herein, and (z) any other provisions which permit disproportionate payments with respect to the Term Loans as, and to the extent, provided therein.

Section 12.07 *Calculations; Computations*.

(a) The financial statements to be furnished to the Lenders pursuant hereto shall be made and prepared in accordance with GAAP consistently applied throughout the periods involved (except as set forth in the notes thereto).

(b) All computations of interest and other Fees hereunder shall be made on the basis of a a three hundred sixty-five (365)-day or three hundred sixty-six (366)-day year, as the case may be, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or Fees are payable.

(c) The calculation of any financial ratios under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-down if there is no nearest number).

Section 12.08 *GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL.*

(a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN THE RELEVANT SECURITY DOCUMENT, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF, TO THE EXTENT THAT THE SAME ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION) AND (TO THE EXTENT APPLICABLE) THE U.S. BANKRUPTCY CODE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT (EXCEPT THAT, (X) IN THE CASE OF ANY SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT OR COLLATERAL AGENT IN THE JURISDICTION IN WHICH THE RELEVANT COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO ANY CREDIT PARTY, ACTIONS OR PROCEEDINGS RELATED TO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS SHALL BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS) MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, EACH OF THE PARTIES HERETO OR THERETO HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER IT, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENTS BROUGHT IN ANY OF THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER IT.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B)

ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

Section 12.09 *Counterparts*. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Administrative Agent.

Section 12.10 *Headings Descriptive*. The headings of the several Sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 12.11 *Amendment or Waiver; etc.*

(a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the Credit Parties party hereto or thereto and the Required Lenders (although additional parties may be added to (and annexes may be modified to reflect such additions) the Security Documents in accordance with the provisions hereof and thereof without the consent of the other Credit Parties party thereto or the Required Lenders), *provided* that no such change, waiver, discharge or termination shall:

(i) without the prior written consent of each Lender directly and adversely affected thereby, extend the final scheduled maturity or scheduled date of any amortization payment of any Term Loan or Note, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with the applicability of any post-default increase in interest rates) or reduce or forgive the principal amount thereof;

(ii) except as otherwise expressly provided in the Security Documents, release all or substantially all of the Collateral under all the Security Documents without the prior written consent of each Lender, other than in connection with the Payment in Full of all Obligations;

(iii) except as otherwise provided in the Credit Documents or in connection with the Payment in Full of the Obligations, release all or substantially all of the value of Article 13 without the prior written consent of each Lender;

(iv) amend, modify or waive any provision of this Section 12.11(a) or Section 12.06 (except for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford the protections to such additional extensions of credit of the type provided to the Refinancing Term Loans on the Signing Date), in each case, without the prior written consent of each Lender directly and adversely affected thereby;

(v) reduce the percentage specified in the definition of Required Lenders without the prior written consent of each Lender directly and adversely affected thereby (it being understood that, with the prior written consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders, as applicable, on substantially the same basis as the extensions of Refinancing Term Loans are included on the Signing Date); or

(vi) consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement without the consent of each Lender;

*provided*, *further*, that no such change, waiver, discharge or termination shall (i) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Total Commitment shall not constitute an increase of the Commitment of any Lender), (ii) without the consent of

each Agent adversely affected thereby, amend, modify or waive any provision of Article 11 or any other provision as same relates to the rights or obligations of such Agent or (iii) without the consent of Collateral Agent, amend, modify or waive any provision relating to the rights or obligations of the Collateral Agent.

(b) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement as contemplated by clauses (i) through (v), inclusive, of the first proviso to Section 12.11(a), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained (such Lender, a "**Non-Consenting Lender**"), then the Borrower shall have the right, so long as all Non-Consenting Lenders whose individual consent is required are treated as described in either clauses (A) or (B) below, to either (A) replace each such Non-Consenting Lender or Lenders with one or more replacement Lenders pursuant to Section 2.13 so long as at the time of such replacement, each such replacement Lender consents to the proposed change, waiver, discharge or termination or (B) terminate such Non-Consenting Lender's Commitments and/or repay the outstanding Term Loans of such Lender in accordance with Section 4.01(b), *provided* that, unless the Commitments that are terminated, and Term Loans repaid, pursuant to the preceding clause (B) are immediately replaced in full at such time through the addition of new Lenders or the increase of outstanding Term Loans of existing Lenders (who in each case must specifically consent thereto), then in the case of any action pursuant to preceding clause (B) the Required Lenders (determined after giving effect to the proposed action) shall specifically consent thereto, *provided*, *further*, that in any event the Borrower shall not have the right to replace a Lender, terminate its Commitments or repay its Term Loans solely as a result of the exercise of such Lender's rights (and the withholding of any required consent by such Lender) pursuant to the second proviso to Section 12.11(a).

(c) Notwithstanding anything to the contrary herein, any fee letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto.

(d) Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender will not be entitled to vote in respect of amendments, waivers and consents hereunder and the Commitment and the outstanding Term Loans or other extensions of credit of such Lender hereunder will not be taken into account in determining whether the Required Lenders or all of the Lenders, as required, have approved any such amendment, waiver or consent (and the definition of the "Required Lenders" will automatically be deemed modified accordingly for the duration of such period); *provided* that any such amendment or waiver that would increase or extend the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, or alter the terms of this proviso, will require the consent of such Defaulting Lender.

(e) Further, notwithstanding anything to the contrary contained in this Section 12.11, if following the Signing Date, the Administrative Agent and any Credit Party shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Credit Documents, then the Administrative Agent and the Credit Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Credit Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

Section 12.12 *Survival.*

(a) All indemnities set forth herein including, without limitation, in Sections 2.10, 4.03, Section 11.07 and 12.01 shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations.

