UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
HARRY & DAVID HOLDINGS, INC, *et al.*,[1]	:	Case No. 11-_____ (____)
Debtors.	:	(Joint Administration Pending)

MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§105, 107, 361, 362, 363, 364 AND 507 AND RULES 2002, 4001, 9014 AND 9018 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POST-PETITION FINANCINGS, (B) OBTAIN EXIT FINANCING, (C) USE CASH COLLATERAL; AND (D) FILE RELATED FEE LETTERS UNDER SEAL; (II) GRANTING LIENS AND SUPER-PRIORITY CLAIMS; (III) SCHEDULING A FINAL HEARING; AND (IV) GRANTING RELATED RELIEF

The above-captioned debtors (collectively, the "Debtors") hereby move the Court for the entry of an order, in substantially the form attached hereto as Exhibit A (the "Interim Order"), and a final order (the "Final Order"), under sections 105, 107, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), and Rules 2002, 4001, 9014 and 9018 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Rules 4001-2 and 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"): (i) authorizing the Debtors to (a) obtain postpetition financing pursuant to a first lien debtor-in-possession financing facility and a separate second lien debtor-in-possession financing facility on the terms described herein,

[1] The Debtors are the following four entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Harry & David Holdings, Inc. (4389); Harry and David (1765); Harry & David Operations, Inc. (1427); Bear Creek Orchards, Inc. (7216). The address of each of the Debtors is 2500 South Pacific Highway, Medford, Oregon 97501.

(b) obtain exit financing pursuant to the terms of an exit financing facility that is part of the first lien debtor-in-possession financing facility referenced above, (c) utilize cash collateral, and (d) file related fee letters under seal; (ii) granting liens and super priority claims; (iii) scheduling a final hearing with respect to the relief requested herein; and (iv) granting related relief (the "Motion"). In support of this Motion, the Debtors incorporate the statements contained in the Declaration of Kay Hong in Support of First-Day Pleadings (the "First Day Declaration") filed contemporaneously herewith and further respectfully state as follows:

Introduction

1. As more fully described in this Motion and in the First Day Declaration, several factors recently have come together to severely impact the Debtors' near-term liquidity, precipitating the commencement of these chapter 11 cases and requiring the Debtors to seek immediate access to the Debtors' proposed second lien debtor-in possession financing facility (the below-defined "DIP Notes Facility") and immediate entry into the Debtors' proposed first lien debtor-in possession financing facility (the below-defined "DIP Revolving Loan Facility"). The proposed postpetition financing will, among other things, provide capital necessary to allow the Debtors to continue normal business operations. The Debtors believe the proposed financing will enable them to stabilize operations and ultimately, in conjunction with a reorganization, restore their profitability.

2. As a result, by this Motion the Debtors seek authorization to obtain the postpetition financing pursuant to the terms set forth in this Motion, the Interim Order and a final order to be entered on the Motion. The Debtors intend to use the proceeds of the second lien DIP Notes Facility immediately upon the entry of, and on the terms set forth in, the Interim Order. In contrast, other than issuing certain letters of credit, the Debtors will not utilize the first lien DIP Revolving Loan Facility until they begin to increase inventory purchases later in the year.

3. The Debtors are also seeking, at the time of the hearing on final approval of the debtor-in-possession financing facilities, approval to enter into an exit financing facility that would become effective upon the Debtors' emergence from chapter 11. Such exit facility is to be on substantially the same terms as the DIP Revolving Loan Facility, taking into account that the exit facility would be effective only after the Debtors exit chapter 11.

Background

4. On the date hereof (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code.[2] By a motion filed on the Petition Date, the Debtors have requested that their chapter 11 cases be consolidated for procedural purposes only and administered jointly.

5. The Debtors are a vertically integrated, multi-channel specialty retailer and producer of branded premium gift-quality fruit, food products, and gifts marketed under the Harry and David®, Wolferman's®, and Cushman's® brands. The Debtors market their products through catalogs distributed through the mail, the Internet, business-to-business, consumer telemarketing, Harry and David Stores, Cushman's seasonal stores, and wholesale distribution to other retailers. For the twelve months ending December 25, 2010, the Debtors generated approximately $416 million in revenue.

The Debtors' Debt Structure

6. The Debtors' primary liabilities consist of: (i) two series of senior unsecured notes; (ii) pension obligations; (iii) unsecured trade debt; and (iv) lease obligations.

7. The Debtors are party to that certain credit agreement dated as of March 20, 2006, as amended by that certain First Amendment dated as of June 21, 2007, as further amended by

[2] This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. § 1409.

that certain Consent and Second Amendment dated as of August 8, 2008, as further amended by that certain Third Amendment dated as of July 7, 2010 (as further amended prior to the date hereof, the "Prepetition Revolving Loan Agreement") with UBS AG, Stamford Branch, as issuing bank, administrative collateral agent and administrative agent (in such capacity, the "Prepetition Revolving Agent"), GMAC Commercial Finance LLC (n/k/a Ally Commercial Finance LLC) as collateral and documentation agent, UBS Securities LLC as arranger, and UBS Loan Finance LLC as swingline lender, that provided the Debtors with a $105 million revolving credit facility (the "Prepetition Revolving Credit Facility"). As of the Petition Date, the Debtors had no outstanding borrowings under the Prepetition Revolving Credit Facility. The Debtors have issued approximately $1 million of letters of credit under the Prepetition Revolving Credit Facility, and the Letters of Credit were still outstanding as of the Petition Date, but fully collateralized.

8. The Debtors had approximately $58 million of Senior Floating Rate Notes due March 1, 2012 and $140 million of Senior Fixed Rate Notes due March 1, 2013 (collectively, the "Prepetition Notes" and the holders thereof, in their capacity as such, the "Prepetition Noteholders") outstanding as of the Petition Date (the "Prepetition Note Obligations"). A single indenture, dated February 25, 2005, governs both series of Prepetition Notes and Wells Fargo Bank, N.A. is the indenture trustee (the "Indenture Trustee" and together with the Prepetition Noteholders, the "Noteholder Parties").

9. The Prepetition Notes represent senior unsecured obligations of Harry and David and are guaranteed by the other Debtors. The Senior Floating Rate Notes accrue interest at a rate per annum equal to LIBOR plus five percent calculated and paid quarterly. The Senior Fixed

Rate Notes accrue interest at an annual fixed rate of nine percent, with semiannual interest payments.

10. In fiscal 2008 and fiscal 2009, the Debtors repurchased approximately $34.8 million of then outstanding Senior Fixed Rate Notes and $11.8 million of the then outstanding Senior Floating Rate Notes. The Debtors officially cancelled $22.2 million of the repurchased Senior Fixed Rate Notes and $2 million of the repurchased Senior Floating Rate Notes, and the Debtors hold the remaining repurchased notes. The amounts listed in this paragraph are in addition to the $198 million of outstanding Senior Notes described above.

Relief Requested

11. By this Motion, the Debtors seek, among other things:

(a) authorization (i) for Harry and David, an Oregon corporation (with respect to the DIP Revolving Loan Facility (defined below), the "Borrower") to obtain secured post-petition financing in the form of a senior secured, super-priority revolving asset-based credit facility (the "DIP Revolving Loan Facility") with commitments in an aggregate principal amount up to $100 million, inclusive of letters of credit issued and outstanding under the Prepetition Revolving Loan Documents (as defined below), which shall be deemed to have been issued under the DIP Revolving Loan Facility (together with interest and reasonable fees, charges and expenses payable under the DIP Revolving Loan Documents) pursuant to that certain $100 Million Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, by and among the Borrower, Harry & David Holdings, Inc., Bear Creek Orchards, Inc., and Harry & David Operations, Inc., as guarantors, the lenders party thereto, UBS Securities LLC, as lead arranger, UBS Loan Finance LLC, as a lender and as a swingline lender, UBS AG, Stamford Branch, as issuing bank, administrative collateral agent and administrative agent for the lenders (in such capacities, together with its successors and permitted assigns, the "Revolving DIP Agent"), and Ally Commercial Finance LLC, as collateral agent for the lenders, as documentation agent, and as a lender (together with UBS Loan Finance LLC, the "Revolving DIP Lenders"), substantially in the form attached to the Interim Order as Exhibit A (as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the "DIP Revolving Loan Agreement", and together with any related notes, certificates, agreements, security agreements, documents (including, without limitation, the Fee Letter (as defined in the DIP Revolving Loan Agreement) and instruments (including any

amendments, restatements, supplements or modifications of any of the foregoing) related to or executed in connection therewith, the "DIP Revolving Loan Documents"), and (ii) for each other Debtor to jointly and severally guarantee the payment and performance of the obligations under the DIP Revolving Loan Facility, in each case, pursuant to the terms of the DIP Revolving Loan Documents and the Interim Order;

(b) authorization for the Debtors to execute and enter into the DIP Revolving Loan Documents and to perform their respective obligations thereunder and such other and further acts as may be required in connection with the DIP Revolving Loan Documents, including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Revolving Loan Documents (the "Revolving DIP Obligations") as such amounts become due and payable;

(c) authorization for the Debtors to grant security interests, liens and super-priority claims (including a super-priority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) on all of the DIP Collateral (as defined in the Interim Order), including, without limitation, all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code, to the Revolving DIP Agent, for the benefit of the Revolving DIP Agent and the Revolving DIP Lenders, to secure all of the Debtors' Revolving DIP Obligations, as more fully set forth in the Interim Order, in each case, subject to the terms of that certain Intercreditor Agreement, substantially in the form attached to the Interim Order as Exhibit B (the "DIP Intercreditor Agreement"), by and between the Revolving DIP Agent and the DIP Notes Agent (defined below);

(d) authorization for (i) Harry and David, one of the Debtors (with respect to the DIP Notes Facility (as defined below), the "Issuer"), to obtain secured post-petition financing, consisting of a super-priority junior debtor-in-possession notes facility in an aggregate principal amount not to exceed $55 million (the "DIP Notes Facility" and together with the Revolving DIP Facility, the "DIP Facilities"), pursuant to that certain Junior Secured Super-Priority Debtor-in-Possession Note Purchase Agreement, by and among the Debtors, Wilmington Trust FSB, as administrative agent (in such capacities, together with its successors and permitted assigns, the "DIP Notes Agent", and together with the Revolving DIP Agent, the "DIP Agents"), and each of the DIP Note Purchasers party thereto, substantially in the form attached to the Interim Order as Exhibit C (as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the "DIP Note Purchase Agreement", and together with any related notes, certificates, agreements, documents and instruments, including without limitation, the Fee Letters (as defined in the DIP Note Purchase Agreement) (including any

amendments, restatements, supplements or modifications of the foregoing) related to or executed in connection therewith, the "DIP Note Documents", and together with the DIP Revolving Loan Documents, the "DIP Documents"), and (ii) for each other Debtor to jointly and severally guarantee the payment and performance of the Issuer's obligations under the DIP Notes Facility on a secured and super-priority basis, as more fully set forth in the Interim Order (subject to the terms of the DIP Intercreditor Agreement);

(e) authorization for the Debtors to (i) execute and enter into the DIP Note Documents and to perform their respective obligations thereunder and such other and further acts as may be required in connection with the DIP Note Documents including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Note Documents (collectively, the "DIP Note Obligations" and together with the Revolving DIP Obligations, the "DIP Obligations"), as such amounts become due and payable and (ii) file the Fee Letters (as defined in the Interim Order) under seal;

(f) authorization for the Debtors to grant security interests, liens and super-priority claims (including a super-priority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) on all of the DIP Collateral, including, without limitation, all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code, to the DIP Notes Agent, for the benefit of the DIP Notes Agent and the DIP Note Purchasers, to secure all obligations of the Debtors under and with respect to the DIP Note Obligations;

(g) authorization for the Debtors to make non-refundable payments of the principal, interest, fees, expenses and other amounts payable under each of the DIP Documents to the respective DIP Agents, the Revolving DIP Lenders and the DIP Note Purchasers (collectively, the "DIP Lenders"), in each case, as they become due, including, without limitation, letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, servicing fees, audit fees, structuring fees, administrative agent's fees, the fees and disbursements of attorneys, advisers, accountants, and other consultants, and the legal expenses of the respective DIP Agents and DIP Lenders, all to the extent provided by and in accordance with the terms of the respective DIP Documents and the terms hereof;

(h) authorization for the Debtors' use of cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (as so defined, "Cash Collateral"), in which the lenders (such lenders in such capacities, the "Prepetition Revolving Lenders") under the Prepetition Revolving

Loan Agreement and the DIP Lenders under the DIP Documents have an interest, subject to the terms and conditions set forth in the Interim Order;

(i) an emergency interim hearing (the "Interim Hearing") on the Motion for this Court to consider entry of the Interim Order, which authorizes the Debtors, on an interim basis, to (i) issue and sell the DIP Notes to the DIP Note Purchasers in an aggregate principal amount of $30 million on the Closing Date (as defined in the DIP Notes Purchase Agreement), and upon the Bankruptcy Court's entry of the Final Order, a subsequent issuance and sale of $25 million in aggregate principal amount of DIP Notes, in each case, subject to the terms and conditions of the Interim Order and the DIP Note Documents; and (ii) obtain from the Revolving DIP Lenders under the DIP Revolving Loan Facility, revolving loan commitments in an aggregate principal amount not to exceed $100 million;

(j) the scheduling of a final hearing (the "Final Hearing") on the Motion no later than 35 days after the Petition Date, to consider entry of a Final Order authorizing (i) the issuances of DIP Notes and borrowings under the DIP Facilities on a final basis, as well as the approval of notice procedures with respect thereto, and (ii) the Debtors to enter into an exit financing facility (the "Exit Facility") with UBS AG, Stamford Branch, as issuing bank, administrative collateral agent and administrative agent, under terms substantially similar to those set forth herein and in the Final Order; and

(k) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the (i) Debtors, (ii) DIP Notes Agent and DIP Note Purchasers, (iii) Revolving DIP Agent and Revolving DIP Lenders and (iv) Prepetition Revolving Lenders and Prepetition Revolving Agent (collectively, the "Prepetition Secured Entities", and together with the DIP Agents and the DIP Lenders, the "Secured Lending Entities") to implement the terms of the Interim Order, and as otherwise provided herein.

The Debtors' Immediate Need For Liquidity

12. As set forth in the First Day Declaration, several factors recently have come together to severely impact the Debtors' near-term liquidity, precipitating the commencement of these chapter 11 cases. Specifically, the Internet has allowed numerous additional direct competitors to enter the Debtors' market. Unlike the Debtors, who manufacture approximately 85 percent of their own products in house, these new entrants typically out source non-proprietary products from cost-advantaged manufacturers. As such, these new entrants generally

possess less overhead costs than the Debtors.

13. "Big box" retailers also have begun to sell products that compete with those of the Debtors. Similar to the Debtors' new direct competitors, the "big box" retailers possess certain cost advantages over the Debtors, and the addition of the "big box" retailers have further increased competition for the Debtors, placing more downward pressure on pricing.

14. Recognizing the existence of an emerging number of low cost competitors, the Debtors focused on the quality of their products. However, consumers have become extremely price conscious following the beginning of the 2008 recession, and this consciousness continues to materially impact the Debtors' ability to maintain higher selling prices. The Debtors' financial performance over the past three years is a reflection of this trend, as consumer price consciousness caused the Debtors to discount their products more significantly than they had expected previously. Additionally, during the 2010 holiday season, the Debtors expected a significant improvement in sales performance, which ultimately did not materialize. In order to clear inventory purchases, the Debtors were forced to discount even more heavily than anticipated.

15. As a result, the Debtors failed to generate enough cash flow during the 2010 holiday season to satisfy the minimum available cash covenant contained in the Prepetition Revolving Credit Facility, and the Debtors were unable to continue borrowing under the Prepetition Revolving Credit Facility.[3]

16. The Debtors' reorganization depends in large part on restoring vendor, customer and employee confidence and maintaining the operation of their business as they restructure.

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[3] Specifically, the Prepetition Revolving Credit Facility requires that the Debtors' maintain an available net cash balance (defined as cash, cash equivalents and short-term investments, minus accounts payable) of at least $50 million as of December 31 of each year.

Accordingly, the Debtors have an immediate need to access the DIP Revolving Loan Facility and to the DIP Notes Facility in order to, among other things, permit the orderly operation of their business by securing goods and paying employees, preserve the going concern value of their estates by restoring vendor and customer confidence, and fund their reorganization, thereby maximizing recoveries for the Debtors' stakeholders. The Debtors believe that such financing will enable them to stabilize operations and ultimately, in conjunction with a reorganization, restore their profitability.

Debtors' Efforts to Obtain Postpetition Financing

17. After determining that the commencement of these cases was necessary, the Debtors, with the assistance of their professional advisors, explored various options with respect to postpetition financing. After engaging in productive discussions with potential investors and lenders, the Debtors determined that financing proposals by the existing lenders under their Prepetition Revolving Credit Facility and a proposal by an ad hoc committee of holders of the Prepetition Notes provided the Debtors with the best opportunity to emerge from these cases in a timely manner and maximize the value of their estates. In combination, these proposals provide the Debtors with the necessary access to working capital during these cases as well as financing to exit these cases.

Material Terms of the DIP Revolving Loan Facility

18. The principal terms of the DIP Revolving Loan Facility are as follows:[4]

Borrower:	Harry and David, an Oregon corporation ("H&D" or the "Borrower"), which will be a debtor in a chapter 11 case (a "Chapter 11 Case") to be filed under chapter 11, 11 U.S.C. §§ 101 et. seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware

[4] This summary is qualified, in its entirety by the provisions of the DIP Revolving Loan Agreement and the Interim Order. Unless otherwise defined within this section, capitalized terms used within this summary only shall have the meanings ascribed to them in the DIP Revolving Loan Agreement.

(the "Bankruptcy Court").