(b) All representations and warranties made hereunder and in any other Credit Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any

Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Event, and shall continue in full force and effect as long as any Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 12.13 *Domicile of Term Loans*. Each Lender may transfer and carry its Term Loans at, to or for the account of any office, Subsidiary or Affiliate of such Lender. Notwithstanding anything to the contrary contained herein, to the extent that a transfer of Term Loans pursuant to this Section 12.13 would, at the time of such transfer, result in increased costs under Section 2.10 or 4.03 from those being charged by the respective Lender prior to such transfer, then the Borrower shall not be obligated to pay such increased costs (although the Borrower shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective transfer).

Section 12.14 *Confidentiality*.

(a) Subject to the provisions of subsection (b) of this Section 12.14, each Agent and Lender agrees that it will use its commercially reasonable efforts not to disclose without the prior consent of the Borrower (other than to its directors, officers, employees, accountants, auditors, advisors or counsel or other representatives or to another Lender if such Lender or such Lender's holding or parent company in its sole discretion determines that any such party should have access to such information, provided such Persons shall be subject to the provisions of this Section 12.14 to the same extent as such Lender (or language substantially similar to this Section 12.14(a)) any information with respect to the Borrower or any of its Subsidiaries that is now or in the future furnished pursuant to this Agreement or any other Credit Document, *provided* that any Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this Section 12.14(a) by such Lender, (ii) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state, provincial or federal regulatory body having or claiming to have jurisdiction over such Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or the Canada Deposit Insurance Corporation or similar organizations (whether in the United States, Canada or elsewhere) or their successors, (iii) as may be required or appropriate in respect to any summons or subpoena or in connection with any litigation, (iv) in order to comply with any law, order, regulation or ruling applicable to such Lender, (v) to the Administrative Agent or the Collateral Agent, (vi) to any prospective or actual direct or indirect contractual counterparty in any swap, hedge or similar agreement (or to any such contractual counterparty's professional advisor), so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section 12.14 (or language substantially similar to this Section 12.14(a)), and (vii) to any prospective or actual transferee, pledgee or participant in connection with any contemplated transfer, pledge or participation of any of the Notes or Commitments or any interest therein by such Lender, *provided* that such prospective transferee, pledge or participant agrees to be bound by the confidentiality provisions contained in this Section 12.14 (or language substantially similar to this Section 12.14(a)); *provided*, *further*, that, to the extent permitted pursuant to any applicable law, order, regulation or ruling, and other than in connection with credit and other bank examinations conducted in the ordinary course with respect to such Lender, in the case of any disclosure pursuant to the foregoing clauses (ii), (iii) or (iv), such Lender will use its commercially reasonable efforts to notify the Borrower in advance of such disclosure so as to afford the Borrower the opportunity to protect the confidentiality of the information proposed to be so disclosed.

(b) The Borrower hereby acknowledge and agree that each Lender may share with any of its affiliates, and such affiliates may share with such Lender, any information related to the Borrower or any of its Subsidiaries (including, without limitation, any non-public customer information regarding the creditworthiness of the Borrower and its Subsidiaries), provided such Persons shall be subject to the provisions of this Section 12.14 to the same extent as such Lender.

Section 12.15 *USA Patriot Act and Canadian AML Acts Notice*. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act Title III of Pub. 107-56 (signed into law October 26, 2001 and amended on March 9, 2009) (the "**Patriot Act**") and the Canadian AML Acts, it is required to obtain, verify, and record information that identifies the Borrower and each Subsidiary Guarantor, which information includes the name of each Credit Party and other information that will allow such Lender to identify the Credit Party in accordance with the Patriot Act and the Canadian AML Acts, and each Credit Party agrees to promptly provide such information from time to time to any Lender.

Section 12.16 *Special Provisions Regarding Pledges of Equity Interests in Persons Not Organized in Qualified Jurisdictions*. The parties hereto acknowledge and agree that the provisions of the various Security Documents executed and delivered by the Credit Parties require that, among other things, all Equity Interests in various Persons owned by the respective Credit Party be pledged, and delivered for pledge, pursuant to the Security Documents. The parties hereto further acknowledge and agree that each Credit Party shall be required to take all actions under the laws of the jurisdiction in which such Credit Party is organized to create and perfect all security interests or hypothecs granted pursuant to the various Security Documents and to take all actions under the laws of the United States or Canada (as applicable) to perfect the security interests in the Equity Interests of any Person organized under the laws of said jurisdictions (to the extent said Equity Interests are owned by any Credit Party).

Section 12.17 *Currency Indemnity.* If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Agents or any Lender under any Credit Document or for the payment of damages in respect of any breach of any Credit Document, or under or in respect of a judgment or order of another court or tribunal for the payment of those amounts or damages, and the judgment or order is expressed in a currency (the "**Judgment Currency**") except the currency payable under the relevant Credit Document (the "**Agreed Currency**"), the party against whom the judgment or order is made shall indemnify and hold the Agents and the Lenders harmless against any deficiency in terms of the Agreed Currency in the amounts received by the Agents and the Lenders arising or resulting from any variation as between (a) the actual rate of exchange at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the actual rate of exchange at which the Agents or the Lender is able to purchase the Agreed Currency with the amount of the Judgment Currency actually received by the Agent or the Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent obligation from the other obligations of the Credit Parties under the Credit Documents and shall apply irrespective of any indulgence granted by the Agents or any Lender.