Guarantors: The DIP Credit Facility (as defined below) will be fully and unconditionally guaranteed by (i) Harry & David Holdings, Inc., a Delaware corporation ("Holdings"), (ii) Bear Creek Orchards, Inc., a Delaware corporation, (iii) Harry & David Operations, Inc., a Delaware corporation, each of which will be a debtor-in-possession in a Chapter 11 case (together with the Chapter 11 Case of H&D, collectively, the "Chapter 11 Cases") to be filed in the Bankruptcy Court, and which and which are loan parties under that certain Credit Agreement, dated as of March 20, 2006 (as amended, the "Existing Credit Agreement"), by and among the Borrower, the lenders and guarantors party thereto, UBS AG, Stamford Branch, as administrative agent, administrative collateral agent, and issuing bank for the secured parties thereunder, and Ally Commercial Finance LLC (f/k/a GMAC Commercial Finance LLC), as collateral agent for the secured parties thereunder and as documentation agent, and (iv) all future direct and indirect domestic subsidiaries of Holdings (collectively, the "Guarantors" and, together with the Borrower, the "Credit Parties").

Administrative Agent: UBS

Collateral Agent: Ally Commercial Finance LLC (f/k/a GMAC Commercial Finance LLC, "Ally"), as collateral agent for the lenders party to the DIP Credit Facility (in such capacity, the "Collateral Agent").

Issuing Bank: UBS

Lenders: The lenders under the Existing Credit Agreement.

DIP Facility: A first priority senior secured revolving credit facility (the "DIP Credit Facility") in an aggregate maximum principal amount of $100,000,000 of "new money" liquidity, with a sublimit for letters of credit as set forth below (the "DIP Loan Commitment"). Letters of credit issued and outstanding under the Existing Credit Agreement shall be deemed to have been issued under the DIP Credit Facility. To the extent that such letters of credit deemed to have been issued under the DIP Credit Facility have been cash collateralized, such cash collateral shall be released to the Debtors upon the closing of the DIP Credit Facility.

Upon the entry of an interim order authorizing and

approving the DIP Credit Facility (the "Interim Order") and the utilization by the Borrower of the proceeds of the Term B Facility (as hereinafter defined), the Borrower shall be entitled to borrow, and receive other extensions of credit in, an amount sufficient to meet the Borrower's working capital and other needs pending the final hearing subject to the terms and conditions of the final documentation of the DIP Credit Facility and in accordance with the Initial DIP Budget (as defined below), and per the terms and conditions of the Interim Order.

Upon the entry of a final order authorizing and approving the DIP Credit Facility (the "Final Order") and the utilization by the Borrower of the proceeds of the Term B Facility (as hereinafter defined), the Borrower shall be entitled to borrow, and receive other extensions of credit in, all amounts available under the DIP Credit Facility, subject to the terms and conditions of the final documentation for the DIP Credit Facility, including, without limitation, compliance with the Initial DIP Budget, and pursuant to the terms and conditions of the Final Order.

Use Of Proceeds: The proceeds of the loans under the DIP Credit Facility (the "DIP Loans") shall be used in a manner consistent with the Initial DIP Budget or Updated DIP Budgets, as applicable, for payment of (i) postpetition operating expenses and other working capital and financing requirements of the Borrower subject to the Initial DIP Budget or Updated DIP Budgets, as applicable, (ii) certain transaction and bankruptcy related fees, costs and expenses, (iii) the Carve-Out (as defined below) and (iv) prepetition claims consented to by the Administrative Agent and the Collateral Agent, or as permitted by the Bankruptcy Court following notice and a hearing.

Carve-Out: "Carve-Out" shall have the meaning set forth in paragraph 16 of the Interim Order.

Maturity Date: The DIP Credit Facility shall mature twelve months following the Petition Date (the "Maturity Date").

Termination Date: The DIP Credit Facility shall terminate on the earliest to occur of (i) the date on which all the DIP Loans have been indefeasibly repaid in full, (ii) the Maturity Date, (iii) the closing date (the "Closing Date") of a sale of all or substantially all of the Credit Parties' assets or stock under Section 363 of the Bankruptcy Code (the "363 Sale"), unless

	otherwise waived by the Administrative Agent and the Required Lenders and delivery of budgets, acceptable to the Administrative Agent and the Collateral Agent in their sole discretion, for the period thereafter, (iv) the effective date of a confirmed plan of reorganization in any Chapter 11 Case pursuant to Chapter 11 of the Bankruptcy Code and (v) the date of termination of the commitments and/or acceleration of any outstanding extensions of credit following the occurrence and during the continuance of an event of default (the "Termination Date").
Intercreditor Agreement:	An intercreditor agreement among the lenders to the Term B Facility (as hereinafter defined) and the DIP Lenders, which shall be acceptable in form and substance to the Required Lenders, and which shall include, among other things, claim and lien subordination provisions.
Availability and Eligibility of Collateral:	Upon satisfaction or waiver by the Administrative Agent and the Required Lenders of conditions precedent to drawing to be specified in the definitive DIP Credit Facility documentation, up to the lesser of: (a) $100,000,000 minus a reserve for the Carve-Out (such reserve, the "Carve-Out Reserve") and (b) the borrowing base calculated as provided for in the Existing Credit Agreement minus the Carve-Out Reserve. The "Borrowing Base," "Eligible Accounts," "Eligible Equipment," "Eligible Inventory," "Eligible Real Property" and "Reserves" shall be consistent with the Existing Credit Agreement. Upon the closing of the DIP Credit Facility, reserves will be no more restrictive than the reserves under the Existing Credit Facility as in effect as of the Petition Date.
Miscellaneous Borrowing Conditions:	December Paydowns: The Borrower shall be required to make mandatory payments of all outstanding loans during the month of December as required by the Existing Credit Agreement. Minimum Available Cash.: The Credit Parties shall be required to maintain minimum Available Cash (as defined in the Existing Credit Agreement) as required by the Existing Credit Agreement.
Letter of Credit Sublimit:	$8,000,000.
Interest Rate and Payment of Interest:	LIBOR plus 3.75%, payable as required in the Existing Credit Agreement; Base Rate plus 2.75%, payable monthly.

Default Interest:	2.00% per annum plus the rate otherwise applicable.
Unused Line Fee:	1.00% per annum based upon the average daily unused amount of the DIP Facility Commitments, calculated and payable per the terms of the Existing Credit Agreement.
Letter of Credit Fees:	The Borrowers will pay to the Issuing Bank (i) letters of credit fees equal to 0.25% per annum on the undrawn amount of all outstanding letters of credit and (ii) letter of credit participation fees equal to 3.75% per annum on the issued and outstanding letters of credit. In addition, the Borrowers shall also pay upon demand to the Issuing Bank customary issuance, amendment and other fees.
Other Fees:	Payable pursuant to the terms of a separate fee letter with the Administrative Agent and the Collateral Agent.
Security:	Subject to exclusions consistent with the Existing Credit Facility, the DIP Credit Facility will be secured by first priority liens on all assets of the Credit Parties, including a lien on all of the stock (or other ownership interests) of each Credit Party, except Holdings, but excluding the collateral account (the "Term B Collateral Account") in which the proceeds of the Term B Facility will be deposited (collectively, the "DIP Collateral") and shall "prime" the liens and security interests under the Existing Credit Agreement.
Cash Management	The cash management system to be used by the Credit Parties shall be satisfactory to the Administrative Agent and the Collateral Agent, and shall be consistent with the cash management system in use under the Existing Credit Agreement with the addition of the Term B Collateral Account.
Conditions Precedent:	The definitive documentation for the DIP Credit Facility will include such conditions precedent as are usual and customary for financings of this kind, and consistent with the conditions precedent contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Credit Parties and the commencement of Chapter 11 Cases), including, but not limited to, (i) the entry of the Interim Order (ii) execution of an Intercreditor Agreement between the DIP Lenders and the lenders under the Term B Facility which is acceptable in form and substance to the DIP Lenders, (iii) the closing and funding of a note purchase facility (the "Term B Facility") in an

aggregate maximum principal amount of $55 million of "new money" liquidity (of which only $30 million will be available to the Borrower until such time as a final DIP financing order is entered in connection with such Term B Facility), the proceeds of which shall be advanced to the Borrower, deposited into the Term B Collateral Account, and utilized in full by the Borrower prior to any advancement to the Borrower of amounts under the DIP Credit Facility, and (iv) execution by certain supporting bondholders of a restructuring support agreement reasonably satisfactory in form and substance to UBS and Ally.

Representations and Warranties: The DIP Credit Facility includes such representations and warranties as are usual and customary for financings of this kind, and consistent with the representations and warranties contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Borrowers and the commencement of the Chapter 11 Cases).

Affirmative Covenants: The DIP Credit Facility includes such affirmative covenants as are usual and customary for financings of this kind, and consistent with the affirmative covenants contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Borrowers and the commencement of the Chapter 11 Cases).

Negative Covenants: The DIP Credit Facility includes such negative covenants as are usual and customary for financings of this kind, and consistent with the negative covenants contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Borrowers and the commencement of the Chapter 11 Cases).

Financial Reports: The DIP Credit Facility includes financial reporting requirements as are usual and customary for financings of this kind, and consistent with the financial reporting contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Credit Parties and the commencement of the Chapter 11 Cases), including, without limitation, the following:

(i) On or before the Closing Date, the Credit Parties will furnish a budget, in form and substance reasonably satisfactory to UBS and Ally, reflecting a forecast of cash receipts and disbursements for the coming 13 week period of the Credit Parties on a consolidated basis, broken down by week, including anticipated weekly uses of the DIP Credit

Facility and the Term B Facility for such period which shall provide, among other things, for the payment of the fees and expenses relating to the DIP Credit Facility and the Term B Facility, ordinary course expenses, bankruptcy-related and court authorized expenses and working capital and other general corporate needs (the "Initial DIP Budget"). On each Friday prior to the beginning of each fiscal month, the Credit Parties will furnish an updated budget in form and substance reasonably satisfactory to UBS and Ally (the "Updated DIP Budget") for the subsequent 13 week period consistent with the form of the Initial DIP Budget.

(ii) Beginning two weeks after the Closing Date and on each Friday thereafter, the Credit Parties will furnish a variance report (the "Variance Report") setting forth actual cash receipts and disbursements of the Credit Parties for the prior week and setting forth all the variances, on a line-item basis, from the amount set forth for such week as compared to (i) the Initial DIP Budget on a weekly and cumulative basis, and (ii) the most recent Updated DIP Budget (as applicable) delivered by the Credit Parties on a weekly and cumulative basis; each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer or Chief Restructuring Officer of H&D.

Financial Covenants:

The Credit Parties shall be required to maintain a fixed charge coverage ratio consistent with the Existing Credit Agreement.

The Credit Parties must maintain Liquidity (defined as cash (inclusive of cash equivalents) *plus* Excess Availability (each as defined in the Existing Credit Agreement)), which shall be tested monthly and shall be equal to no less than eighty percent (80%) of (x) the corresponding cash amounts forecasted in the "Ending Book Cash Balance" line item of the Initial DIP Budget or any Updated DIP Budget (as applicable), which Initial DIP Budget or Updated DIP Budget shall reflect any proceeds of the Term B Facility received by the Borrower, *plus* (y) the corresponding availability amounts forecasted in the "Revolver availability after draw (1)" line item of page 10 of the Borrowing Base Projections[5] (as may be modified or updated).

[5] "Borrowing Base Projections" means that certain Harry & David Borrowing Base, DIP Sizing, and Liquidity Forecast dated as of March 9, 2011, which, together with that certain Harry & David Business Plan dated as of March 4, 2011 (the "Business Plan"), shall be referred to as the "Projections".

	Any modifications or revisions to the Projections, specifically including, but not limited to, modifications to availability amounts projected therein, must be reasonably satisfactory and acceptable to the Administrative Agent and the Collateral Agent.
Events of Default:	The DIP Credit Facility includes such events of default as are usual and customary for financings of this kind, and consistent with the events of default contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Borrowers and the commencement of the Chapter 11 Cases).
Adequate Protection:	To the extent there remain any claims under the Existing Credit Agreement, as adequate protection for any diminution in the value of their collateral resulting from the Borrower's use of cash collateral, the priming liens in favor of the DIP Credit Facility, or otherwise, the Credit Parties shall (a) grant to the lenders under the Existing Credit Agreement replacement liens on all of the DIP Collateral, subordinate only to the liens in favor of the DIP Credit Facility and the Term B Facility, the Carve-Out and Permitted Liens (as defined in the Existing Credit Agreement), (b) provide for a super-priority administrative claim, subject only to the claims of the DIP Credit Facility, the Carve-Out, and the claims of the Term B Facility, (c) timely pay the reasonable fees and out-of-pocket expenses of the professionals retained by the lenders under the Existing Credit Agreement (including counsel), and (d) timely pay in cash interest due, if any, under the Existing Credit Agreement at the rate in effect on the day before the Petition Date. The current intention of the Credit Parties is that there will be no adequate protection provided to any party. Any claims for indemnification as to the Existing Credit Agreement or any similar claims under such agreement which are outstanding or survive termination of commitments thereunder shall be assumed under the DIP Credit Facility and made thereunder.
Fee Reimbursement:	The Administrative Agent and Collateral Agent shall be entitled to prompt reimbursement of their reasonable fees and expenses of their counsel, arising from or related to the DIP Credit Facility or the Chapter 11 Cases and as provided for in the Existing Credit Agreement.

Material Terms of the Exit Facility

19. The principal terms of the Exit Facility are as follows:[6]

Borrowers	Harry and David, an Oregon corporation ("H&D" or the "Borrower"), which will be a debtor in a chapter 11 case (a "Chapter 11 Case") to be filed under chapter 11, 11 U.S.C. §§ 101 et. seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").
Guarantors:	The Exit Credit Facility will be fully and unconditionally guaranteed by (i) Harry & David Holdings, Inc.., a Delaware corporation ("Holdings"), (ii) Bear Creek Orchards, Inc., a Delaware corporation, (iii) Harry & David Operations, Inc., a Delaware corporation, each of which will be a debtor-in-possession in a Chapter 11 case (together with the Chapter 11 Case of H&D, collectively, the "Chapter 11 Cases") to be filed in the Bankruptcy Court, and which shall be loan parties under that certain Senior Secured, Super-Priority DIP Credit Agreement, and (iv) all future direct and indirect domestic subsidiaries of Holdings (collectively, the "Guarantors" and, together with the Borrower, the "Credit Parties").
Administrative Agent:	UBS
Collateral Agent:	Ally Commercial Finance LLC(f/k/a GMAC Commercial Finance LLC, "Ally"), as collateral agent for the lenders party to the Exit Credit Facility (in such capacity, the "Collateral Agent").
Issuing Bank:	UBS
Lenders:	The lenders under the DIP Credit Agreement.
Exit Facility:	A first priority senior secured revolving credit facility (the "Exit Credit Facility") in an aggregate principal amount of $100,000,000, with a sublimit for letters of credit as set forth below (the "Exit Facility Amount").
Use of Proceeds:	The proceeds of the loans under the Exit Credit Facility (the "Exit Loans") shall be used by the Borrowers (a) to

[6] This summary is qualified, in its entirety by the provisions of documentation with respect to the Exit Facility. Unless otherwise defined within this section, capitalized terms used within this summary only shall have the meanings ascribed to them in the DIP Revolving Loan Agreement.

	repay the outstanding obligations under the DIP Credit Facility and (b) to fund general corporate working capital and capital expenditure needs including, without limitation, payment of interest and fees under the Exit Credit Facility and cash collateral for letters of credit of the Credit Parties.
Maturity Date:	3 years from the closing date.
Availability and Eligible Collateral:	Upon satisfaction or waiver by the Administrative Agent and the Required Lenders of conditions precedent to drawing to be specified in the definitive Exit Credit Facility documentation, up to the lesser of: (a) $100,000,000 minus any applicable reserves and (b) the borrowing base calculated (including with respect to advance rates) as provided for in the DIP Credit Agreement minus any applicable reserves. The "Borrowing Base," "Eligible Accounts," "Eligible Equipment," "Eligible Inventory," "Eligible Real Property," "Reserves" and related definitions shall be consistent with the Existing Credit Agreement. Upon the closing of the Exit Credit Facility, reserves will be no more restrictive than the reserves under the Existing Credit Facility in effect as of the Petition Date.
Miscellaneous Borrowing Conditions:	December Paydowns: The Borrower shall be required to make mandatory payments of all outstanding loans during the month of December as required by the Existing Credit Agreement. Minimum Available Cash.: The Credit Parties shall be required to maintain minimum Available Cash (as defined in the Existing Credit Agreement) as required by the Existing Credit Agreement.
Letter of Credit Sublimit:	$8,000,000.
Interest Rate and Payment of Interest:	LIBOR plus 3.75%; Base Rate plus 2.75%, payable per the terms of the Existing Credit Agreement.
Default Interest:	2.00% per annum plus the rate otherwise applicable.
Unused Line Fee:	1.00%, calculated and paid per the terms of the Existing Credit Agreement.
Letter of Credit Fees:	The Borrowers will pay to the Issuing Bank, (i) letters of credit fronting fees equal to 0.25% per annum on the undrawn amount of all outstanding letters of credit and (ii) letter of credit participation fees equal to 3.75% per annum on the issued and outstanding letters of credit. In

	addition, the Borrowers shall also pay upon demand to the Issuing Bank customary issuance, amendment and other fees.
Other Fees:	Payable pursuant to the terms of a separate fee letter with the Administrative Agent and the Collateral Agent.
Security:	The Exit Credit Facility will be secured by first priority perfected liens (except as provided herein) on all assets of the Borrowers and the Guarantors (collectively, the "Collateral").
Cash Management	The cash management system to be used by the Credit Parties shall be satisfactory to the Administrative Agent and the Collateral Agent, and shall be consistent with the cash management system in use under the Existing Credit Agreement.
Conditions Precedent:	The definitive documentation for the Exit Credit Facility will include such conditions precedent as are usual and customary for financings of this kind, and consistent with the conditions precedent contained in the Existing Credit Agreement, including, but not limited to, (i) the confirmation of a plan of reorganization reasonably acceptable to the Lenders and the occurrence of the effective date of such plan of reorganization, (ii) the repayment in full of the Term B Facility pursuant to an equity rights offering or the conversion to equity of any claims outstanding pursuant to the Term B Facility,[7] (iii) the conversion to equity of any claims outstanding on account of the Senior Floating Rate Notes due 2012 and the 9% Senior Fixed Rate Notes due 2013, (iv) completion of review of capital and corporate structures of reorganized Credit Parties, which structures shall be reasonably satisfactory to the Administrative Agent and the Collateral Agent (and which shall not include a "diligence out"), and (v) such other reasonable and customary conditions as may be required by the Lenders.
Representations and Warranties:	The definitive documentation for the Exit Credit Facility will include such representations and warranties as are usual and customary for financings of this kind, and consistent with the representations and warranties contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Credit Parties, and the exit from