Section 12.18 *Waiver of Sovereign Immunity*. Each of the Credit Parties, in respect of itself, its Subsidiaries, its process agents, and its properties and revenues, hereby irrevocably agrees that, to the extent that the Borrower and its Subsidiaries or any of their properties has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States, Canada or elsewhere, to enforce or collect upon the Term Loans or any Credit Document or any other liability or obligation of the Borrower or any of their respective Subsidiaries related to or arising from the transactions contemplated by any of the Credit Documents, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, the Borrower, for itself and on behalf of its Subsidiaries, hereby expressly waives, to the fullest extent permissible under applicable law, any such immunity, and agrees not to assert any such right or claim in any such proceeding, whether in the United States, Canada or elsewhere. Without limiting the generality of the foregoing, the Borrower further agrees that the waivers set forth in this Section 12.18 shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

Section 12.19 *INTERCREDITOR ARRANGEMENTS*.

(a) EACH LENDER PARTY HERETO UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT IT (AND EACH OF ITS SUCCESSORS AND ASSIGNS) AND EACH OTHER LENDER (AND EACH OF THEIR SUCCESSORS AND ASSIGNS) SHALL BE BOUND BY THE POST-PETITION INTERCREDITOR ARRANGEMENTS, WHICH IN CERTAIN CIRCUMSTANCES MAY REQUIRE (AS MORE FULLY PROVIDED THEREIN) THE TAKING OF CERTAIN ACTIONS BY THE LENDERS, INCLUDING THE PURCHASE AND SALE OF PARTICIPATIONS BY VARIOUS LENDERS TO EACH OTHER IN ACCORDANCE WITH THE TERMS THEREOF.

(b) THE PROVISIONS OF THIS SECTION 12.19 ARE NOT INTENDED TO SUMMARIZE OR FULLY DESCRIBE THE PROVISIONS OF THE POST-PETITION INTERCREDITOR ARRANGEMENTS. REFERENCE MUST BE MADE TO THE POST-PETITION INTERCREDITOR ARRANGEMENTS TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE POST-PETITION INTERCREDITOR ARRANGEMENTS AND THE TERMS AND PROVISIONS THEREOF, AND NO AGENT

OR ANY OF AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE POST-PETITION INTERCREDITOR ARRANGEMENTS.

Section 12.20 *Acknowledgment and Consent to Bail-In of EEA Financial Institutions.* Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 12.21 *Absence of Fiduciary Relationship; Acknowledgment of no Liability*. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Borrower and its respective Affiliates, on the one hand, and the Administrative Agent, and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (ii) (A) the Administrative Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (iii) the Administrative Agent, the Lenders, and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby. For the avoidance of doubt, each of the parties hereto agree that the Advisors shall not have any liability with respect to or arising out of this Agreement or the other Credit Documents.

## ARTICLE 13
## GUARANTY

Section 13.01 *Subsidiary Guaranty*. Each Subsidiary Guarantor, severally, unconditionally and irrevocably guarantees (the undertaking by each Subsidiary Guarantor under this Article 13 being the "**Guaranty**") the punctual payment when and as due, whether at scheduled maturity or at a date fixed for prepayment or by

acceleration, demand or otherwise, of all of the Obligations of each of the other Credit Parties now or hereafter existing under or in respect of the Credit Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premium, fees, indemnification payments, contract causes of action, costs, expenses or otherwise (such Obligations being the "**Guaranteed Obligations**"), and agrees to pay any and all expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Administrative Agent, the Collateral Agent or any of the other Secured Parties solely in enforcing any rights under this Guaranty. Without limiting the generality of the foregoing, each Subsidiary Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any of the other Credit Parties to the Administrative Agent or any of the other Secured Parties under or in respect of the Credit Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Credit Party.

Section 13.02 *Guaranty Absolute*. Each Subsidiary Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Credit Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Administrative Agent or any other Secured Party with respect thereto. The Obligations of each Subsidiary Guarantor under this Guaranty are independent of the Guaranteed Obligations or any other Obligations of any Credit Party under the Credit Documents, and a separate action or actions may be brought and prosecuted against such Subsidiary Guarantor to enforce this Guaranty, irrespective of whether any action is brought against any other Credit Party or whether any other Credit Party is joined in any such action or actions. The liability of each Subsidiary Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of, and such Subsidiary Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any and all of the following:

(a) any lack of validity or enforceability of any Credit Document or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any Credit Party under the Credit Documents, or any other amendment or waiver of or any consent to departure from any Credit Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Credit Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or nonperfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any Subsidiary Guaranty or any other guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of Collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Guaranteed Obligations or any other Obligations of any Credit Party under the Credit Documents, or any other property and assets of any other Credit Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any other Credit Party or any of its Subsidiaries;

(f) any failure of the Administrative Agent or any other Secured Party to disclose to any Credit Party any information relating to the financial condition, operations, properties or prospects of any other Credit Party now or hereafter known to the Administrative Agent or such other Secured Party, as the case may be (such Subsidiary Guarantor waiving any duty on the part of the Secured Parties to disclose such information);

(g) the failure of any other Person to execute this Guaranty or any other guarantee or agreement of the release or reduction of the liability of any of the other Credit Parties or any other guarantor or surety with respect to the Guaranteed Obligations; or

(h) any other circumstance (including, without limitation, any statute of limitations or any existence of or reliance on any representation by the Administrative Agent or any other Secured Party) that might otherwise constitute a defense available to, or a discharge of, such Guarantor, any other Credit Party or any other guarantor or surety other than payment in full in cash of the Guaranteed Obligations.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Administrative Agent or any other Secured Party or by any other Person upon the insolvency, bankruptcy or reorganization of any other Credit Party or otherwise, all as though such payment had not been made.