[7] That certain second priority secured note purchase facility in an aggregate principal amount of $55,000,000 (the "Term B Facility").

	the Chapter 11 Cases, the longer term of the Exit Credit Facility and as may otherwise be required by the Lenders).
Affirmative Covenants:	The definitive documentation for the Exit Credit Facility will include such affirmative covenants as are usual and customary for financings of this kind, and consistent with the affirmative covenants contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Credit Parties, and the exit from the Chapter 11 Cases, the longer term of the Exit Credit Facility and as may otherwise be required by the Lenders).
Negative Covenants:	The definitive documentation for the Exit Credit Facility will include such negative covenants as are usual and customary for financings of this kind, and consistent with the negative covenants contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Credit Parties, and the exit from the Chapter 11 Cases, the longer term of the Exit Credit Facility and as may otherwise be required by the Lenders).
Financial Reports:	The definitive documentation for the Exit Credit Facility will include financial reporting requirements as are usual and customary for financings of this kind, and consistent with the financial reporting contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Credit Parties, and the exit from the Chapter 11 Cases, the longer term of the Exit Credit Facility and as may otherwise be required by the Lenders).
Financial Covenants:	Consistent with financial covenants in the Existing Credit Agreement.
Fee Reimbursement:	The Administrative Agent and Collateral Agent shall be entitled to prompt reimbursement of their reasonable fees and expenses of their counsel, arising from or related to the Exit Credit Facility and as provided for in the Existing Credit Agreement.
Events of Default:	The definitive documentation for the Exit Credit Facility will include such events of default as are usual and customary for financings of this kind, and consistent with the events of default contained in the Existing Credit Agreement (as modified to take account of current financial condition of the Credit Parties, and the exit from the Chapter 11 Cases, the longer term of the Exit Credit Facility and as may

otherwise be required by the Lenders).

Fee Reimbursement: The Administrative Agent and Collateral Agent shall be entitled to prompt reimbursement of their reasonable fees and expenses of their counsel, arising from or related to the DIP Credit Facility or the Chapter 11 Cases and as provided for in the Existing Credit Agreement.

Material Terms of the DIP Note Purchase Agreement

20. The principal terms of the DIP Note Purchase Agreement are as follows:[8]

Issuer: Harry and David, an Oregon corporation (the "Issuer"), as debtor and debtor-in-possession in a case (together with the cases of their affiliated debtors and debtors-in-possession, the "Cases") filed under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

Guarantors: Harry & David Holdings, Inc. ("Parent Guarantor") and each of the Parent Guarantor's Subsidiaries, each as debtors and debtors-in-possession in jointly administrated Cases (collectively, the "Guarantors"; together with the Issuer, each a "Debtor" and collectively, the "Debtors").

ABL Facility: Prepetition ABL Facility. That certain account, inventory, receivable, and other asset based credit facility, made available pursuant to the credit agreement, dated March 20, 2006, by and among the Issuer as borrower, Parent and the other guarantor parties thereto, the lenders party thereto, GMAC Commercial Finance LLC (n/k/a Ally Commercial Finance LLC) as collateral and documentation agent, UBS Securities LLC as arranger, UBS AG, Stamford Branch as issuing bank, administrative collateral agent and administrative agent, and UBS Loan Finance LLC as swingline lender (and including all exhibits and related definitive documentation in respect thereof, in each case as amended, supplemented or otherwise modified prior to the date hereof, collectively, the "Existing ABL Facility").

Debtor-in-Possession ABL Facility. On or prior to the Interim Order Entry Date (as defined below), the Debtors

[8] This summary is qualified, in its entirety by the provisions of the DIP Note Purchase Agreement and the Interim Order. Unless otherwise defined in this section, capitalized terms used within this summary only shall have the meanings ascribed to them in the DIP Note Purchase Agreement.

shall have received Bankruptcy Court approval under section 364 of the Bankruptcy Code to enter into a senior asset based revolving credit facility on substantially similar terms to the Existing ABL Facility, in form and substance reasonably satisfactory to the Initial Note Purchasers (as defined below) and subject to the terms of an intercreditor agreement in form and substance satisfactory to the Initial Note Purchasers in all respects (the "Intercreditor Agreement"), which such Intercreditor Agreement shall provide for lien and claim subordination, in an aggregate principal amount of not less than $90,000,000, to be drawn and applied as per the Budget (as defined below) during the Cases and having a stated maturity date that is no earlier than the Scheduled Maturity Date (as defined below) (along with related definitive documentation, including all exhibits and other ancillary documentation in respect thereof, collectively, the "DIP ABL Facility").

Exit ABL Facility: On or prior to the Petition Date (as defined below), the Debtors shall have received binding commitments from its existing lenders committing to enter into a senior asset based revolving credit facility in an aggregate principal amount of not less than $100,000,000 (to be entered into on the effective date of a Plan (as defined below)) (the "Exit ABL Facility") pursuant to a commitment letter (including the summary of terms and conditions of the Exit ABL Facility) that is in form and substance reasonably satisfactory to the Initial Note Purchasers (the "Exit ABL Commitment Letter").

DIP Notes: Secured DIP Floating Rate Notes issued under the Facility (the "DIP Notes") pursuant to a note purchase agreement (the "DIP Agreement").

DIP Facility: A superpriority term notes facility (the "Facility") in an aggregate principal amount of $55,000,000 (such amount, the "Aggregate Commitment"). Once repaid or prepaid, the DIP Notes cannot be reissued. On each Issuance Date (as defined below), the Initial Commitment (as defined below) or Final Commitment (as defined below) of each Note Purchaser, as applicable, shall be reduced by the aggregate principal amount of all DIP Notes purchased by such Note Purchaser on such Issuance Date.

Use of Proceeds: The proceeds of the Facility will be used, in accordance with the terms of the Budget to provide working capital for the Debtors, and for other approved corporate purposes of the

Debtors, including to pay transaction costs, fees and expenses under the Facility, as expressly set forth herein.

Notwithstanding anything herein to the contrary, no proceeds of the Facility, the DIP Notes, Adequate Protection (as defined below), if any, DIP Collateral (defined below), cash collateral, any portion of the Carve-Out (defined below) or any other amounts may be used by any of the Debtors, any official committee appointed in any of the Cases (the "Committee"), and any trustee or other estate representative appointed in the Cases or any successor case, or any other person, party or entity to (or to pay any professional fees and disbursements incurred in connection therewith) (a) request authorization to obtain postpetition loans or other financial accommodations pursuant to Bankruptcy Code section 364(c) or (d), or otherwise, on a *pari passu* or senior basis to the Facility (other than the DIP ABL Facility, to the extent set forth herein); or (b) investigate, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any or all of the holders of the DIP Notes, the DIP Agent or the Note Purchasers and each of their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (ii) any so-called "lender liability" claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of the pre-petition Senior Floating Rate Notes Due 2012 (the "Floating Rate Notes") and/or 9.0% Senior Notes Due 2013 (the "Fixed Rate Notes" and, together with the Floating Rate Notes, the "Notes") issued by the Issuer, as successor to Harry and David Operations Corp., pursuant to that certain indenture dated as of February 25, 2005 and guaranteed by the guarantor parties thereto or the DIP Notes; (iv) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Notes or the DIP Notes; and/or (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to any or all of the Note Purchasers hereunder or the DIP Documents (defined below); provided, however, that no

more than $50,000 in the aggregate of the proceeds of the Facility, the DIP Notes, Adequate Protection, if any, DIP Collateral, cash collateral, or the Carve-Out may be used by, or to reimburse, the fees, costs or expenses of the Committee to investigate the prepetition claims of the holders of the Notes or their affiliates.

Administrative Agent: Wilmington Trust FSB ("WTFSB"), in its capacity as administrative agent, collateral agent and/or syndication agent (the "DIP Agent").

Notes Purchasers: "Note Purchasers" means (a) the Initial Note Purchasers that have severally and not jointly committed to their respective amount of the Aggregate Commitment (collectively, the "Initial Commitments"), and (b) those Eligible Holders that, on or prior to the Syndication Deadline, validly elect to participate in the Facility in accordance with the syndication procedures (together with their successors and permitted assigns, the "Participating Noteholders").

In addition, as used herein, (i) "Final Commitment" means, with respect to each Note Purchaser, as of the Final Issuance Date, such Note Purchaser's portion of the entire Aggregate Commitment as of the Commitment Adjustment Time), (ii) "Total Exposure" means, with respect to each Note Purchaser, as of any date of determination, the sum of (x)(A) at any time prior to the Commitment Adjustment Time, such Note Purchaser's Initial Commitment and (B) from and any time after the Commitment Adjustment Time, such Note Purchaser's Final Commitment and (y) the aggregate principal amount of DIP Notes held by such Note Purchaser on such date and (iii) "Pro Rata Share" means, with respect to each Note Purchaser, as of any date of determination, a fraction (expressed as a percentage) the numerator of which is the Total Exposure of such Note Purchaser on such date and the denominator of which is the Aggregate Commitment.

Facility Availability: On the Closing Date (as defined below), subject to the satisfaction of the conditions precedent set forth herein, $30,000,000 in principal amount of the DIP Notes (the "Initial Issuance Amount") shall be issued and purchased by the Initial Note Purchasers based on each of their Initial Commitments (the "Initial Issuance"); provided, however, that with respect to Wasserstein Partners, LP ("Wasserco"), its Pro Rata Share of the Initial Issuance Amount shall be funded on a date after the Closing Date,

which such date shall be no later than April 5, 2011. Upon the Bankruptcy Court's entry (the "Final Order Entry Date") of the Final Order, subject to the satisfaction of the conditions precedent set forth herein, the full remaining balance of the Aggregate Commitment (i.e., $25,000,000) in principal amount of the DIP Notes (the "Final Issuance Amount") shall be issued and purchased in accordance with the terms hereof and subject to the syndication procedures (the "Final Issuance"). The date of any issuance of DIP Notes under the Facility is referred to herein as an "Issuance Date".

The availability of the Aggregate Commitment shall be subject to compliance with the terms, conditions and covenants described in this Term Sheet, including satisfaction of and compliance with the terms and conditions, including the execution and delivery of definitive documents relating to the Facility (such documents, including, without limitation, the DIP Agreement, guarantees, security agreements, pledge agreements, opinions of counsel and other related definitive notes, certificates or documents, each in form and substance satisfactory to the DIP Agent and the Initial Note Purchasers, collectively, the "DIP Documents").

Budget:

DIP Budget. On or before the Closing Date, the Issuer will furnish a budget, in form and substance reasonably satisfactory to the Initial Note Purchasers, reflecting a forecast of cash receipts and disbursements for the coming 13 week period of the Issuer and its subsidiaries on a consolidated basis, broken down by week, including anticipated weekly uses of the Facility and the DIP ABL Facility for such period which shall provide, among other things, for the payment of the fees and expenses relating to the Facility and the DIP ABL Facility, ordinary course expenses, bankruptcy-related and court authorized expenses and working capital and other general corporate needs (the "Initial DIP Budget"). On each Friday prior to the beginning of each fiscal month, the Issuer will furnish an updated budget, in each case, in form and substance reasonably satisfactory to the Initial Note Purchasers (the "Updated DIP Budget" and together with the Initial Budget, the "Budget") for the subsequent 13 week period consistent with the form of the Initial DIP Budget.

Variance Report. Beginning two weeks after the Closing Date and on each Friday thereafter, the Issuer will furnish a

variance report (the "Variance Report") setting forth actual cash receipts and disbursements of the Issuer and its Subsidiaries for the prior week and setting forth all the variances, on a line-item basis, from the amount set forth for such week as compared to (i) the Initial DIP Budget on a weekly and cumulative basis and (ii) the most recent Updated DIP Budget (as applicable) delivered by the Issuer on a weekly and cumulative basis; each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer or Chief Restructuring Officer of the Issuer.

Maturity: The maturity date of the Facility will be the earliest of: (i) the date that is twelve (12) months after the Closing Date (the "Scheduled Maturity Date"), (ii) the effective date of a Plan, (iii) the date of confirmation of any other plan of reorganization of any Debtor (other than a Plan), (iv) the date that is thirty-five (35) calendar days after the Interim Order Entry Date if the Final Order Entry Date shall not have occurred by such date and (v) the acceleration of the DIP Notes or termination of the Aggregate Commitment under the Facility (or the DIP ABL Facility), including, without limitation, as a result of the occurrence of an Event of Default (as defined below) (such earliest date, the "Maturity Date"). Principal of, and accrued interest and premium (if any) on, the DIP Notes, and all other amounts owed to the DIP Agent and the Note Purchasers under the Facility shall be due and payable on the Maturity Date.

Without the consent of the Note Purchasers, any confirmation order entered in the Cases shall not discharge any of the joint and several DIP Obligations (as defined below), other than after the payment in full and in cash of all amounts outstanding under the Facility and the DIP Documents and the termination of the Aggregate Commitment on or before the effective date of a Plan or in connection with a credit bid by the Note Purchasers.

Credit Bidding: The Note Purchasers shall have the right to credit bid all of the amounts outstanding under the Facility and the DIP Documents in connection with a sale of the Debtors' assets under section 363 of the Bankruptcy Code or under a plan of reorganization.

Closing Date: The date on or before March 31, 2011 on which the DIP Documents for the Facility shall be executed (the "Closing Date"), which shall be no later than three (3) calendar days

	after the Interim Order Entry Date, subject to satisfaction (or waiver) of the applicable conditions precedent set forth herein and in the DIP Documents.
Amortization:	None
Interest Rates and Fees:	At Issuer's option, all outstanding principal balances under the Facility shall bear interest at a rate per annum equal to (a) the Base Rate plus the Applicable Margin or (b) one-month LIBOR plus the Applicable Margin. An additional 2% of interest shall be charged following an Event of Default. Base Rate will be a floating rate per annum defined as the higher of (a) the rate last quoted by The Wall Street Journal (or a substitute national publication selected by the Note Purchasers) as the U.S. "Prime Rate," and (b) the Federal Funds Rate plus 50 basis points. In no event shall one-month LIBOR be less than 150 basis points or the Base Rate less than 375 basis points. Applicable Margin (consisting of per annum rate margins) shall be 9.25% for Base Rate borrowings and 11.5% for LIBOR borrowings. In addition, the Issuer shall also pay the fees set forth in the Fee Letter and the Agent Fee Letter, in each case, referred to and defined in the Commitment Letter.
Funding Protection:	Usual and customary lender protections, including breakage costs, minimum cost of funds, gross-up for withholding (subject to customary qualifications), unavailability of LIBOR, compensation for increased costs and compliance with any change in regulatory restrictions.
Voluntary Prepayments and Commitment Reductions or Cancellations:	The Issuer may repay the DIP Notes under the Facility and/or reduce the Aggregate Commitment at any time together with breakage costs, if any, upon (i) at least 3 business days' notice in the case of DIP Notes accruing interest at the LIBOR rate and (ii) one business day's notice in the case of DIP Notes accruing interest at the Base Rate; provided that in the case of repayment, reduction, or cancellation of the Aggregate Commitment, each partial repayment, reduction, or cancellation shall be in an amount of $5,000,000 or multiples of $1,000,000 in excess thereof (or, if less, the remaining available balance of the Aggregate

Commitment). All prepayments, reductions, cancellations of the Aggregate Commitment shall be permanent.

Mandatory Prepayments: The following mandatory prepayments (each, a "Mandatory Prepayment") are required:

1. Asset Sales: Subject to certain usual and customary exceptions reasonably consistent with those in the Existing ABL Facility as modified to take into account the current financial condition of the Debtors and the commencement of the Cases (including for sales in the ordinary course of business, obsolete equipment and other sales for total consideration of up to $2,000,000 in the aggregate during the term of the Facility), prepayments of the Facility in an amount equal to 100% of the net cash proceeds (to be defined) of the sale or other disposition of any property or assets of the Debtors (other than net cash proceeds of sales or other dispositions of DIP Collateral, in which the lenders under the DIP ABL Facility (the "DIP ABL Lenders") have senior priority, that are required to be applied to permanently repay obligations under the DIP ABL Facility), payable on the date of receipt thereof.

2. Insurance Proceeds: Subject to certain usual and customary reinvestment rights reasonably consistent with those in the Existing ABL Facility (as modified to take into account the current financial condition of the Debtors and the commencement of the Cases), repayments of the Facility in an amount equal to 100% of the net cash proceeds (to be defined) of insurance, condemnation, or other amounts paid on account of any loss of any property or assets of the Debtors (other than any such proceeds received prior to the date of commencement of the Cases or required to be applied to permanently repay obligations under the DIP ABL Facility), payable on the date of receipt thereof.

3. Incurrence of Indebtedness or Issuances of Equity: Prepayments of the Facility in an amount equal to 100% of the net cash proceeds received from the incurrence of indebtedness or issuances of equity by the Debtors (other than (x) indebtedness under the DIP ABL Facility, (y) indebtedness otherwise permitted under the DIP Documents or (z) to the extent such proceeds are required to be applied to permanently repay the obligations under the DIP ABL Facility), payable on the date of receipt thereof.