Section 13.03 *Waivers and Acknowledgments.*

(a) Each Subsidiary Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Guaranty, and any requirement that the Administrative Agent or any other Secured Party protect, secure, perfect or insure any Lien or any property or assets subject thereto or exhaust any right or take any action against any other Credit Party or any other Person or any Collateral.

(b) Each Subsidiary Guarantor hereby unconditionally waives any right to revoke this Guaranty, and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) Each Subsidiary Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by the Secured Parties which in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Subsidiary Guarantor or other rights to proceed against any of the other Credit Parties, any other guarantor or any other Person or any Collateral, and (ii) any defense based on any right of setoff or counterclaim against or in respect of such Subsidiary Guarantor's obligations hereunder.

(d) Each Subsidiary Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Credit Documents and that the waivers set forth in Section 13.02 and this Section 13.03 are knowingly made in contemplation of such benefits.

Section 13.04 *Subrogation*. Each Subsidiary Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or may hereafter acquire against any other Credit Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of its Obligations under this Guaranty or under any other Credit Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Administrative Agent or any other Secured Party against such other Credit Party or any other insider guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from such other Credit Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, until such time as all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, and the Commitments shall have expired or terminated. If any amount shall be paid to any Subsidiary Guarantor in violation of the immediately preceding sentence at any time prior to the latest of (a) the payment in full in cash of all of the Guaranteed Obligations and all other amounts payable under this Guaranty, and (b) the Maturity Date, such amount shall be held in trust for the benefit of the Administrative Agent and the other Secured Parties and shall forthwith be paid to the Administrative Agent to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Credit Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) any Subsidiary Guarantor shall pay to the Administrative Agent all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, and (iii) the Maturity Date shall have occurred, the Administrative Agent and the other Secured Parties will, at such Subsidiary Guarantor's request and expense, execute and deliver to such Subsidiary Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer of

subrogation to such Subsidiary Guarantor of an interest in the Guaranteed Obligations resulting from the payment made by such Subsidiary Guarantor.

Section 13.05 *Additional Guarantors*. Upon the execution and delivery by any Person of a guaranty joinder agreement in substantially the form of Exhibit M hereto or otherwise in a form reasonably acceptable to the Administrative Agent (each, a "**Guaranty Supplement**"), (a) such Person shall be referred to as an "Additional Guarantor" and shall become and be a Subsidiary Guarantor hereunder, and each reference in this Guaranty to a "Subsidiary Guarantor" shall also mean and be a reference to such Additional Guarantor, and each reference in any other Credit Document to a "Subsidiary Guarantor" shall also mean and be a reference to such Additional Guarantor, and (b) each reference herein to "this Guaranty", "hereunder", "hereof" or words of like import referring to this Guaranty, and each reference in any other Credit Document to the "Guaranty", "thereunder", "thereof" or words of like import referring to this Guaranty, shall include each such duly executed and delivered Guaranty Supplement.

Section 13.06 *Continuing Guarantee; Assignments*. This Guaranty is a continuing guaranty and shall (a) remain in full force and effect until the latest of (i) the payment in full in cash of all of the Guaranteed Obligations and all other amounts payable under this Guaranty, and (ii) the Maturity Date, (b) be binding upon each Subsidiary Guarantor and its successors and assigns and (c) inure to the benefit of, and be enforceable by, the Administrative Agent and the other Secured Parties and their respective successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Lender may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender under this Article 13 or otherwise, in each case as provided in Section 12.04.

Section 13.07 *No Reliance*. Each Subsidiary Guarantor has, independently and without reliance upon any Agent or any Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guaranty and each other Credit Document to which it is or is to be a party, and such Subsidiary Guarantor has established adequate means of obtaining from each other Credit Party on a continuing basis information pertaining to, and is now and on a continuing basis will be completely familiar with, the business, condition (financial or otherwise), operations, performance, properties and prospects of such other Credit Party.

Section 13.08 *Quebec Guarantees*. To the extent that any Subsidiary Guarantor, whether now or at any time in the future, is located in the Province of Quebec:

(a) it hereby agrees that it shall be liable for, and hereby absolutely, irrevocably and unconditionally guarantees, on a solidary basis and as primary obligor and not merely as surety, to the Administrative Agent and the other Secured Parties and their respective successors and assigns, the Guaranteed Obligations; and

(b) it expressly waives and renounces the benefits of division and discussion.

## ARTICLE 14
## SECURITY

Section 14.01 *Grant of Security*.

(a) Upon and subject to the Final Financing Order Date, as security for the prompt and complete payment or performance, as the case may be, when due of all of its Obligations, each Credit Party does hereby pledge, assign, mortgage, charge and grant to the Collateral Agent, for the benefit of the Secured Parties, as and by way of a fixed and specific mortgage and charge, and grants to the Collateral Agent, for the benefit of the Secured Parties, a continuing security interest in, all of its present and after-acquired personal property, including, without limiting the foregoing, all of its right, title and interest in, to and under all of the following personal property and fixtures (and all rights therein), or in which or to which it has any rights, in each case whether now existing or hereafter from time to time acquired (but excluding any Excluded Property):

(i) each and every Account, including all claims of any kind that such Credit Party has, including claims against the Crown and claims under insurance policies;

(ii) the Cash Collateral Account and all Money, Securities, Instruments and other investments deposited or required to be deposited in the Cash Collateral Account;

(iii) all Chattel Paper;

(iv) all Contracts, together with all Contract Rights arising thereunder;

(v) all Equipment and fixtures;