Additionally, the DIP Notes shall be subject to redemption

on the Final Issuance Date in connection with the syndication procedures.

Priority / Security:

All obligations of the Issuer and the Guarantors to the DIP Agent and the Note Purchasers under the DIP Documents (the "DIP Obligations"), including all indebtedness evidenced by the DIP Notes issued and purchased under the Facility, at all times shall be:

(i) claims entitled to the benefits of Bankruptcy Code §364(c)(1), having a super-priority status over any and all administrative expenses of the kind that are specified in Bankruptcy Code §§ 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code, subject only to the Carve-Out and the DIP ABL Facility;

(ii) secured pursuant to Bankruptcy Code §364(c)(2), subject only to the Carve-Out and the DIP ABL Facility, by a first-priority perfected lien on, and security interest in, all present and after acquired property of the Debtors, wherever located, not subject to a perfected lien or security interest on the date of commencement of the Case (the "Petition Date");

(iii) secured pursuant to Bankruptcy Code §364(c)(3), subject only to the Carve-Out and the DIP ABL Facility, by a junior perfected lien on, and security interest in, all present and after acquired property of the Debtors, wherever located, that is subject to a perfected lien or security interest on the Petition Date or subject to a lien or security interest in existence on the Petition Date that is perfected subsequent thereto as permitted by Bankruptcy Code §546(b), other than the liens and security interests on property subject to priming liens pursuant to clause (iv) below; and

(iv) secured pursuant to Bankruptcy Code §364(d)(1), subject to the Carve-Out and the DIP ABL Facility, by a first priority, perfected senior priming lien on, and security interest in, all present and after acquired property of the Debtors, wherever located, that is subject to a perfected lien or security interest on the Petition Date (other than the liens securing the obligations under the Existing ABL Facility), provided that such priming lien shall be subject to the lien securing the DIP ABL Facility (the "DIP ABL Liens") to the extent set forth in the Intercreditor Agreement; and

(v) secured pursuant to Bankruptcy Code

§§ 364(c)(2), 364(c)(3) and 364(d)(1), by a perfected first-priority lien on the proceeds of any avoidance claims or causes of action under chapter 5 of the Bankruptcy Code.

The property referred to in the preceding clauses (ii), (iii), (iv) and (v) is collectively referred to as the "DIP Collateral" and shall include, without limitation, all assets of the Debtors, whether now owned or hereafter acquired, including, without limitation, assets acquired after the Petition Date.

In addition, the proceeds of the issuance and purchase of all DIP Notes hereunder shall be held in a segregated interest-bearing cash DIP Collateral account of the Issuer maintained with a financial institution reasonably acceptable to the Initial Note Purchasers (the "DIP Collateral Account"), which account shall at all times be subject to (x) a first-priority perfected security interest and lien solely in favor of the DIP Agent and the Note Purchasers (and not subject to a security interest or lien in favor of any other person, including, without limitation, the DIP ABL Lenders or an agent therefor) and (y) an account control agreement among the Issuer, the depositary bank, and the DIP Agent, as agent under the Facility, such agreement to be in form and substance reasonably satisfactory to the DIP Agent and the Initial Note Purchasers (the "DIP Collateral Account Control Agreement"). Prior to the occurrence of an Event of Default, funds held in the DIP Collateral Account shall be freely available to the Issuer for use as described under "Purpose/Use of Proceeds" above and in accordance with the Budget; provided, however, in no such event shall the Issuer withdraw more than (x) $10,000,000 during the period from and including the Closing Date through the first full calendar week after the Petition Date and (y) $7,500,000 in any succeeding calendar week.

All of the liens described herein shall be effective and perfected as of the Interim Order Entry Date and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements.

Adequate Protection:

The manner and form of adequate protection (if any) ("Adequate Protection") to be provided to the lenders under the Existing ABL Facility or any other party shall be, in form and substance, acceptable to the Initial Note Purchasers or Requisite Note Purchasers, as applicable. The current

	intention of the Debtors is that there will be no Adequate Protection provided to any party.
Carve-Out:	"Carve-Out" shall have the meaning set forth in paragraph 16 of the Interim Order.
Representations and Warranties:	Usual and customary representations and warranties reasonably consistent with those in the Existing ABL Facility (as modified to take into account the current financial condition of the Debtors and the commencement of the Cases) as reasonably determined by the Initial Note Purchasers and reasonably acceptable to the Debtors to be made as of (x) the date the DIP Documents are executed and (y) the date of each issuance of DIP Notes under the Facility, including, without limitation, representations and warranties regarding that the Issuer and the Guarantors have not failed to disclose any material assumptions with respect to the Budget, affirmation that the Budget and projections are based upon assumptions that are reasonable, accuracy of financial statements and all other information provided to the DIP Agent or Note Purchasers, valid existence, requisite power, due authorization, no conflict with agreements, orders or applicable law, governmental consent, enforceability of DIP Documents, compliance with law, absence of material adverse change (other than by virtue of the Cases), no default under the DIP Documents, absence of material litigation and contingent obligations, taxes, subsidiaries, ERISA, pension, benefit plans, absence of liens on assets, ownership of properties and necessary rights to intellectual property, insurance, no burdensome restrictions, inapplicability of Investment Company Act or Public Utility Holding Company Act of 2005 ("PUHCA"), continued accuracy of representations and continued effectiveness of the applicable Order and each other order of the Bankruptcy Court with respect to the Facility.
Financial Covenants:	Budget: Beginning with the 5th week subsequent to the Closing Date and continuing for each week thereafter, and as measured on a cumulative basis from the Closing Date, the Debtors' (i) net cash flow (excluding financing costs and professional fees and expenses) through such week, (ii) post-petition disbursements with respect to the Debtors' professional fees through such week and (iii) post-petition disbursements with respect to the Committee's professional fees through such week, in each case, shall not have a Variance of greater than (a) with respect to testing in the 5th, 6th, 7th and 8th weeks, 20% of the projected amounts set

forth in the Initial DIP Budget for prior periods, (b) with respect to testing in the 9th, 10th, 11th, 12th and 13th weeks, 15% of the projected amounts set forth in the Initial DIP Budget for prior periods and (c) with respect to testing in the 14th week and each week thereafter, 15% of the projected amounts set forth in the Initial DIP Budget plus the most recent Updated DIP Budget delivered prior to the end of the initial 13-week period covered by the Initial DIP Budget. "Variance" means (x) with respect to the calculation of net cash flow, actual net cash flow being less than the amount set forth in the applicable Budget, and (y) with respect to the Debtors' or the Committee's professional fees, actual professional fees being greater than the amount set forth in the applicable Budget.

Affirmative Covenants:

Usual and customary affirmative covenants reasonably consistent with those in the Existing ABL Facility (as modified to take into account the current financial condition of the Debtors and the commencement of the Cases) as reasonably determined by the Initial Note Purchasers and reasonably acceptable to the Debtors, including without limitation:

(a) delivery of the Updated DIP Budget as and when described above and weekly Variance Reports;

(b) (A) monthly telephonic conference calls with the Chief Restructuring Officer and senior management with respect to asset sales, cost savings, key hires and expenses, initiatives for marketing, purchasing, merchandising, information technology, and call centers, store closures and other matters reasonably requested by the Note Purchasers; and (B) delivery of (i) monthly consolidated financial statements of the Debtors, including balance sheet, income statement and cash flow statement within thirty (30) days of fiscal month end, certified by the Issuer's chief financial officer, together with management's discussion and analysis thereof; (ii) quarterly consolidated financial statements of the Debtors within forty-five (45) days of fiscal quarter end, certified by the Issuer's chief financial officer; and (iii) annual audited consolidated financial statements of the Debtors within ninety (90) days of fiscal year end, certified with respect to such consolidated statements by independent certified public accountants;

(c) delivery to counsel to the Note Purchasers as soon as practicable, in advance of filing with the Bankruptcy Court,

drafts of (x) each of the Interim Order and the Final Order (which, in each case, must be in form and substance satisfactory to the Initial Note Purchasers in all respects) and (y) all other first day pleadings and proposed orders related to the Facility and the DIP ABL Facility (which, in each case, must be in form and substance reasonably satisfactory to the Initial Note Purchasers), any plan of reorganization or liquidation, and/or any disclosure statement related to such plan;

(d) compliance with the Milestones (as defined below) with respect to the Cases;

(e) delivery of additional reporting requirements requested by the DIP ABL Lenders;

(f) access to information (including historical information and books and records) and personnel, including, without limitation, weekly telephonic conference calls, and other regularly scheduled meetings, as mutually agreed, among company advisors and a subcommittee of the Note Purchasers and its legal and/or financial advisors, who shall be provided with access to all information they shall reasonably request;

(g) conduct all transactions with affiliates on terms equivalent to those obtainable in arm's length transactions, including, without limitation, restrictions on management fees to affiliates;

(h) maintain a cash management system reasonably satisfactory to the DIP Agent and the Requisite Note Purchasers; provided, that, subject to the establishment of the DIP Collateral Account in accordance with the terms hereof, the cash management system currently in existence shall be deemed acceptable; and

(i) delivery to the DIP Agent of any updates or modifications to the business plan delivered to the Initial Note Purchasers on March 9, 2011 and the projected operating budget of the Debtors for fiscal year 2011 and fiscal year 2012.

Negative Covenants: Usual and customary negative covenants reasonably consistent with those in the Existing ABL Facility (as modified to take account of current financial condition of the Debtors and the commencement of the Cases) as reasonably

determined by the Initial Note Purchasers and reasonably acceptable to the Debtors, including, without limitation, the following, which the Issuer and each of the Guarantors agree are prohibited (except to the extent otherwise provided in this Term Sheet or the DIP Documents and subject to baskets to the extent agreed in the DIP Documents consistent with the Existing ABL Facility (as modified to take account of current financial condition of the Debtors and the commencement of the Cases)):

(a) creating or permitting to exist any liens or encumbrances on any assets, other than liens securing the Facility, the DIP ABL Facility (to the extent set forth herein) and any permitted liens agreed by the Note Purchasers (which liens shall include scheduled liens in existence on the Closing Date to the extent subordinated pursuant to the Orders) and other liens described in "Priority/Security" above;

(b) creating or permitting to exist any other superpriority claim which is pari passu with or senior to the claims of the Note Purchasers under the Facility, except for the Carve-Out and the DIP ABL Facility (to the extent set forth herein);

(c) disposing of assets (including, without limitation, any sale and leaseback transaction and any disposition under Bankruptcy Code section 363) in respect of a transaction or series of related transactions for total consideration of more than $2,000,000 in the aggregate;

(d) modifying or altering (i) in any material manner the nature and type of its business or the manner in which such business is conducted or (ii) its organizational documents, except as required by the Bankruptcy Code or other immaterial modifications or alterations not adverse to the Note Purchasers;

(e) prepaying, redeeming, purchasing or exchanging any pre-petition indebtedness, or amending or modifying any of the terms of any such pre-petition indebtedness, except as expressly provided for in the Budget and pursuant to "first day" or other orders entered upon pleadings, which orders shall be in form and substance reasonably satisfactory to the Requisite Note Purchasers;

(f) asserting any right of subrogation or contribution against the Issuer or any other Guarantor until all amounts under the

Facility are paid in full in cash and the Aggregate Commitment is terminated;

(g) incurring or assuming any additional debt or contingent obligations or giving any guaranties, other than the DIP ABL Facility; merging or consolidating with any other person, changing the corporate structure or create or acquire new subsidiaries; giving a negative pledge on any assets in favor of any person other than the DIP Agent and the Note Purchasers and other than under the DIP ABL Facility; and permitting to exist any consensual encumbrance on the ability of any subsidiary to pay dividends or other distributions to the Issuer or Parent; in each case, subject to customary exceptions or baskets as may be agreed reasonably consistent with the Existing ABL Facility (as modified to take account of current financial condition of the Debtors and the commencement of the Cases);

(h) making any loans, advances, capital contributions or acquisitions, form any joint ventures or partnerships or making any other investments in subsidiaries or any other person, subject to certain exceptions to be agreed reasonably consistent with the Existing ABL Facility (as modified to take account of current financial condition of the Debtors and the commencement of the Cases);

(i) making or committing to make any payments in respect of warrants, options, repurchase of stock, dividends or any other distributions;

(j) making, committing to make, or permitting to be made any bonus payments to executive officers of the Debtors and their subsidiaries in excess of the amounts set forth in the Budget;

(k) without the prior written consent of the DIP Agent (at the direction of the Requisite Note Purchasers in their sole discretion), making or permitting to be made any change to the Orders or any other order of the Bankruptcy Court with respect to the Facility or the DIP ABL Facility;

(l) permitting any change in control of any Debtor or any subsidiary;

(m) permitting any change in accounting treatment, reporting practices or fiscal year, except as required by GAAP and as permitted by the DIP Documents;

(n) making or committing to make payments to critical vendors (as such term is customarily used) in respect of pre-petition amounts during the term of the Facility in excess of the amount contemplated by the Budget and the "first day" orders;

(o) delaying or impeding the delivery of any part of the Budget when due;

(p) permitting the use of any portion or the proceeds of the Facility to purchaser or carry margin stock;

(q) permitting transactions with affiliates, other than certain exceptions to be agreed reasonably consistent with the Existing ABL Facility (as modified to take account of current financial condition of the Debtors and the commencement of the Cases);

(r) entering or permitting entry into (i) any operating lease that is outside of the ordinary course of business, (ii) any sale/leaseback transaction, or (iii) any speculative transactions;

(s) permitting the release of any contaminant in violation of applicable environmental laws;

(t) permitting any action which results in any Debtor becoming a "holding company" or a "public-utility company" as defined under the PUHCA;

(u) issuing any capital stock or other equity interests or creating any new subsidiaries, in each case, without the prior written consent of the Required Note Purchasers; and

(v) obtaining or attempting to obtain a license under the Perishable Agricultural Commodities Act, as amended.

Events of Default: The Facility shall be subject to usual and customary events of default reasonably consistent with those in the Existing ABL Facility (as modified to take account of current financial condition of the Debtors and the commencement of the Cases) as reasonably determined by the Initial Note Purchasers and reasonably acceptable to the Debtors (each, an "Event of Default"), including, without limitation, the following (with thresholds and grace periods as set forth in

the DIP Documents reasonably consistent with those in the Existing ABL Facility (as modified to take account of current financial condition of the Debtors and the commencement of the Cases)):

(a) The Final Order Entry Date shall not have been occurred within thirty-five (35) calendar days after the Interim Order Entry Date;

(b) any of the Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code; a trustee, receiver, interim receiver or receiver and manager shall be appointed in any of the Cases, or a responsible officer or an examiner with enlarged powers shall be appointed in any of the Cases (having powers beyond those set forth in Bankruptcy Code sections 1106(a)(3) and (4)); or the Debtors shall seek approval for any other superpriority administrative expense claim or lien (other than the Carve-Out or under the DIP ABL Facility) which is pari passu with or senior to the claims or liens of the Note Purchasers under the Facility; or any similar request by any other party shall be granted in any of the Cases; in each case without the prior written consent of the Note Purchasers;

(c) other than payments authorized by the Bankruptcy Court in respect of "first day" or other orders entered upon pleadings, in each case, in form and substance reasonably satisfactory to the Note Purchasers, as required by the Bankruptcy Code, or as may be permitted in the DIP Documents, the Debtors shall make any payment (whether by way of Adequate Protection, if any, or otherwise) of principal or interest or otherwise on account of any pre-petition indebtedness or payables;

(d) the Bankruptcy Court shall have entered an order granting relief from the automatic stay to any creditor or party in interest (i) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of the Debtors which have an aggregate value in excess of $250,000 or (ii) to permit any other actions that would be reasonably expected to cause a material adverse effect on the Debtors or their estates (taken as a whole);

(e) an order shall be entered reversing, amending, supplementing, staying for a period of five days or more, vacating or otherwise modifying the Interim Order or the Final Order, or any of the Debtors or any of their affiliates

shall apply for authority to do so, without the prior written consent of the Requisite Note Purchasers, or the Interim Order or Final Order with respect to the Facility shall cease to be in full force and effect in any respect;

(f) any judgments which are in the aggregate in excess of $1,000,000 as to any post-petition obligation shall be rendered against the Debtors and the enforcement thereof shall not be stayed (by operation of law, the rules or orders of a court with jurisdiction over the matter or by consent of the party litigants); or there shall be rendered against the Debtors a non-monetary judgment with respect to a post-petition event which causes or would reasonably be expected to cause a material adverse effect on the ability of the Debtors taken as a whole to perform each of their DIP Obligations;

(g) a plan of reorganization shall be confirmed in any of the Cases that does not provide for termination of the Commitments under the Facility and payment in full in cash of the DIP Obligations on the effective date of such plan of reorganization or liquidation, any order shall be entered which dismisses any of the Cases and which order does not provide for termination of the Commitments under the Facility and payment in full in cash of the DIP Obligations, or any of the Debtors shall seek, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order;

(h) the Debtors shall take any action in support of any of the foregoing or any person other than the Debtors shall do so and such application is not contested in good faith by the Debtors and the relief requested is granted in an order that is not stayed pending appeal;

(i) any DIP Document (and the liens granted thereunder) shall cease to be in full force and effect or shall be contested by Debtors or any of their affiliates;

(j) any of the Debtors or their affiliates shall fail to comply with the Interim Order or Final Order;

(k) any of the Debtors (A) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), in respect of the DIP ABL Facility, or (B) fails to observe or perform any other

agreement or condition relating to the indebtedness under the DIP ABL Facility, or any other event occurs, the effect of which default or other event 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 or beneficiary or beneficiaries) to cause, with the giving of notice if required or the lapse of time or both, such indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise) prior to its stated maturity, unless such default or event set forth in this clause (B) is cured or waived within ten (10) days after the occurrence of such default or event;

(l) any violation of the Budget covenants;

(m) the entry of an order by the Bankruptcy Court invalidating, disallowing or limiting in any respect, as applicable, the enforceability, priority, or validity of the Notes;

(n) subject to customary grace periods to be agreed, the failure to pay fees or professional fees, costs and expenses to or for the benefit of the DIP Agent or the Note Purchasers when and as provided for under the Orders and the DIP Documents;

(o) the failure to make any principal or interest payments under the Facility when due;

(p) noncompliance with covenants and breaches of representations and warranties;

(q) the occurrence of an ERISA Event (to be defined) (other than as a result of the Case) and the amount of all liabilities and deficiencies resulting therefrom, whether or not assessed, exceeds an amount in the aggregate to be agreed;

(r) change of ownership or control of any Debtor except as set forth in a plan of reorganization reflecting the terms and conditions set forth in the Plan Support Agreement and otherwise reasonably satisfactory to the Requisite Note Purchasers;

(s) the sale of all or substantially all of the assets of any Debtor pursuant to Section 363 of the Bankruptcy Code or otherwise;

(t) the failure by the Debtors to meet the timing of any Milestone;

(u) loss of exclusivity by the Debtors; and

(v) the Chief Restructuring Officer shall cease to be employed by the Debtors or shall be hindered in any material respect from performing his or her duties by the Debtors or any of their affiliates.