(vi) all Deposit Accounts and all Money, Securities, Instruments and other investments deposited or required to be deposited in any of the foregoing;

(vii) all Documents of Title;

(viii) all Financial Assets;

(ix) all Goods;

(x) all Instruments;

(xi) all Intangibles;

(xii) all Intellectual Property;

(xiii) all Inventory;

(xiv) all Investment Property, including shares, stock, warrants, bonds, debentures, debenture stock and other Securities (in each case whether evidenced by a Security Certificate or an Uncertificated Security) and Security Entitlements, Securities Accounts, Futures Contracts and Futures Accounts;

(xv) all rights in letters of credit (whether or not the respective letter of credit is evidenced by a writing);

(xvi) all Money;

(xvii) all Permits;

(xviii) all Commercial Tort Claims;

(xix) all Letter of Credit Rights;

(xx) all insurance policies and Proceeds thereof;

(xxi) all Real Property (including each Credit Party's estate, right, title, interest, property, claim and demand, now or hereafter arising, in and to such Credit Party's Real Property);

(xxii) any Proceeds of an Avoidance Action (but not the Avoidance Action itself);

(xxiii) any and all other assets of each Credit Party;

(xxiv) with respect to the foregoing, all parts, components, renewals, substitutions and replacements of that property and all attachments, accessories and increases, additions and Accessions to that property; and

(xxv) all Proceeds and products of any and all of the foregoing, including property in any form derived directly or indirectly from any dealing with such property

(all of the above, the "**Collateral**").

(b) The security interest of the Collateral Agent under this Agreement extends to all Collateral that any Credit Party may acquire, or with respect to which any Credit Party may obtain rights, at any time during the term of this Agreement.

Section 14.02 *Intellectual Property*. The security interest with respect to Intellectual Property constitutes a security interest in, and a charge and pledge of, such Collateral in favour of the Collateral Agent, for the benefit of the Secured Parties, but does not constitute an assignment or mortgage of such Collateral to the Collateral Agent or any Secured Party.

Section 14.03 *Attachment*. Each Credit Party has rights in its Collateral and agrees that the Secured Parties have given value and that the security interests created by this Agreement are intended to attach (a) with respect to Collateral that is now in existence, upon execution of this Agreement, and (b) with respect to Collateral that comes into existence in the future, upon such Credit Party acquiring rights in the Collateral or the power to transfer rights in the Collateral to the Collateral Agent. In each case, the parties do not intend to postpone the attachment of any security interests created by this Agreement.

Section 14.04 *Power of Attorney*. Subject to the entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to act, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due or to become due to such Credit Party under or arising out of the Collateral, to endorse any cheques or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Collateral Agent may deem to be reasonably necessary or advisable to protect the interests of the Secured Parties, which appointment as attorney is coupled with an interest. Each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to sign any document which may be required by the United States Patent and Trademark Office, any domain name registrar, the United States Copyright Office, the Canadian Intellectual Property Office or any other governmental authority in order to effect an assignment of all right, title and interest in any Intellectual Property constituting Collateral, and record the same. Each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to execute and file any IP Security Documents to evidence and perfect the Collateral Agent's security interest in any after-acquired Recordable Intellectual Property.

Section 14.05 *In Addition to Other Rights; No Marshalling*. This Agreement is in addition to and is not in any way prejudiced by or merged with any other security interest or Lien now or subsequently held by the Collateral Agent in respect of any Obligations. The Secured Parties shall be under no obligation to marshal in favour of the Credit Parties any other security interest or Lien or any money or other property that the Secured Parties may be entitled to receive or may have a claim upon.

Section 14.06 *Covenants*. Each Credit Party covenants and agrees with the Collateral Agent (for its own benefit and for the benefit of the other Secured Parties) that:

(a) such Credit Party will keep and maintain proper books and records of its Accounts and Contracts, in which full, true and correct entries in conformity with generally accepted accounting principles and all

Requirements of Law shall be made of all such Accounts and Contracts, and such Credit Party will make the same available on such Credit Party's premises to officers and designated representatives of the Collateral Agent for inspection in accordance with the terms and conditions set forth in this Agreement. Upon the occurrence and during the continuance of an Event of Default and at the request of the Collateral Agent, such Credit Party shall, at its own cost and expense, deliver all tangible evidence of its Accounts and Contract Rights (including, without limitation, all documents evidencing the Accounts and all Contracts) and such books and records to the Collateral Agent or to its representatives (copies of which evidence and books and records may be retained by such Credit Party). Subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, upon the occurrence and during the continuance of an Event of Default and if the Collateral Agent so requests, such Credit Party shall legend, in form and manner satisfactory to the Collateral Agent, the Accounts and the Contracts, as well as books, records and documents (if any) of such Credit Party evidencing or pertaining to such Accounts and Contracts with an appropriate reference to the fact that such Accounts and Contracts have been assigned to the Collateral Agent and that the Collateral Agent has a security interest therein;