Milestones:

If the Debtors fail to meet any of the following milestones (the "Milestones"), it shall constitute an Event of Default under the Facility:

DIP ABL Facility: On or prior to the Interim Order Entry Date, the Debtors shall have received Bankruptcy Court approval for the DIP ABL Facility in form and substance reasonably satisfactory to the Initial Note Purchasers and subject to the terms of the Intercreditor Agreement, to be drawn and applied as per the Budget during the Cases.

Exit ABL Facility: On or prior to the Petition Date, the Debtors shall have received the Exit ABL Commitment Letter. The Debtors shall have obtained final Bankruptcy Court approval for such Exit ABL Facility on or prior to the date that is thirty-five (35) days after the Petition Date pursuant to an order of the Bankruptcy Court in form and substance reasonably satisfactory to the Initial Note Purchasers (the "Exit ABL Order"). The definitive documentation of the Exit ABL Facility shall be in form and substance reasonably satisfactory to the Note Purchasers.

Leases: Within forty-five (45) calendar days after the Petition Date, the Debtors shall have obtained entry of an order of the Bankruptcy Court extending the time for the Debtors to assume or reject their leases of commercial property to not less than 210 days after the Petition Date.

Disclosure Statement and Plan: On or prior to (x) May 16, 2011, the Debtors shall have filed a disclosure statement in form and substance reasonably satisfactory to the Requisite Note Purchasers and a chapter 11 plan of reorganization of the Debtors, which plan of reorganization provides for the indefeasible payment in full in cash and satisfaction of the DIP Obligations prior to the effective date of such plan of reorganization (a "Plan"), and (y) June 29, 2011, the Debtors

shall have obtained entry of an order of the Bankruptcy Court approving such disclosure statement.

Confirmation: On or prior to September 12, 2011, the Debtors shall have obtained an order of the Bankruptcy Court confirming a Plan.

Emergence: On or prior to October 1, 2011, the effective date under a Plan shall have occurred.

Milestones to be amended only with the consent of the Requisite Note Purchasers, which consent shall not be withheld if the delay for meeting such Milestones is due solely to the Note Purchasers review and approval of the documents, plans or orders with respect to such Milestones.

Rights and Remedies Upon Event of Default:

Modification of Automatic Stay: The Interim Order and the Final Order shall provide that, upon the occurrence and during the continuation of an Event of Default under the Facility and after the expiration of the three-business day notice referenced below, the automatic stay shall be deemed lifted without any further action by the Bankruptcy Court, (i) permitting the termination of the Debtors' authority to use cash DIP Collateral, the acceleration of all DIP Obligations, the termination of any commitments under the Facility, and the exercise of other post-default remedies under the DIP Agreement and other DIP Documents for the Facility (other than those described in clause (ii) below), and (ii) upon five (5) Business Days' notice to the Debtors, counsel to any creditors' committee, and the United States Trustee, permitting the DIP Agent and the Note Purchasers to exercise any and all enforcement remedies with respect to the DIP Collateral, including, without limitation, the disposition of the DIP Collateral solely for application to the DIP Obligations; provided, that the sole basis on which the Debtors can contest the automatic lifting of the automatic stay is on the grounds that an Event of Default has not occurred or has been cured. The Debtors and other parties-in-interest may request an expedited hearing on any motion seeking such a finding, and the DIP Agent shall consent to such expedited hearing.

Access to DIP Collateral/No Landlord's Liens: Upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the DIP Documents, the DIP Agent may, subject to any separate agreement by and between such landlord and the DIP Agent

(a "Separate Agreement"), enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and, subject to the Separate Agreement, shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from such landlord; provided, that, subject to such Separate Agreement, the DIP Agent shall only pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP Agent, calculated on a per diem basis. Nothing herein shall require the DIP Agent to assume any lease as a condition to the rights afforded to the DIP Agent in this paragraph or impair the Debtors' rights under the lease except as contemplated by the preceding sentence or under Section 365 of the Bankruptcy Code.

Conditions Precedent to Initial Issuance and Final Issuance:

The obligation of the Note Purchasers to purchase DIP Notes under the Facility on each Issuance Date will be subject to customary closing conditions and such other conditions as set forth herein.

The conditions to each Issuance Date will include, without limitation, the following:

(a) As a result of such issuances, usage of the Aggregate Commitment shall not exceed the lesser of (i) the Aggregate Commitment and (ii) the amount authorized by the Interim Order or the Final Order, as applicable;

(b) The Interim Order or Final Order, as the case may be, shall be in full force and effect, and shall not have been reversed, modified, amended, stayed for a period of five business days or longer, vacated or subject to a stay pending appeal, in the case of any modification, amendment or stay pending appeal, in a manner, or relating to a matter, that is materially adverse to the interests of the Note Purchasers;

(c) The Debtors shall maintain a chief restructuring officer acceptable to the Requisite Note Purchasers (the "Chief Restructuring Officer") it being understood that the current chief restructuring officer of the Debtors shall be deemed to be acceptable to the Requisite Note Purchasers;

(d) The Debtors shall have paid the balance of all fees then due and payable as referenced herein; and

(e) Each of the Cases shall have been commenced no later

than March 28, 2011.

Assignments and Participations: Notwithstanding anything contained herein to the contrary, each of the Initial Note Purchasers agrees that no portion of the Initial Commitments may be assigned without the prior written consent of each of the Initial Note Purchasers, other than an assignment to: (i) any Initial Note Purchaser's affiliates or funds and/or accounts that it manages or advises or (ii) any other Initial Note Purchaser or its affiliates or funds and/or accounts that it manages or advises.

After the Final Issuance Date, each Note Purchaser may, subject to the prior written consent of the Issuer, which consent shall not be unreasonably withheld, delayed or conditioned, assign all or any part of the DIP Notes or Final Commitments held by it to one or more banks, financial institutions or other entities, provided, however, no such consent from the Issuer shall be required for any assignment by a Note Purchaser of all or any part of their DIP Notes or Final Commitments held by it to: (x) any of such Note Purchaser's affiliates or funds and/or accounts that it manages or advises and (y) any other Note Purchaser or its affiliates or funds and/or accounts that it manages or advises; provided, further, following the occurrence and during the continuance of an Event of Default, no consent of the Issuer shall be required for any assignment; provided, further, that in no event shall any assignment by a Note Purchaser be to a Debtor or any entity controlled by a Debtor nor shall any Debtor or any entity controlled by a Debtor be a holder of any DIP Notes or Final Commitments. Upon such assignment, such affiliate, bank, financial institution or entity will become a Note Purchaser for all purposes under the DIP Documents (to the extent it is not already a Note Purchaser under the DIP Documents). Each Note Purchaser will also have the right to sell participations, subject to customary limitations on voting rights, in the Facility.

Requisite Note Purchasers: "Requisite Note Purchasers" means, as of the applicable reference date, Note Purchasers holding more than fifty percent (50%) of the aggregate Total Exposure under the Facility. The vote of the Requisite Note Purchasers shall be required to amend, waive or modify such Facility, except that with respect to matters relating to, among others, the reduction in, or compromise of payment rights with respect to, principal or interest rates, extension of maturity, the pro-rata sharing provisions, release of guarantees and/or liens granted on all or substantially all of the DIP Collateral (other

than liens on DIP Collateral subject to permitted dispositions), any waiver of the covenants set forth in clauses (a) or (b) of "Negative Covenants" above and the definition of Requisite Note Purchasers, Requisite Note Purchasers will be defined as Note Purchasers holding 100% of the aggregate Total Exposure under the Facility.

Taxes: The Facility will include customary provisions reasonably acceptable to the Initial Note Purchasers to the effect that all payments are to be made free and clear of any taxes (other than applicable franchise taxes and taxes on overall net income), imposts, assessments, withholdings or other deductions whatsoever, subject to customary qualifications.

Indemnity; Expenses: The Debtors shall jointly and severally pay promptly after receipt of an invoice from the DIP Agent or counsel to the Initial Note Purchasers, regardless of whether any transactions contemplated hereby are ever actually consummated, all (i) (A) other than with respect to the fees and out-of-pocket costs and expenses of counsel and financial advisors to each DIP Agent, the Revolving DIP Lenders and the Initial Note Purchasers, all reasonable fees and out-of-pocket costs and expenses of the DIP Agent, the Revolving DIP Lenders and the Initial Note Purchasers and (B) with respect to the fees and out-of-pocket costs and expenses of counsel and financial advisors to DIP Agent, the Revolving DIP Lenders and the Initial Note Purchasers, all reasonable fees and out-of-pocket costs and expenses of the following: (i) Ropes & Gray LLP and its local counsel, (ii) Paul, Hastings, Janofsky & Walker LLP and its local counsel, (iii) Stroock & Stroock & Lavan LLP and its local counsel, (iv) Munger, Tolles & Olson LLP and its local counsel (if any), (v) Akin Gump Strauss Hauer & Feld LLP, (y) Moelis & Company (excluding any success fees), and (vi) other professional advisors hired by any of the foregoing counsel named or referenced above (collectively, the "DIP Professionals"), in each case, in connection with the preparation, execution and delivery of the DIP Documents and the consummation of the transactions contemplated under the DIP Facilities and hereby, including, without limitation, all due diligence, syndication (including printing, distribution and bank meeting), transportation, computer, duplication, messenger, audit, insurance, appraisal, valuation and consultant costs and expenses, and all search, filing and recording fees, incurred or sustained by the DIP Agents and the DIP Lenders in connection with the DIP Facilities, the

DIP Documents or the transactions contemplated thereby, the administration of the DIP Facilities and any amendment or waiver of any provision of the DIP Documents; and (b) out-of-pocket costs and expenses of the DIP Agents, the Revolving DIP Lenders and the Initial Note Purchasers (including fees, expenses and disbursements of the DIP Professionals) incurred in connection with (i) enforcing the Interim Order or any DIP Document or DIP Obligation or any security therefor or exercising or enforcing any other right or remedy available by reason of an Event of Default (as defined in the applicable DIP Documents); (ii) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or in any insolvency or bankruptcy proceeding; (iii) commencing, defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to the DIP Obligations or any Debtor and related to or arising out of the transactions contemplated hereby or by any of the DIP Documents; and (iv) in taking any other action in or with respect to any suit or proceeding (bankruptcy or otherwise) described in clauses (i) through (iv) above.

The Debtors shall promptly reimburse each DIP Agent, the Revolving DIP Lenders and the Initial Note Purchasers for such invoiced amounts within ten (10) calendar days (if no written objection is received within such ten (10) calendar day period) after delivery of an invoice describing such fees, costs, and expenses substantially in the form provided in the ordinary course of business; provided, however, that any such invoice may be redacted to protect privileged, confidential or proprietary information. A copy of each invoice submitted to the Debtors shall simultaneously be sent to the U.S. Trustee and counsel for the Committee (if appointed). Any written objection to such fees, costs or expenses must contain a specific basis for the objection and a quantification of the undisputed amount of the fees, costs and expenses invoiced; failure to object with specificity or to quantify the undisputed amount of the invoice subject to such objection will constitute a waiver of any objection to such invoice. None of such fees, costs and expenses shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court.

The Debtors shall jointly and severally indemnify and hold harmless the DIP Agent, each Note Purchaser and each of their affiliates and each of the respective officers, directors, employees, controlling persons, agents, advisors, attorneys and representatives of each (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto, arising out of or in connection with or relating to the Facility, the DIP Documents or the transactions contemplated thereby, or any use made or proposed to be made with the proceeds of the Facility, whether or not such investigation, litigation or proceeding is brought by any Debtor or any of its subsidiaries, any shareholders or creditors of the foregoing, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby or under the DIP Documents are consummated, except to the extent such claim, damage, loss, liability or expense is found in a final non appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any of their subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. In no event, however, shall any Indemnified Party be liable on any theory of liability for any special, indirect, consequential or punitive damages.

Governing Law and Jurisdiction: The Facility will provide that the Debtors, the DIP Agent and the Note Purchasers will submit to the non-exclusive jurisdiction and venue of the Bankruptcy Court, or in the event that the Bankruptcy Court does not have or does not exercise jurisdiction, then in any state or federal court of competent jurisdiction in the state, county and city of New York, borough of Manhattan; and shall waive any right to trial by jury. New York law shall govern the DIP Documents (other than security documents to be governed by local law,

to be determined by the Initial Note Purchasers).

Cooperation: The Debtors will assist the DIP Agent and the Initial Note Purchasers in the syndication of the Facility as reasonably requested by them, and will provide customary information and documents in connection therewith.

Local Rule 4001-2

21. Rule 4001-2 of the Local Rules requires that certain provisions contained in the DIP agreements be highlighted and that the Debtors provide justification for the inclusion of such highlighted provision(s).

22. Local Rule 4001-2(a)(i) provides:

> Provisions to be Highlighted. All Financing Motions must (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement and (c) justify the inclusion of such provision:
>
> (A) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);
>
> (B) Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters;
>
> (C) Provisions that seek to waive, without notice, whatever rights the estate may have under 11 U.S.C. § 506(c);
>
> (D) Provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548 and 549;
>
> (E) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured

creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);

(F) Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve out; and

(G) Provisions that prime any secured lien without the consent of that lienor.

26. The Debtors believe that they should identify and discuss the following provisions of the DIP Documents and Interim Order in accordance with Local Rule 4001-2 in the context and circumstances of these cases.

(i) Local Rule 4001-2(a)(i)(B)

23. Local Rule 4001-2(a)(i)(B) requires a movant to identify provisions that bind the estates or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if formed, at least 60 days from the date of its formation to investigate such matters. See Del. Bankr. L.R. 4001- 2(a)(i)(B).

24. Paragraph 17 of the Interim Order provides that the Committee (as defined in the Interim order) (or any non-Debtor party-in-interest, including any Chapter 11 trustee or examiner appointed in the Chapter 11 Cases) shall have a maximum of sixty (60) calendar days from the date of the Committee's appointment, but in no event later than seventy-five (75) calendar days from entry of the Interim Order to investigate and commence an adversary proceeding or contested matter, as required by the applicable Bankruptcy Rules, and challenge the findings, the Debtors' stipulations, or any other stipulations in the Interim Order, including, without limitation, any challenge to the validity, priority, perfection or enforceability of the Prepetition Revolving

Liens, the Prepetition Revolving Obligations or the Prepetition Note Obligations, or to assert any claim or cause of action against the Prepetition Secured Entities or the Prepetition Note Parties arising under or in connection with the Prepetition Revolving Obligations or the Prepetition Note Obligations, as the case may be, whether in the nature of a setoff, counterclaim or defense of Prepetition Revolving Obligations or the Prepetition Note Obligations, or otherwise, and to file a motion seeking standing to pursue such challenge on or before the expiration of the Investigation Period. Because this provision affords parties in interest the requisite investigation period, the Debtors respectfully submit that it complies with the Local Rules.

(ii) Local Rule 4001-2(a)(i)(C)

25. Local Rule 4001-2(a)(i)(C) requires explicit disclosure of provisions that constitute a waiver, without notice, of the estates' rights under Bankruptcy Code Section 506(c). Paragraph 19 of the Interim Order provides that upon the entry of the Final Order and to the extent such order so provides, the Debtors shall irrevocably waive and shall be prohibited from asserting any surcharge claim, under section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment), for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Secured Lending Entities upon the DIP Collateral or the Prepetition Collateral (each as defined in the Interim Order) (as applicable). Because this waiver only will be effective upon entry of the Final Order and to the extent such order so provides, the Debtors respectfully submit that parties in interest will have an opportunity to be heard and, as such, the waiver will not be "without notice."

(iii) Local Rule 4001-2(a)(i)(D)

26. Local Rule 4001-2(a)(i)(D) requires disclosure of provisions under which the Debtors immediately grant the prepetition secured lenders liens on the Debtors' claims or causes of action under 11 U.S.C. §§ 544, 545, 547, 548 and 549 (the "Avoidance Actions"). Paragraph 13 of the Interim Order provides that, upon the entry of the Final Order and to the extent such order so provides, (i) the DIP Notes Agent and the DIP Note Purchasers, as security for the DIP Note Obligations, and (ii) the Revolving DIP Agent and the Revolving DIP Lenders, as security for the Revolving DIP Obligations, are granted valid and perfected security interests in, and liens on the DIP Collateral (as defined in the Interim Order), including the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code.

27. This provision, as it relates to the granting of a security interest and lien on the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code, is subject to the approval of the court in the Final Order. As such, the Debtors respectfully submit that prepetition secured lenders are not being granted liens on the Avoidance Actions "immediately" and parties in interest will have an opportunity to be heard.