(b) subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, upon the occurrence and during the continuance of an Event of Default, after giving notice to the relevant Credit Party of its intent to do so, if the Collateral Agent so directs any Credit Party, such Credit Party agrees (i) to cause all payments on account of the Accounts and Contracts to be made directly to the Cash Collateral Account, (ii) that the Collateral Agent may, at its option, directly notify the obligors in its own name or in the name of others with respect to any Accounts and/or under any Contracts to make payments with respect thereto as provided in the preceding clause (i), and (iii) that the Collateral Agent may enforce collection of any such Accounts and Contracts and may adjust, settle or compromise the amount of payment thereof, in the same manner and to the same extent as such Credit Party; provided that, (x) any failure by the Collateral Agent to give or any delay in giving such notice to the relevant Credit Party shall not affect the effectiveness of such notice or the other rights of the Collateral Agent created by this Section 14.06(b) and (y) no such notice shall be required if an Event of Default has occurred and is continuing. Subject to entry and the terms of the Financing Orders, including the Post-Petition Intercreditor Arrangements, without notice to or assent by any Credit Party, the Collateral Agent may, upon the occurrence and during the continuance of an Event of Default, apply any or all amounts then in, or thereafter deposited in, the Cash Collateral Account toward the payment of the Obligations in the manner provided in this Agreement. The reasonable costs and expenses of collection (including reasonable legal fees), whether incurred by a Credit Party or the Collateral Agent, shall be borne by the relevant Credit Party. The Collateral Agent shall deliver a copy of each notice referred to in the preceding clause (y) to the relevant Credit Party, provided that (x) the failure by the Collateral Agent to so notify such Credit Party shall not affect the effectiveness of such notice or the other rights of the Collateral Agent created by this Section and (y) no such notice shall be required if an Event of Default has occurred and is continuing;

(c) except in accordance with such Credit Party's ordinary course of business and consistent with reasonable business judgment, or as permitted hereunder or by the Credit Documents, no Credit Party shall rescind or cancel any indebtedness evidenced by any Account, or modify any material term thereof or make any material adjustment with respect thereto, or extend or renew the same, or compromise or settle any material dispute, claim, suit or legal proceeding relating thereto, or sell any Account, or interest therein, without the prior written consent of the Collateral Agent unless such rescissions, cancellations, modifications, adjustments, extensions, renewals, compromises, settlements, releases, or sales would not reasonably be expected to materially adversely affect the value of the Accounts constituting Collateral taken as a whole. Except as otherwise permitted by the Credit Documents, no Credit Party will do anything to impair the rights of the Collateral Agent in the Accounts or Contracts;

(d) such Credit Party shall endeavor in accordance with historical business practices to cause to be collected from the Account Debtor named in each of its Accounts or obligor under any Contract, as and when due (including, without limitation, amounts which are delinquent, such amounts to be collected in accordance with generally accepted lawful collection procedures) any and all amounts owing under or on account of such Account or Contract, and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Account or under such Contract. Except as otherwise directed by the Collateral Agent after the occurrence and during the continuation of an Event of Default or otherwise required pursuant to the Credit Agreement, any Credit Party may allow in the ordinary course of business as adjustments to amounts owing under its Accounts and Contracts (i) an extension or renewal of the time or times of payment, or settlement for less than the total unpaid

balance, which such Credit Party finds appropriate in accordance with reasonable business judgment, (ii) a refund or credit due as a result of returned or damaged merchandise or improperly performed services or for other reasons which such Credit Party finds appropriate in accordance with reasonable business judgment and (iii) any other adjustments necessary or desirable in the Credit Party's reasonable business judgment. The reasonable costs and expenses (including, without limitation, reasonable legal fees) of collection, whether incurred by a Credit Party or the Collateral Agent, shall be borne by the relevant Credit Party;

(e) anything herein to the contrary notwithstanding, the Credit Parties shall remain liable under each of the Accounts to observe and perform all of the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to such Accounts. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Agreement, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Credit Party under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by them or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times;

(f) anything herein to the contrary notwithstanding, the Credit Parties shall remain liable under each of the Contracts to observe and perform all of the conditions and obligations to be observed and performed by them thereunder, all in accordance with and pursuant to the terms and provisions of each Contract. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Contract by reason of or arising out of this Agreement, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Credit Party under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any performance by any party under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times;

(g) [reserved];

(h) each Credit Party will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, certificates, reports and other assurances or instruments and take such further steps, including any and all actions as may be necessary or required relating to its Accounts, Contracts, Instruments and other property or rights which constitute Collateral, as the Collateral Agent may reasonably require for the purpose of obtaining or preserving the full benefits of the security interests, rights and powers herein granted;

(i) each Credit Party will do nothing to impair the rights of the Collateral Agent in the Collateral. Each Credit Party or an affiliate on behalf of such Credit Party will at all times maintain insurance, at such Credit Party's own expense to the extent and in the manner provided in the Secured Debt Agreements. If any Event of Default shall have occurred and be continuing, the Collateral Agent shall, at the time any proceeds of such insurance are distributed to the Secured Parties, apply such proceeds in accordance with Section 14.08(e). Each Credit Party assumes all liability and responsibility in connection with the Collateral acquired by it and the liability of such Credit Party to pay the Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Credit Party;

(j) to the extent practicable, each Credit Party agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such Credit Party shall request that such warehouse receipt or receipt in the nature thereof shall not be a “negotiable” document of title (as such term is used in Section 26(1) of the PPSA or Section 7-104 of the UCC, in each case, as in effect in any relevant jurisdiction or under other relevant law);

(k) each Credit Party will, at its own expense, from time to time upon the reasonable request of the Collateral Agent, promptly furnish to the Collateral Agent such information with respect to the Collateral

(including the identity of the Collateral or such components thereof as may have been reasonably requested by the Collateral Agent, the value and location of such Collateral, etc.) as may be requested by the Collateral Agent;

(l) each Credit Party will, at its own expense and upon the reasonable request of the Collateral Agent, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such lists, descriptions and designations of its Collateral, warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, certificates, reports and other assurances or instruments and take such further steps relating to the Collateral and other property or rights covered by the security interest hereby granted, which the Collateral Agent deems reasonably appropriate or advisable to perfect, preserve or protect its security interest in the Collateral; provided, that notwithstanding anything herein to the contrary, the Credit Parties shall not be required to (i) take any action to perfect any security interest in any Collateral under the laws of any jurisdiction outside of the United States or Canada or (ii) enter into any control agreement or similar arrangements relating to any Deposit Account; and