(iv) Local Rule 4001-2(a)(i)(G)

28. Pursuant to Local Rule 4001-2(a)(i)(G), a movant must describe provisions of the proposed debtor in possession facility that contemplates a priming of any secured lien without the consent of that lienor. See Del. Bankr. L.R. 4001-2(a)(i)(G).

29. The DIP Facilities are "priming" facilities inasmuch as the DIP Facilities will be secured by first priority, senior, priming, perfected lien on and security interest in all of the Debtors' right, title and interest in, to and under the DIP Collateral (as defined in the Interim Order) that is subject to or encumbered by a validly perfected, unavoidable security interest or lien on the Petition Date or subsequently perfected thereafter. The Prepetition Revolving

Lenders have consented to the terms of the DIP Documents and the Interim and Final Orders, including the priming of their liens, and, in any case, such lenders had no outstanding loans as of the Petition Date.

30. In addition to the provisions above described as required by the Local Rules, the DIP Documents and the Interim Order contain certain other provisions that the Debtors believe the Court likely would want the Debtors to highlight, even though these provisions are noted in the term sheet description of the facilities set forth in this Motion. In particular, the DIP Note Purchase Agreement contains various plan of reorganization related "milestones" that the Debtors must meet throughout their chapter 11 cases, and failure to meet such milestones constitutes an event of default under such facility. In addition, the DIP Note Purchase Agreement requires that the Debtors receive a commitment to provide exit financing prior to the Petition Date and obtain final approval from the Bankruptcy Court to enter into the Exit Facility on or prior to the date that is thirty-five (35) days after the Petition Date. As such, the Debtors are hereby seeking, at the time of the hearing on final approval of the debtor-in-possession financing facilities, authority to enter into and approval of the Exit Facility (for which the Debtors did contain a commitment prior to the Petition Date) under terms substantially similar to the DIP Revolving Loan Facility and as set forth in the Final Order.

Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code Provide a Basis for the Relief Requested

31. Bankruptcy Code Section 364(c) provides:

> If the [debtor in possession] 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 this title;

(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).

32. Bankruptcy Code Section 364(d)(1) provides:

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 [debtor in possession] 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.

11 U.S.C. § 364(d).

33. Bankruptcy Rule 4001(c)(2) provides, in relevant part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2).

34. Bankruptcy Rule 4001(d) provides, in relevant part, that (i) a motion for approval to modify or terminate the automatic stay shall be served on any committee appointed pursuant to Bankruptcy Code Section 1102, on the creditors included on the list filed under Bankruptcy Rule 1007(d), and on such other entities as the court may direct, and (ii) objections may be filed within 14 days of the mailing of the notice of the motion and the time for filing objections thereto. See Fed. R. Bankr, P. 4001(01) - (2).

The DIP Documents

35. As set forth above, based on discussions with potential lenders other than the DIP Lenders, the Debtors were unable to obtain postpetition financing on an unsecured basis in an amount, and within the timeframe, that the Debtors' current liquidity situation mandated. The Debtors negotiated the DIP Documents at arm's-length and have determined, in the exercise of their business judgment, that it is the best proposal under the circumstances. Provided that this judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its business judgment. See, e.g., In re Ames Dept. Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (courts have discretion under Bankruptcy Code § 364 to permit debtors to exercise reasonable business judgment so long as (i) the terms of the financing agreement do not "leverage the bankruptcy process and powers" and (ii) the financing agreement's purpose is primarily to benefit the estate, and not a party in interest).

36. The financing under the DIP Documents provides additional liquidity to the Debtors sufficient to enable them, inter alia, to (i) minimize disruption to their business and operations, (ii) preserve and maximize the value of their estates for the benefit of all creditors, (iii) avoid immediate and irreparable harm to their businesses, their creditors and their employees, and their assets and (iv) permit the Debtors to reorganize. Without the financing provided for in the DIP Documents, the Debtors will not be able to meet the operating expenses necessary to the Debtors' ordinary course operations, they will suffer irreparable harm and their entire reorganization effort will be jeopardized.

37. The Debtors believe that the terms and conditions of the DIP Documents are fair and reasonable under the circumstances. Accordingly, the Debtors request that the DIP Lenders be afforded the benefits of Bankruptcy Code Section 364(e) in respect of the DIP Documents.

Based upon the foregoing, the Debtors respectfully request that the Court approve the DIP Documents in accordance with the terms set forth in the Interim Order and the DIP Documents.

Request to File Fee Letters Under Seal

38. In connection with the DIP Documents, the Debtors have agreed to pay all amounts due under the Fee Letters (as defined in the Interim Order). The public disclosure of the confidential and proprietary information in the Fee Letters has the potential to harm the DIP Lenders' business and impair their ability to syndicate such facilities in the future. It is essential that the DIP Lenders' highly-sophisticated and proprietary methodology for calculating the fees remain confidential.

39. Accordingly, the Debtors also request, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Rule 9018 of the Bankruptcy Rules and Local Rule 9018-1(b), authorization to file the Fee Letters (as defined in the Interim Order) under seal. See In re Global Crossing, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (stating that the purpose of Bankruptcy Rule 9018 is to "protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury."); Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 27 (2d. Cir. 1994)(stating the Section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and that under this exception, an interested party has to show only that the information it wishes to seal is "confidential and commercial" in nature). The relief requested in this Motion is similar to the relief granted in other recent chapter 11 cases in Delaware. See, e.g., In re Xerium Technologies, Inc., No. 10-11031 (KJC) (Bankr. D. Del. Mar. 31, 2010) (authorizing the debtors to file fee letter in connection with debtor-in-possession financing under seal at first day hearing) [Docket No. 66]; In re Tribune Co., No. 08-13141 (KJC) (Bankr. D. Del. Dec. 10, 2010) (same) [Docket No. 62]. The Debtors submit that similar relief is warranted here.

Use of Cash Collateral

40. In connection with their need for debtor in possession financing, the Debtors also require use of Cash Collateral once the Debtors grant liens under the proposed debtor-in-possession financing facilities, including liens on cash and cash equivalents. Again, as of the Petition Date, there were no outstanding loans under the Debtors' prepetition revolving credit facility, so effectively the Debtors had no secured long-term debt as of the Petition Date.

41. Bankruptcy Code Section 363(c)(2) provides that the Debtors 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." 11 U.S.C. § 363(c)(2). Also, the DIP Documents grant to (i) the Revolving DIP Agent, for the benefit of the Revolving DIP Agent and the Revolving DIP Lenders and (ii) the DIP Notes Agent, for the benefit of the DIP Notes Agent and the DIP Note Purchasers, security interests, liens and super-priority claims on all of the DIP Collateral (as defining in the Interim Order), including, without limitation, all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code.

42. The Prepetition Revolving Lenders and all the DIP Lenders have consented to the Debtors' use of Cash Collateral on the terms and conditions set forth in the Interim Order and the DIP Documents. Based upon the foregoing, the Debtors respectfully request that the Court authorize the Debtors to use the Cash Collateral in accordance with the terms set forth in the Interim and Final Orders.

Modification of the Automatic Stay

43. Bankruptcy Code Section 362 provides for an automatic stay upon the filing of a bankruptcy petition. The proposed DIP Documents contemplate the modification of the automatic stay (to the extent applicable), to the extent necessary to permit the (i) Debtors,

(ii) DIP Notes Agent and DIP Note Purchasers, (iii) Revolving DIP Agent and Revolving DIP Lenders and (iv) Prepetition Secured Entities to implement the terms of the Interim Order, and as otherwise provided therein.

44. Stay modification provisions of this type are standard features of postpetition debtor in possession financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order and DIP Documents.

Interim Approval of the DIP Revolving Loan Facility and DIP Notes Facility

45. As set forth above, Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral pursuant to Bankruptcy Code Section 363 or to obtain credit under Bankruptcy Code Section 364 may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and to authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

46. The Debtors respectfully request that the Court conduct a preliminary hearing on the Motion and authorize the Debtors from the entry of the Interim Order until the Final Hearing to obtain credit under the terms contained in the DIP Documents and to utilize Cash Collateral.

Approval of the Exit Facility in the Final Order

47. Among the "milestones" in the DIP Note Purchase Agreement, the Debtors are required to obtain final approval from the Bankruptcy Court to enter into the Exit Facility on or prior to the date that is thirty-five (35) days after the Petition Date. As such, the Debtors are seeking authority to enter into and approval of the Exit Facility, at the time of the hearing on

final approval of this Motion, under the terms substantially similar to the DIP Revolving Loan Facility.

48. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use, sale or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts generally authorize such transactions if (i) the debtor has an articulated sound business decision, (ii) the debtor provides notice to creditors and (iii) a hearing is held. See e.g., In re Martin, 91 F.3d 389, 395 (3d Cir. 1996) (citing In re Schipper, 933 F.2d 513, 515 (7th Cir. 1991); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999).

49. Bankruptcy courts have approved a debtor's entry into exit financing agreements and incurring obligations in connection with exit financing on the basis of a debtor's reasonable business judgment. See e.g., In re AbitiBowater Inc., No. 09-11296 (KJC) (Bankr. D. Del. Aug. 24, 2010) ("The Debtors are authorized to enter into, execute, deliver and perform under the Exit Financing Agreements and all related documents and agreements thereto, and to take all actions in connection therewith."); In re Mirant Corp., No. 03-46590 (DML) (Bankr. N.D. Tex. May 13, 2005) ("entry into the Commitment Letter is in the best interest of the Debtors' estates and creditors and represents a sound exercise of the Debtors' business judgment").

50. The Debtors have exercised their business judgment in seeking to fulfill the milestone under the DIP Note Purchase Agreement that requires the Debtors to obtain final approval from the Bankruptcy Court to enter into the Exit Facility on or prior to the date that is thirty-five (35) days after the Petition Date. If the Debtors fail to satisfy their milestone, the Debtors will trigger a default under the DIP Note Facility and lose the financing provided therein. In such a case, the Debtors will not be able to meet the operating expenses necessary to

the Debtors' ordinary course operations, they will suffer irreparable harm and their entire reorganization effort will be jeopardized. Moreover, the terms of the Exit Facility are the product of good-faith negotiations at arm's length, are reasonable given the magnitude of these chapter 11 cases and provide the Debtors with financing to exit chapter 11 in an expeditious manner. Based upon the foregoing, the Debtors respectfully request that the Court authorize the Debtors, at the Final Hearing, to obtain credit under the Exit Facility.

Establishing Notice Procedures and Scheduling Final Hearing

51. The Debtors respectfully request that the Court schedule the Final Hearing and authorize them to mail copies of the Motion and the signed Interim Order, which fixes the time, date and manner for the filing of objections, to (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (iii) counsel to the Debtors' proposed postpetition secured lenders; (iii) the Securities and Exchange Commission; (iv) counsel to the DIP Notes Agent; (v) counsel to the Revolving DIP Agent; (vi) the Prepetition Revolving Agent; (vii) counsel to that certain ad hoc committee of holders of the Notes; and (viii) any other parties requesting such notice. The Debtors request that the Court approve such notice of the Final Hearing, including without limitation, notice[9] that the Debtors will seek (i) approval at the Final Hearing of (a) a waiver of rights under Bankruptcy Code Section 506(c) and (b) the granting of liens on the proceeds of the Debtors' avoidance actions under chapter 5 of the Bankruptcy Code; and (ii) authorization to obtain exit financing.

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[9] Local Rule 2002-1(b) provides that "[i]n chapter 11 cases, all motions . . . shall be served only upon counsel for the debtor, the United States Trustee, counsel for all official committees, all parties who file a request for service of notices under Fed. R. Bankr. P. 2002(i) and all parties whose rights are affected by the motion. If an official unsecured creditors' committee has not been appointed, service shall be made on the twenty (20) largest unsecured creditors in the case in lieu of the creditors' committee."

Notice

52. Notice of this Motion and the signed Interim Order shall be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; and (iii) counsel to the Debtors' proposed postpetition secured lenders (iii) the Securities and Exchange Commission; (iv) counsel to the DIP Notes Agent; (v) counsel to the Revolving DIP Agent; (vi) the Prepetition Revolving Agent; (vii) counsel to that certain ad hoc committee of holders of the Notes; and (viii) any other parties requesting such notice. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as Exhibit A: (i) granting the relief sought herein; and (ii) granting to the Debtors such other and further relief as the Court may deem proper

Dated: March 28, 2011
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel J. DeFranceschi

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
HARRY & DAVID HOLDINGS, INC, *et al.*,[1]	:	Case No. 11-_____ (____)
Debtors.	:	(Joint Administration Pending)

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 107, 361, 362, 363, 364 AND 507 AND RULES 2002, 4001, 9014 AND 9018 OF THE FEDERAL RULES OF BANKRUPTCY (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POST-PETITION FINANCINGS, (B) USE CASH COLLATERAL AND (C) FILE RELATED FEE LETTERS UNDER SEAL; (II) GRANTING LIENS AND SUPER-PRIORITY CLAIMS, (III) SCHEDULING A FINAL HEARING; AND (IV) GRANTING RELATED RELIEF

This matter is before the Court on the motion dated March __, 2011 (the "Motion")[2] of Harry & David Holdings, Inc. ("HND") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors") in the above-referenced chapter 11 cases (collectively, the "Chapter 11 Cases"), for entry of an interim order (this "Interim Order") and a final order ("Final Order"), under sections 105, 107, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), and Rules 2002, 4001, 9014 and 9018 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Rules 4001-2 and 9018-1(b) of the Local Rules of

[1] The Debtors are the following four entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Harry & David Holdings, Inc. (4389); Harry and David (1765); Harry & David Operations, Inc. (1427); Bear Creek Orchards, Inc. (7216). The address of each of the Debtors is 2500 South Pacific Highway, Medford, Oregon 97501.

[2] All defined terms shall have the meaning ascribed to them in the DIP Documents (as defined below) unless otherwise defined herein.

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), seeking, among other things:

A. DIP Revolving Loan Facility.

(1) authorization for Harry and David, an Oregon corporation (with respect to the DIP Revolving Loan Facility (defined below), the "Borrower") to obtain secured post-petition financing in the form of a senior secured, super-priority revolving asset-based credit facility (the "DIP Revolving Loan Facility") with commitments in an aggregate principal amount up to $100 million, inclusive of letters of credit issued and outstanding under the Prepetition Revolving Loan Documents (as defined below), which shall be deemed to have been issued under the DIP Revolving Loan Facility (together with interest and reasonable fees, charges and expenses that are, in each case, payable under the DIP Revolving Loan Documents) pursuant to that certain $100.0 million Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of March __, 2011, by and among the Borrower, Harry & David Holdings, Inc., Bear Creek Orchards, Inc., and Harry & David Operations, Inc., as guarantors, the lenders party thereto, UBS Securities LLC, as lead arranger, UBS Loan Finance LLC, as a lender and as a swingline lender, UBS AG, Stamford Branch, as issuing bank, administrative collateral agent and administrative agent for the lenders (in such capacities, together with its successors and permitted assigns, the "Revolving DIP Agent"), and Ally Commercial Finance LLC, as collateral agent for the lenders, as documentation agent, and as a lender (together with UBS Loan Finance LLC, the "Revolving DIP Lenders"), substantially in the form attached hereto as Exhibit A (as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the "DIP Revolving

Loan Agreement", and together with any related notes, certificates, agreements, security agreements, documents (including, without limitation, the Fee Letter (as defined in the DIP Revolving Loan Agreement) and instruments (including any amendments, restatements, supplements or modifications of any of the foregoing) related to or executed in connection therewith, the "DIP Revolving Loan Documents"), and (b) for each other Debtor to jointly and severally guarantee the payment and performance of the obligations under the DIP Revolving Loan Facility, in each case, pursuant to the terms of the DIP Revolving Loan Documents and this Interim Order;

(2) authorization for the Debtors to execute and enter into the DIP Revolving Loan Documents and to perform their respective obligations thereunder and such other and further acts as may be required in connection with the DIP Revolving Loan Documents, including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Revolving Loan Documents (the "Revolving DIP Obligations") as such amounts become due and payable;

(3) authorization for the Debtors to grant security interests, liens and super-priority claims (including a super-priority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) on all of the DIP Collateral (defined below), including, without limitation, all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code, to the Revolving DIP Agent, for the benefit of the Revolving DIP Agent and the Revolving DIP Lenders, to secure all of the Debtors' Revolving DIP Obligations, as more fully set forth in this Interim Order, in each case, subject to the terms of that certain

Intercreditor Agreement dated as of March __, 2011, substantially in the form attached hereto as Exhibit B (the "DIP Intercreditor Agreement"), by and between the Revolving DIP Agent and the DIP Notes Agent (defined below);

B. DIP Notes Facility

(1) authorization for (a) Harry and David, one of the Debtors (with respect to the DIP Notes Facility (as defined below), the "Issuer"), to obtain secured post-petition financing, consisting of a super-priority junior debtor-in-possession notes facility in an aggregate principal amount not to exceed $55 million (the "DIP Notes Facility" and together with the Revolving DIP Facility, the "DIP Facilities"), pursuant to that certain Junior Secured Super-Priority Debtor-in-Possession Note Purchase Agreement, dated as of March ___, 2011, by and among the Debtors, Wilmington Trust FSB, as administrative agent (in such capacity, together with its successors and permitted assigns, the "DIP Notes Agent", and together with the Revolving DIP Agent, the "DIP Agents"), and each of the DIP Note Purchasers party thereto, substantially in the form attached hereto as Exhibit C (as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the "DIP Note Purchase Agreement", and together with any related notes, certificates, agreements, documents and instruments, including without limitation, the Fee Letters (as defined in the DIP Note Purchase Agreement) (including any amendments, restatements, supplements or modifications of the foregoing) related to or executed in connection therewith, the "DIP Note Documents", and together with the DIP Revolving Loan Documents, the "DIP Documents"), and (b) for each other Debtor to jointly and severally guarantee the payment and performance of the Issuer's obligations under the DIP Notes Facility on a

secured and super-priority basis, as more fully set forth in this Interim Order (subject to the terms of the DIP Intercreditor Agreement);

(2) authorization for the Debtors to execute and enter into the DIP Note Documents and to perform their respective obligations thereunder and such other and further acts as may be required in connection with the DIP Note Documents including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Note Documents (collectively, the "DIP Note Obligations" and together with the Revolving DIP Obligations, the "DIP Obligations"), as such amounts become due and payable;

(3) authorization for the Debtors to grant security interests, liens and super-priority claims (including a super-priority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) on all of the DIP Collateral (defined below), including, without limitation, all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code, to the DIP Notes Agent, for the benefit of the DIP Notes Agent and the DIP Note Purchasers, to secure all obligations of the Debtors under and with respect to the DIP Note Obligations;

C. Fees and Expenses.

Authorization for the Debtors to make non-refundable payments of the principal, interest, fees, expenses and other amounts payable under each of the DIP Documents to the respective DIP Agents, the Revolving DIP Lenders and the DIP Note Purchasers (collectively, the "DIP Lenders"), in each case, as they become due, including, without

limitation, letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, servicing fees, audit fees, structuring fees, administrative agent's fees, the fees and disbursements of attorneys, advisers, accountants, and other consultants, and the legal expenses of the respective DIP Agents and DIP Lenders, all to the extent provided by and in accordance with the terms of the respective DIP Documents and the terms hereof.

D. Cash Collateral.

Authorization for the Debtors' limited use of cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (as so defined, "Cash Collateral"), (i) in which the lenders (such lenders in such capacities, the "Prepetition Revolving Lenders") under that certain credit agreement dated as of March 20, 2006, as amended by that certain First Amendment dated as of June 21, 2007, as further amended by that certain Consent and Second Amendment dated as of August 8, 2008, as further amended by that certain Third Amendment dated as of July 7, 2010 (as further amended prior to the date hereof, the "Prepetition Revolving Loan Agreement"), by and among HND, as borrower, and the other guarantor parties thereto, UBS AG, Stamford Branch, as issuing bank, administrative collateral agent and administrative agent (in such capacity, the "Prepetition Revolving Agent"), GMAC Commercial Finance LLC (n/k/a Ally Commercial Finance LLC) as collateral and documentation agent, UBS Securities LLC as arranger, and UBS Loan Finance LLC as swingline lender, and (ii) the DIP Lenders under the DIP Documents have an interest, subject to the terms and conditions set forth in this Interim Order.

E. Interim and Final Relief.

(1) an emergency interim hearing (the "Interim Hearing") on the Motion for this Court to consider entry of this Interim Order, which authorizes the Debtors, on an interim basis, to (A) issue and sell the DIP Notes to the DIP Note Purchasers in an aggregate principal amount of $30 million on the Closing Date (as defined in the DIP Notes Purchase Agreement), and upon the Bankruptcy Court's entry of the Final Order, a subsequent issuance and sale of $25 million in aggregate principal amount of DIP Notes, in each case, subject to the terms and conditions of this Interim Order and the DIP Note Documents; and (B) obtain from the Revolving DIP Lenders under the DIP Revolving Loan Facility, revolving loan commitments in an aggregate principal amount not to exceed $100 million;

(2) the scheduling of a final hearing (the "Final Hearing") on the Motion no later than April __, 2011, to consider entry of a Final Order authorizing (i) the issuances of DIP Notes and borrowings under the DIP Facilities on a final basis, as well as the approval of notice procedures with respect thereto and (ii) the Debtors to enter into an exit financing facility; and

(3) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the (a) Debtors, (b) DIP Notes Agent and DIP Note Purchasers, (c) Revolving DIP Agent and Revolving DIP Lenders and (d) Prepetition Revolving Lenders and Prepetition Revolving Agent (collectively, the "Prepetition Secured Entities", and together with the DIP Agents and the DIP Lenders, the "Secured Lending Entities") to implement the terms of this Interim Order, and as otherwise provided herein.

This Court having found that, under the circumstances, due and sufficient notice of the Motion and Interim Hearing was provided by the Debtors as set forth below, and having held the Interim Hearing on March __, 2011 after considering all the pleadings filed with this Court, including the First Day Declaration and the testimony proffered or presented in connection therewith; and, as further stated on the record of the Interim Hearing, this Court having overruled any objections to entry of this Interim Order in all respects; and upon the record made by the Debtors at the Interim Hearing; and this Court having concluded that the DIP Facilities are otherwise fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and approval of the Motion essential for the continued operation of the Debtors' businesses; and after due deliberation and consideration and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. On March 28, 2011 (the "Petition Date"), each Debtor filed a voluntary petition with this Court commencing a case under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their respective businesses and manage their respective properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Subject to Paragraph 17 below, the Debtors hereby admit, acknowledge, agree and stipulate that:

(i) as of the Petition Date, (a) the Debtors' obligations to the Prepetition Revolving Agent and the Prepetition Revolving Lenders pursuant to the

Prepetition Revolving Loan Agreement and all the notes, documents, instruments or certificates related to or executed in connection therewith (the "Prepetition Revolving Loan Documents") constitute legal, valid and binding obligations of each of the Debtors; and

(ii) the liens and security interests (the "Prepetition Revolving Liens") which secure the Debtors' obligations under the Prepetition Loan Documents (collectively, together with any amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition Revolving Loan Documents, the "Prepetition Revolving Obligations"), were granted by the applicable Debtors to the Prepetition Revolving Agent, for its benefit and the benefit of the Prepetition Revolving Lenders, and such liens include a security interest in substantially all of the Debtors' assets as set forth in the Prepetition Revolving Loan Documents (the "Prepetition Collateral"); and

(iii) (a) as of the Petition Date there were no amounts outstanding under the Prepetition Revolving Loan Documents[3]; (b) the Prepetition Revolving Obligations constitute legal, valid and binding obligations of each of the Debtors; (c) no offsets, defenses or counterclaims to the Prepetition Revolving Obligations exist; (d) no portion of the Prepetition Revolving Obligations is subject to avoidance, disallowance, reduction, subordination or any challenge of any nature, pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Prepetition Revolving Documents are valid and enforceable by the Prepetition Revolving Agent and Prepetition Revolving Lenders against each of the Debtors party thereto; (f) the Prepetition Revolving Liens constitute

[3] As of the Petition Date, there were $891,000 in letters of credit that were issued and outstanding under the Prepetition Revolving Loan Documents that have been fully cash collateralized at 100% of face amount in accordance with the Prepetition Revolving Loan Documents. Such letters of credit shall be deemed to have been issued under the DIP Revolving Loan Facility (together with interest and reasonable fees, charges and expenses that are, in each case, payable under the DIP Revolving Loan Documents).

valid, binding, enforceable and perfected liens in and to the Prepetition Collateral, having the priority set forth in the Prepetition Revolving Documents and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge, subordination or any other challenge, pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (g) no claim of or cause of action held by the Debtors exists against the Prepetition Revolving Agent, the Prepetition Revolving Lenders or their respective affiliates, subsidiaries, agents, officers, directors, employees, advisors, consultants, predecessors in interest, successors and assigns, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Prepetition Revolving Documents (or the transactions contemplated thereunder), Prepetition Revolving Obligations or Prepetition Revolving Liens, including without limitation, any right to assert any disgorgement or recovery, and the Debtors hereby release the Prepetition Revolving Agent and the Prepetition Revolving Lenders from any and all such claims or causes of action.

D. Subject to Paragraph 17 below, the Debtors hereby further admit, acknowledge, agree and stipulate that:

(i) as of the Petition Date, (a) the Debtors' obligations (the "Prepetition Note Obligations") under the Senior Floating Rate Notes due 2012 and 9.0% Senior Notes due 2013 (collectively, the "Prepetition Notes" and the holders thereof, solely in their capacity as holders of Prepetition Notes, the "Prepetition Noteholders") issued pursuant to that certain indenture dated February 25, 2005, by and among Harry

and David, as issuer, the guarantors party thereto, and Wells Fargo Bank, N.A., as indenture trustee (the "Indenture Trustee" and together with the Prepetition Noteholders, the "Noteholder Parties"), and all the notes, documents, instruments or certificates related to or executed in connection therewith (the "Prepetition Note Documents") constitute legal, valid and binding obligations of each of the Debtors; and

(ii) (a) as of the Petition Date, there was at least approximately $198,362 in principal amount outstanding under the Notes (exclusive of any and all interest, fees, costs or other amounts that accrued but were unpaid as of the Petition Date); (b) the Prepetition Note Obligations constitute legal, valid and binding obligations of each of the Debtors; (c) no offsets, defenses or counterclaims to the Prepetition Note Obligations exist; (d) no portion of the Prepetition Note Obligations is subject to avoidance, disallowance, reduction, subordination or any challenge of any nature, pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Prepetition Note Documents are valid and enforceable by the Prepetition Note Parties against each of the Debtors party thereto; and (f) no claim of or cause of action held by the Debtors exists against the Prepetition Note Parties or their respective affiliates, subsidiaries, agents, officers, directors, employees, advisors, consultants, predecessors in interest, successors and assigns, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Prepetition Note Documents (or the transactions contemplated thereunder) or Prepetition Note Obligations, including without

limitation, any right to assert any disgorgement or recovery, and the Debtors hereby release the Prepetition Note Parties from any and all such claims or causes of action.

E. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the DIP Facilities. The Debtors' ability to maintain business relationships with their vendors, suppliers and customers, pay their employees, make capital expenditures, purchase and supply new inventory and otherwise finance their operations is essential to the Debtors' continued viability. In addition, based on the record presented at the Interim Hearing: (i) the Debtors' critical need for financing is immediate; (ii) in the absence of the DIP Facilities, the continued operation of the Debtors' businesses would not be possible and serious and irreparable harm to the Debtors and their estates would occur; and (iii) the preservation, maintenance and enhancement of the going concern value of the Debtors' estates are of the utmost significance and importance to a successful reorganization of the Debtors.

F. The Debtors are unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than under the DIP Facilities, and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. New credit is unavailable to the Debtors without providing the DIP Super-Priority Claims (as defined below) and the DIP Liens (as defined below) in the DIP Collateral (as defined below) to the respective DIP Agents and DIP Lenders (as applicable), as provided herein.

G. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (i) the terms and conditions of the DIP Facilities as set forth in the DIP Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their

fiduciary duty and are supported by reasonably equivalent value and fair consideration, (ii) each of the DIP Facilities and the DIP Documents has been negotiated in good faith and at arm's length among the Debtors and the applicable DIP Agents and DIP Lenders, and (iii) any credit extended, loans made and other financial accommodations extended or made to the Debtors by the DIP Lenders have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

H. The Prepetition Revolving Agent, on behalf of the Prepetition Revolving Lenders, and each of the Prepetition Revolving Lenders have each consented to the financing arrangements, liens and security interests contemplated by this Interim Order and the DIP Documents on the terms and conditions set forth in this Interim Order and the DIP Documents respectively.

I. Notice of the Interim Hearing and the entry of this Interim Order has been provided to: (i) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (ii) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (iii) counsel to the Debtors' proposed postpetition secured lenders (iv) the Securities and Exchange Commission; (v) counsel to the DIP Notes Agent; (vi) counsel to the Revolving DIP Agent; (vii) the Prepetition Revolving Agent; (viii) counsel to that certain ad hoc committee of holders of the Notes (the "Ad Hoc Committee"); and (ix) any other parties requesting such notice (collectively, the "Notice Parties"). Requisite notice of the Motion and the relief requested thereby and this Interim Order has been provided in accordance with Bankruptcy Rule 4001, and no other notice need be provided for entry of this Interim Order.

J. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent entry of this Interim Order, the Debtors'

businesses, properties and estates will be immediately and irreparably harmed. This Court concludes that entry of this Interim Order is in the best interest of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses and enhance the Debtors' prospects for successful reorganization.

Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Approval of Interim Order. The Motion is approved, subject to the terms and conditions set forth in this Interim Order. Any objections that have not previously been withdrawn are hereby overruled on the merits.

2. Approval of DIP Documents; Authority Thereunder. The Debtors are hereby authorized and directed to enter into the DIP Documents and such additional documents, instruments and agreements as may be required or requested by either of the DIP Agents or the DIP Lenders to implement the terms or effectuate the purposes of this Interim Order. The Debtors are authorized and directed to comply with and perform all of the terms and conditions contained in the DIP Documents. The Issuer or Borrower, as the case may be, is/are directed to repay amounts outstanding with respect to the DIP Facilities, and with respect to the DIP Notes Facility, each other Debtor is further directed to repay amounts guaranteed, together with interest, fees and premiums (as applicable) thereon and any other outstanding DIP Obligations to the DIP Lenders in accordance with and subject to the terms and conditions set forth in the respective DIP Documents, the DIP Intercreditor Agreement and this Interim Order. Pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of

Bankruptcy Procedure, the Debtors are authorized to file the Fee Letters under seal. The terms of the Fee Letters (as defined in each of the DIP Notes Purchase Agreement and DIP Revolving Loan Agreement) are approved and the Debtors are authorized to pay all amounts due thereunder, including any break-up or expense reimbursement fees, which shall be deemed allowed as administrative expenses under section 503(b) of the Bankruptcy Code and deemed earned on the Closing Date, in accordance with the terms of the Fee Letters.

3. Syndication Procedures With Respect to DIP Notes Facility. The syndication procedures contained in the DIP Note Purchase Agreement (the "Syndication Procedures") are hereby approved and shall be binding upon all parties in interest, including, without limitation, the Debtors, the DIP Notes Agent, each Initial Note Purchaser and each Eligible Holder (as defined in the DIP Note Purchase Agreement). The filing of the Motion, the execution of the DIP Note Purchase Agreement and the issuance and sale of the DIP Notes pursuant to the DIP Note Purchase Agreement (including, without limitation, the Syndication Procedures) and this Interim Order complies with applicable state and federal securities laws. The DIP Notes Agent and the Initial DIP Note Purchasers, as applicable, shall have no liability whatsoever in respect of the Syndication Procedures.

4. Authorization to Issue/Sell DIP Notes and Borrow. Upon finalizing and executing (i) the DIP Note Purchase Agreement, in substantially the form annexed hereto as Exhibit C, and the other DIP Note Documents, each in form and substance acceptable to the Initial DIP Note Purchasers, and (ii) the DIP Revolving Loan Agreement, in substantially the form annexed hereto as Exhibit A, and the other DIP Revolving Loan Documents, each in form and substance acceptable to the Revolving DIP Lenders, and, in each case, so long as the Debtors are not in default under the terms of this Interim Order or the DIP Documents (and have satisfied

the conditions precedent contained in the DIP Documents), the Debtors are immediately authorized to (i) issue and sell DIP Notes to the DIP Note Purchasers under the DIP Note Facility, and (ii) borrow from the Revolving DIP Lenders under the DIP Revolving Loan Facility, in each case, (a) in accordance with the terms and provisions of the respective DIP Documents, the DIP Intercreditor Agreement and the Interim Order and (b) to the extent required to pay those expenses enumerated in the Approved Budget (as defined below), as and when such expenses come due.

5. No Obligation to Extend Credit. None of the DIP Agents or DIP Lenders shall have any obligation to make any loan or advance, purchase DIP Notes or to issue any letters of credit under the respective DIP 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 DIP Documents and this Interim Order have been satisfied in full or waived in accordance with the terms thereof.

6. Use of Proceeds of DIP Facilities. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facilities or proceeds from the issuances of DIP Notes only for the purposes specifically set forth in this Interim Order and the DIP Documents, and in compliance with the Approved Budget. Without in any way limiting the foregoing, no Cash Collateral, DIP Collateral, proceeds from the issuance of the DIP Notes under the DIP Notes Facility or borrowings under the DIP Revolving Loan Facility, any portion of the Carve-Out or any other amounts may be used directly or indirectly by any of the Debtors, any official committee appointed in the Chapter 11 Cases (the "Committee"), or any trustee or other estate representative appointed in the Chapter 11 Cases (or any successor case) or any other person or entity (or to pay any professional fees and disbursements incurred in connection

therewith): (a) to seek authorization to obtain liens or security interests that are senior to, or on a parity with, the DIP Liens or the DIP Super-Priority Claims (except to the extent expressly set forth herein); or (b) to assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, against any of the DIP Agents, DIP Lenders, the Prepetition Revolving Lenders, the Prepetition Revolving Agent or the Prepetition Note Parties and each of their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors (collectively, the "Released Parties"), with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (ii) any so-called "lender liability" claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the DIP Obligations, the DIP Super-Priority Claims, the DIP Liens, the DIP Documents, the Prepetition Revolving Obligations, the Prepetition Note Obligations, the Prepetition Note Documents or the Prepetition Revolving Documents; (iv) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, DIP Obligations, the Prepetition Revolving Obligations or the Prepetition Note Obligations; (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to any or all of the DIP Agents or DIP Lenders hereunder or under any of the DIP Documents (including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the DIP Agents' or DIP Lenders' assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the applicable DIP Documents and this Interim Order); or

(vi) objecting to, contesting, or interfering with, in any way, the DIP Agents' and the DIP Lenders' enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred; provided, however, that no more than $50,000 in the aggregate of Cash Collateral, the DIP Collateral, the Carve-Out, proceeds from the issuance of the DIP Notes under the DIP Note Facility, borrowings under the DIP Revolving Loan Facility or any other amounts may be used to fund an investigation by the Committee into the existence of any causes of action against the Released Parties with respect to the Prepetition Revolving Obligations or the Prepetition Note Obligations, subject to the terms and limitations set forth below in Paragraph 17.