(m) each Credit Party agrees to file such financing statements, in form reasonably acceptable to the Collateral Agent, as the Collateral Agent may from time to time reasonably request to establish and maintain a valid, enforceable, perfected security interest in the Collateral as provided herein and for the purpose of obtaining and preserving the full benefits of the other rights and security contemplated hereby. Each Credit Party will pay any applicable filing fees, recordation taxes and related expenses relating to its Collateral. Each Credit Party hereby authorizes the Collateral Agent to file any such financing statements without the signature of such Credit Party where permitted by law (and such authorization includes describing the Collateral as "all assets and all personal property whether now owned or hereafter acquired" or as "all present and after-acquired personal property" of such Credit Party or words of similar effect).

Section 14.07 *Security Representations and Warranties*. Each Credit Party represents and warrants, as applicable, as of the date hereof, as follows:

(a) Such Credit Party is the record and beneficial owner of Securities and Security Entitlements forming part of the Collateral. No security agreement, financing statement or other notice with respect to any or all of the Collateral is on file or on record in any public office, except for filings with respect to Permitted Liens.

(b) The terms of any interest in a partnership or limited liability company that is Collateral expressly provide that such interest is a "security" for the purposes of the Securities Transfer Act (Ontario), as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

Section 14.08 *Remedies*.

(a) Each Credit Party agrees that, subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, if any Event of Default shall have occurred and be continuing, then and in every such case, the Collateral Agent, in addition to any rights now or hereafter existing under applicable law and under the other provisions of this Agreement, shall have all rights as a secured party under any PPSA, any UCC, and such additional rights and remedies to which a secured party is entitled under the laws in effect in all relevant jurisdictions and may:

(i) personally, or by agents or attorneys, immediately take possession of the Collateral or any part thereof, from such Credit Party or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon such Credit Party's premises where any of the Collateral is located and remove the same and use in connection with such removal any and all services, supplies, aids and other facilities of such Credit Party;

(ii) instruct the obligor or obligors on any agreement, instrument or other obligation (including, without limitation, the Accounts and the Contracts) constituting the Collateral to make any

payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent and may exercise any and all remedies of such Credit Party in respect of such Collateral;

(iii) sell, assign or otherwise liquidate any or all of the Collateral or any part thereof in accordance with Section 14.08(b) hereof, or direct such Credit Party to sell, assign or otherwise liquidate any or all of the Collateral or any part thereof, and, in each case, take possession of the proceeds of any such sale or liquidation;

(iv) take possession of the Collateral or any part thereof, by directing such Credit Party in writing to deliver the same to the Collateral Agent at any reasonable place or places designated by the Collateral Agent, in which event such Credit Party shall at its own expense:

(A) forthwith cause the same to be moved to the place or places so designated by the Collateral Agent and there delivered to the Collateral Agent;

(B) store and keep any Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent as provided in Section 14.08(b) hereof; and

(C) while the Collateral shall be so stored and kept, provide such security and maintenance services as shall be reasonably necessary to protect the same and to preserve and maintain it in good condition;

(v) license or sublicense, on a royalty free basis, whether on an exclusive or nonexclusive basis, any Intellectual Property included in the Collateral (in the case of Trademarks, subject to reasonable quality control and in connection with goods and services of a similar type and quality sold by the applicable Credit Party under such Trademarks), subject to those exclusive licenses granted by Credit Parties in effect on the date hereof and those granted by any Credit Party hereafter to the extent permitted by the Credit Agreement for such term and on such conditions and in such manner as the Collateral Agent shall in its sole judgment determine, it being understood that any such license may be exercised, at the option of the Collateral Agent, only upon the occurrence and during the continuation of an Event of Default; provided, that any such license shall be binding upon the Credit Parties notwithstanding any subsequent cure of an Event of Default;

(vi) apply any monies constituting Collateral or proceeds thereof in accordance with the provisions of Section 14.18(e); and

(vii) take any other action as specified in the PPSA or in the UCC;

it being understood that each Credit Party's obligation so to deliver the Collateral is of the essence of this Article 14 and that, accordingly, upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by such Credit Party of said obligation. By accepting the benefits of this Agreement and each other Security Document, the Secured Parties expressly acknowledge and agree that this Agreement and each other Security Document may be enforced only by the action of the Collateral Agent acting upon the instructions of the Required Lender and that no other Secured Party shall have any right individually to seek to enforce or to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Collateral Agent or the holders of at least a majority of the outstanding other Obligations, as the case may be, for the benefit of the Secured Parties upon the terms of this Agreement and the other Security Documents.

(b) To the extent permitted by applicable law, subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders:

(i) if any Event of Default shall have occurred and be continuing, then any Collateral repossessed by the Collateral Agent under or pursuant to Section 14.08(a) hereof and any other

Collateral whether or not so repossessed by the Collateral Agent, may be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Collateral Agent may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Collateral Agent or after any overhaul or repair at the expense of the relevant Credit Party which the Collateral Agent shall reasonably determine to be commercially reasonable.

(ii) any such sale, lease or other disposition may be effected by means of a public disposition or private disposition, effected in accordance with the applicable requirements (in each case if and to the extent applicable) of the UCC and the PPSA and/or such other mandatory requirements of applicable law as may apply to the respective disposition.

(iii) the Collateral Agent may, without notice or publication, adjourn any public or private disposition or cause the same to be adjourned from time to time by announcement at the time and place fixed for the disposition, and such disposition may be made at any time or place to which the disposition may be so adjourned.

(iv) to the extent permitted by any such requirement of law, the Collateral Agent may bid for and become the purchaser (and may pay all or any portion of the purchase price by crediting Obligations against the purchase price) of the Collateral or any item thereof, offered for disposition in accordance with this Section 14.08(b) without accountability to the relevant Credit Party.

(v) the Collateral Agent may also accept the Collateral in satisfaction of the Obligations. Each Credit Party agrees to do or cause to be done all such other acts and things as may be reasonably necessary to make such disposition or dispositions of all or any portion of the Collateral valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at such Credit Party's expense.

(c) Subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, the Collateral Agent may take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term includes a receiver and manager) of the Collateral or may by appointment in writing appoint any person to be a receiver of the Collateral; the Collateral Agent may remove any receiver appointed by it and appoint another in its place, and may determine the remuneration, acting reasonably, of any receiver, which may be paid from the proceeds of the Collateral in priority to other Obligations; any receiver appointed by the Collateral Agent shall, to the extent permitted by applicable law, have all of the rights, benefits and powers of the Collateral Agent under this Agreement, the PPSA or otherwise; any receiver shall be deemed the agent of the Credit Parties and the Collateral Agent shall not be in any way responsible for any misconduct or negligence of any receiver.

(d) Except as otherwise provided in this Agreement, subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, EACH CREDIT PARTY HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH THE COLLATERAL AGENT'S TAKING POSSESSION OR THE COLLATERAL AGENT'S DISPOSITION OF ANY OF THE COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES, and each Credit Party hereby further waives, to the extent permitted by law:

(i) all damages occasioned by such taking of possession or any such disposition except any damages which are the direct result of the Collateral Agent's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision);

(ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder; and

(iii) all rights of redemption, appraisement, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof, and each Credit Party, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the relevant Credit Party therein and thereto, and shall be a perpetual bar both at law and in equity against such Credit Party and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under such Credit Party.

(e) Subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, all moneys collected by the Collateral Agent (or, to the extent any other Security Document requires proceeds of collateral under such other Security Document to be applied in accordance with the provisions of this Agreement, the Collateral Agent under such other Security Document) upon any sale or other disposition of the Collateral (or the collateral under the relevant Security Document), together with all other moneys received by the Collateral Agent hereunder (or under the relevant Security Document), in each case, as a result of the exercise of remedies by the Collateral Agent after the occurrence and during the continuance of an Event of Default, shall be applied as follows:

(i) first, to the payment of all amounts owing the Collateral Agent in respect of the Obligations and any and all sums advanced by the Collateral Agent in order to preserve the Collateral or preserve its security interest in the Collateral;

(ii) second, to the extent proceeds remain after the application pursuant to the preceding clause (i), to the payment of all amounts owing to any Agent or any of its Affiliates in respect of any amounts paid by any Indemnified Person as to which such Indemnified Person has the right to reimbursement under this Agreement and all amounts owing to any Agent or any of its Affiliates pursuant to any of the Credit Documents in its capacity as such;

(iii) third, to the extent proceeds remain after the application pursuant to preceding clauses (i) through (ii), inclusive, ratably to any other then remaining unpaid Obligations; and

(iv) fourth, to the extent proceeds remain after the application pursuant to the preceding clauses (i) through (iii), inclusive, and following the termination of this Agreement, to the relevant Credit Party or to whomever may be lawfully entitled to receive such surplus.

For purposes of this Article 14, "Pro Rata Share" shall mean, when calculating a Secured Party's portion of any distribution or amount, that amount (expressed as a percentage) equal to a fraction the numerator of which is the then unpaid amount of such Secured Party's Obligations, and the denominator of which is the then outstanding amount of all Obligations. All payments required to be made hereunder shall be made to the Administrative Agent for the account of the Secured Parties.

For purposes of applying payments received in accordance with this Section 14.18(e), the Collateral Agent shall be entitled to rely upon the Administrative Agent for a determination (which the Administrative Agent agrees (or shall agree) to provide upon request of the Collateral Agent) of the outstanding Obligations owed to the Secured Parties. It is understood that the Credit Parties are and shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Obligations.

(f) Subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, each and every right, power and remedy hereby specifically given to the Collateral Agent shall be in addition to every other right, power and remedy specifically given to the Collateral Agent under this Agreement, the other Security Documents or now or hereafter existing at law, in equity or by statute and each and

every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Collateral Agent. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Collateral Agent in the exercise of any such right, power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence thereof. No notice to or demand on any Credit Party in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Collateral Agent to any other or further action in any circumstances without notice or demand. In the event that the Collateral Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Collateral Agent may recover reasonable expenses, including reasonable legal fees, and the amounts thereof shall be included in such judgment.

(g) In case the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case the relevant Credit Party, the Collateral Agent and each holder of any of the Obligations shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the security interest created under this Agreement, and all rights, remedies and powers of the Collateral Agent shall continue as if no such proceeding had been instituted.

(h) Any amounts paid by any Indemnified Person as to which such Indemnified Person has the right to reimbursement shall constitute Obligations secured by the Collateral. The indemnity obligations of each Credit Party contained in the Credit Agreement shall continue in full force and effect notwithstanding the full payment of all of the other Obligations and notwithstanding the full payment of all the Notes issued, and Term Loans made, under this Agreement and the payment of all other Obligations and notwithstanding the discharge thereof.

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