7. Segregated DIP Collateral Account. The Debtors are authorized and directed to establish the DIP Collateral Account (as defined in the DIP Note Purchase Agreement). Notwithstanding anything contained herein or in the DIP Intercreditor Agreement to the contrary, the proceeds of the issuance and purchase of all DIP Notes pursuant to the DIP Note Documents shall be held in the DIP Collateral Account, which account shall at all times, immediately and automatically upon the entry of this Interim Order, without the need for any further act by the DIP Notes Agent, the DIP Note Purchasers or the Debtors, be subject to a first-priority perfected security interest and lien solely in favor of the DIP Notes Agent and the DIP Note Purchasers (and, for the avoidance of doubt, notwithstanding anything contained herein to the contrary, the DIP Collateral Account and all funds deposited therein shall not be subject to a security interest or lien in favor of any other person or entity, including, without limitation, the Revolving DIP Agent or the Revolving DIP Lenders). Promptly following the entry of the Interim Order, the Debtors and the depositary bank shall be authorized and directed, at the request of the DIP Note Agent, at the direction of the Requisite DIP Note Purchasers, to execute an account control agreement in form and substance reasonably satisfactory to the Requisite DIP

Note Purchasers. Prior to the occurrence of an Event of Default (as defined in the DIP Note Purchase Agreement), funds held in the DIP Collateral Account may solely be withdrawn from such account and used by the Issuer solely as permitted under the DIP Note Documents.

8. Validity and Effect of DIP Intercreditor Agreement. Each of the DIP Agents (the "Intercreditor Parties") shall be bound by, and their respective rights and remedies pursuant to the DIP Facilities shall be, subject to the terms, provisions and restrictions of the DIP Intercreditor Agreement, and the DIP Intercreditor Agreement shall apply and govern the Intercreditor Parties in these Cases. Nothing in this Interim Order is meant to or shall be deemed to alter or otherwise modify the rights contained in the DIP Intercreditor Agreement as between the Intercreditor Parties.

9. Payment of DIP Fees and Expenses. The Debtors are hereby authorized and directed to pay upon receipt of an invoice all reasonable fees and out-of-pocket costs and expenses of each DIP Agent, the Revolving DIP Lenders and the Initial Note Purchasers as follows: (a) (1) other than with respect to the fees and out-of-pocket costs and expenses of counsel and financial advisors to each DIP Agent, the Revolving DIP Lenders and the Initial Note Purchasers, all reasonable fees and out-of-pocket costs and expenses of the DIP Agent, the Revolving DIP Lenders and the Initial Note Purchasers and (B) with respect to the fees and out-of-pocket costs and expenses of counsel and financial advisors to DIP Agent, the Revolving DIP Lenders and the Initial Note Purchasers, all reasonable fees and out-of-pocket costs and expenses of the following: (i) Ropes & Gray LLP and its local counsel, (ii) Paul, Hastings, Janofsky & Walker LLP and its local counsel, (iii) Stroock & Stroock & Lavan LLP and its local counsel, (iv) Munger, Tolles & Olson LLP and its local counsel (if any), (v) Akin Gump Strauss Hauer & Feld LLP, (y) Moelis & Company (excluding any success fees), and (vi) other professional

advisors hired by any of the foregoing counsel named or referenced above (collectively, the "DIP Professionals"), in each case, in connection with the preparation, execution and delivery of the DIP Documents, the administration of the DIP Facilities and the consummation of the transactions contemplated under the DIP Facilities and hereby, including, without limitation, all due diligence, syndication (including printing, distribution and bank meeting), transportation, computer, duplication, messenger, audit, insurance, appraisal, valuation and consultant costs and expenses, and all search, filing and recording fees, incurred or sustained by the DIP Agents and the DIP Lenders in connection with the DIP Facilities, the DIP Documents or the transactions contemplated thereby, the administration of the DIP Facilities and any amendment or waiver of any provision of the DIP Documents; and (b) out-of-pocket costs and expenses of the DIP Agents, the Revolving DIP Lenders and the Initial Note Purchasers (including fees, expenses and disbursements of the DIP Professionals) incurred in connection with (i) enforcing this Order or any DIP Document or DIP Obligation or any security therefor or exercising or enforcing any other right or remedy available by reason of an Event of Default (as defined in the applicable DIP Documents); (ii) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or in any insolvency or bankruptcy proceeding; (iii) commencing, defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to the DIP Obligations or any Debtor and related to or arising out of the transactions contemplated hereby or by any of the DIP Documents; and (iv) in taking any other action in or with respect to any suit or proceeding (bankruptcy or otherwise) described in clauses (i) through (iii) above.

10. The Debtors shall promptly reimburse each DIP Agent, the Revolving DIP Lenders and the Initial Note Purchasers for such invoiced amounts within ten (10) calendar days

(if no written objection is received within such ten (10) calendar day period) after delivery of an invoice describing such fees, costs, and expenses substantially in the form provided in the ordinary course of business; provided, however, that any such invoice may be redacted to protect privileged, confidential or proprietary information. A copy of each invoice submitted to the Debtors shall simultaneously be sent to the U.S. Trustee and counsel for the Committee (if appointed). Any written objection to such fees, costs or expenses must contain a specific basis for the objection and a quantification of the undisputed amount of the fees, costs and expenses invoiced; failure to object with specificity or to quantify the undisputed amount of the invoice subject to such objection will constitute a waiver of any objection to such invoice. None of such fees, costs and expenses shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court.

11. Validity of DIP Documents. Upon due execution and delivery to the applicable DIP Agents or DIP Lenders, as the case may be, the DIP Documents shall constitute, and are hereby deemed to be the legal, valid and binding obligations of the Debtors party thereto, enforceable against each such Debtor in accordance with the terms of such DIP Documents. No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

12. Super-Priority Claims. In accordance with Bankruptcy Code section 364(c)(1), but subject to the terms of the DIP Intercreditor Agreement, (i) the DIP Note Obligations shall constitute claims (the "DIP Note Super-Priority Claims") with priority in

payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114 or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, which DIP Super-Priority Claims shall be payable from and have recourse to all DIP Collateral, including all pre- and post-petition property of the Debtors and all proceeds thereof, including, upon entry of the Final Order, the proceeds of Avoidance Actions (as defined below); and (ii) the Revolving DIP Obligations shall constitute claims (the "Revolving DIP Super-Priority Claims", together with the DIP Note Super-Priority Claims, the "DIP Super-Priority Claims") with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114 or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, which DIP Super-Priority Claims shall be payable from and have recourse to all DIP Collateral, including all pre- and post-petition property of the Debtors and all proceeds thereof, including, upon entry of the Final Order, the proceeds of Avoidance Actions (as defined below).

13. DIP Liens. (i) The DIP Notes Agent and the DIP Note Purchasers, as security for the DIP Note Obligations, and (ii) the Revolving DIP Agent and the Revolving DIP Lenders, as security for the Revolving DIP Obligations, are hereby granted (effective upon the date of this Interim Order, without the necessity of the execution by the Debtors or the filing or recordation of mortgages, security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise by either of the DIP Agents) valid and

perfected security interests in, and liens on (the "DIP Note Liens" and the "Revolving DIP Liens", respectively, and together the "DIP Liens"), the DIP Collateral (defined below), subject, in each case, to the terms of the DIP Intercreditor Agreement, and subject to the Carve-Out (defined below), as follows:

(a) pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority, perfected lien on and security interest in all of the Debtors' right, title and interest in, to and under all DIP Collateral that is not otherwise subject to or encumbered by a validly perfected, unavoidable security interest or lien on the Petition Date;

(b) pursuant to section 364(c)(3) of the Bankruptcy Code, a junior perfected lien on and security interest in all of the Debtors' right, title and interest in, to and under all DIP Collateral that is subject to or encumbered by a validly perfected, unavoidable security interest or lien on the Petition Date or subject to a lien or security interest in existence on the Petition Date that is perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code (other than the priming liens and security interests granted pursuant to clause (c) below); and

(c) pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority, senior, priming, perfected lien on and security interest in all of the Debtors' right, title and interest in, to and under the DIP Collateral that is subject to or encumbered by a validly perfected, unavoidable security interest or lien on the Petition Date or subsequently perfected thereafter;

For purposes of this Interim Order, the term "DIP Collateral" shall mean the following: all present and after-acquired property or assets of each of the Debtors of any nature whatsoever and wherever located (whether acquired pre- or post-petition), including, without

limitation: (x) all "Collateral" as defined in each of the DIP Revolving Loan Agreement and the DIP Note Purchase Agreement, (y) the proceeds of all claims or causes of action (including, upon entry of the Final Order and to the extent such order so provides, proceeds of avoidance actions under chapter 5 of the Bankruptcy Code (the "Avoidance Actions")), whether pursuant to federal law or applicable state law, of the Debtors or their estates, and (z) all proceeds and products of any or all of the foregoing. Notwithstanding anything contained herein to the contrary, the DIP Collateral Account, together with any funds on deposit in such account, shall constitute DIP Collateral solely with respect to the DIP Notes Facility, and, for the avoidance of doubt, no party, other than the DIP Notes Agent (for the benefit of the DIP Notes Agent and the DIP Note Purchasers) shall have any lien or security interest in such account (or in the funds on deposit in such account).

14. Priority of DIP Liens. In furtherance of the foregoing, notwithstanding anything contained herein to the contrary, each of the DIP Note Liens and the Revolving DIP Liens, and each of the Revolving DIP Super-Priority Claims and the DIP Note Super-Priority Claims, shall have the relative ranking and priority set forth in the DIP Intercreditor Agreement.

15. Covenants. As a condition to the extension of credit under the DIP Facilities, the DIP Agents, the DIP Lenders and the Debtors have agreed that, until the DIP Obligations have been paid in full, in cash, or with a form of security to be agreed upon between the Debtors, the DIP Agents and the DIP Lenders (as applicable), the Debtors shall be obligated to comply with all covenants contained in the DIP Documents.

16. Carve-Out.

(a) As used in this Interim Order, "Carve-Out" means the following: (1) all unpaid fees required to be paid in these Cases to the Clerk of the Court and to the office of the

U.S. Trustee under 28 U.S.C. §1930, whether arising prior to or after the delivery of the Carve-Out Trigger Notice (defined below); (2) all reasonable and documented unpaid fees, costs, disbursements and expenses, including, without limitation, success, financing, completion, or similar fees (collectively, "Transaction Fees") and the reasonable expenses of any member of the Committee (collectively, together with the Transaction Fees, the "Professional Fees"), of professionals retained by the Debtors and any Committee (collectively, the "Professionals") in these Chapter 11 Cases, in each case, that (x) are incurred, and in the case of a professional seeking compensation for a Transaction Fee, the services giving rise to the Transaction Fee actually occur or the event that triggers the Transaction Fee occurs (regardless of any provision contained in any engagement letter or retention order with respect to the professional seeking compensation for a Transaction Fee), prior to the delivery by either DIP Agent of a Carve-Out Trigger Notice, that are ultimately allowed (regardless of the time of any such allowance) by the Bankruptcy Court; and (y) that remain unpaid after application of any retainers; and (3) all Professional Fees incurred on or after the delivery by the applicable DIP Agent of a Carve-Out Trigger Notice, that are allowed by the Bankruptcy Court (and remain unpaid after application of any retainers) in an aggregate amount not to exceed $1,750,000 (the "Carve-Out Cap").

(b) The term "Carve-Out Trigger Notice" shall mean a written notice issued by either DIP Agent and delivered to the Debtors' lead counsel, the U.S. Trustee, the other DIP Agent and lead counsel to any Committee, at any time following the occurrence and during the continuation of any Event of Default; provided, however, that the Carve-Out shall not include, apply to or be available for any fees, disbursements, costs or expenses incurred by any party, including, without limitation, the Debtors, any Committee, or any party-in-interest, in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims,

causes of action, adversary proceedings or other litigation against the Released Parties, including challenging the amount, extent, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the Prepetition Revolving Documents, the Prepetition Revolving Obligations, the Prepetition Note Documents or the Prepetition Note Obligations, the DIP Documents or the DIP Obligations or the DIP Liens or DIP Super-Priority Claims.

(c) Nothing contained herein is intended to constitute, nor should be construed as consent to, the allowance of any Professional's fees, costs or expenses by any party and shall not affect the right of the Debtors, the DIP Agents, the DIP Lenders, the Prepetition Secured Entities, the Prepetition Note Parties, any Committee, the U.S. Trustee, or any other party-in-interest to object to the allowance and payment or any amounts incurred or requested.

(d) None of the DIP Agents or the DIP Lenders shall be responsible for the direct payment or reimbursement of any fees or disbursements of any Professionals or Professional Fees in connection with the Chapter 11 Cases or any successor cases. Nothing in this Interim Order or otherwise shall be construed to obligate any of the DIP Agents or DIP Lenders, in any way, to pay compensation to or to reimburse expenses of any of the Professional Fees, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) Any payment or reimbursement made on or after the delivery of the Carve-Out Trigger Notice in respect of any Professional Fees incurred on or after the delivery by the applicable DIP Agent of a Carve-Out Trigger Notice, that are allowed by the Bankruptcy Court (exclusive of the application of any retainers by any of the Professionals) shall permanently reduce the Carve-Out Cap on a dollar-for- dollar basis. Any funding of the Carve-Out 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 DIP Documents, the Bankruptcy Code and applicable law.

17. Investigation Rights. The Committee (or any non-Debtor party-in-interest, including any chapter 11 trustee or examiner appointed in the Chapter 11 Cases) shall have a maximum of sixty (60) calendar days from the date of the Committee's appointment, but in no event later than seventy-five (75) calendar days from entry of this Interim Order (the "Investigation Period") to investigate and commence an adversary proceeding or contested matter, as required by the applicable Bankruptcy Rules, and challenge (each, a "Challenge") the findings, the Debtors' stipulations, or any other stipulations herein, including, without limitation, any challenge to the validity, priority, perfection or enforceability of the Prepetition Revolving Liens, the Prepetition Revolving Obligations or the Prepetition Note Obligations, or to assert any claim or cause of action against the Prepetition Secured Entities or the Prepetition Note Parties arising under or in connection with the Prepetition Revolving Obligations or the Prepetition Note Obligations, as the case may be, whether in the nature of a setoff, counterclaim or defense of Prepetition Revolving Obligations or the Prepetition Note Obligations, or otherwise, and to file a motion seeking standing to pursue such challenge on or before the expiration of the Investigation Period. The Investigation Period may only be extended: (a) with the prior written consent of counsel to the Prepetition Revolving Lenders and counsel to the Ad Hoc Committee, as memorialized in an order of this Court, or (b) pursuant to an order of this Court upon a showing of good cause for such extension. Except to the extent asserted in an adversary proceeding or contested matter filed during the Investigation Period, upon the expiration of such applicable Investigation Period (to the extent not otherwise waived or barred), without further order of the Court: (a) any and all such challenges by any party (including, without limitation, any

Committee, any chapter 11 trustee, and/or any examiner appointed in the Chapter 11 Cases) shall be deemed to be forever waived and barred; (b) all of the agreements, waivers, releases, affirmations, acknowledgements and stipulations contained in this Interim Order shall be irrevocably and forever binding on the Debtors, any Committee and all parties-in-interest and any and all successors-in-interest as to any of the foregoing, without further action by any party or this Court; (c) the liens and security interests of the Prepetition Revolving Agent and Prepetition Revolving Lenders shall be deemed to constitute valid, binding, enforceable and perfected liens and security interests not subject to avoidance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (d) the Prepetition Revolving Obligations and the Prepetition Note Obligations shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and (e) the Debtors shall be deemed to have released, waived and discharged the Prepetition Secured Entities and the Prepetition Note Parties (in each case, whether in their prepetition or post-petition capacity), together with their respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors, from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Prepetition Revolving Obligations or the Prepetition Note Obligations. Notwithstanding anything to the contrary herein: (i) if any such Challenge is timely commenced, the stipulations contained in this Interim Order shall nonetheless remain binding on all other parties-in-interest and preclusive except to the extent that such stipulations are expressly and successfully challenged in such Challenge; and (ii) the Prepetition Secured Entities and the Prepetition Note Parties reserve all of their rights to contest on any grounds any Challenge.

18. Approved Budget. For purposes of this Interim Order, the term "Approved Budget" means the following: (a) an initial 13-week cash flow forecast setting forth all forecasted receipts and disbursements for the succeeding 13 week period beginning as of the week of the Petition Date, broken down by week, including the anticipated weekly uses of each of the DIP Facilities for such period, which shall provide, among other things, for the payment of the fees and expenses relating to each of the DIP Facilities, ordinary course expenses, fees and expenses related to the Chapter 11 Cases, and working capital and other general corporate needs, a copy of which is attached hereto as Exhibit D (the "Initial DIP Budget"); (b) on each Friday prior to the beginning of each fiscal month, the Debtors will furnish an updated budget, in each case, in form and substance reasonably satisfactory to the Initial Note Purchasers and the Revolving DIP Agent (the "Updated DIP Budget" and together with the Initial Budget, the "Approved Budget") for the subsequent 13 week period consistent with the form of the Initial DIP Budget; and (c) beginning three weeks after the Petition Date, and on each Friday thereafter, a variance report (the "Variance Report") setting forth actual cash receipts and disbursements of the Debtors for the prior week and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such week as compared to (i) the Initial DIP Budget on a weekly and cumulative basis (which shall be subject to the variances set forth in the DIP Documents), and (ii) the most recent Updated DIP Budget (as applicable) delivered by the Debtors, in each case, on a weekly and cumulative basis (and each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer or Chief Restructuring Officer of the Issuer).

19. 506(c) and 552(b) Waiver. Upon the entry of the Final Order and to the extent such order so provides, the Debtors shall irrevocably waive and shall be prohibited from

asserting any surcharge claim, under section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment), for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Secured Lending Entities upon the DIP Collateral or the Prepetition Collateral (as applicable). In no event shall the Secured Lending Entities be subject to (i) the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code or (ii) the equitable doctrine of "marshaling" or any other similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable).

20. 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 each of the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of the DIP Facilities and the DIP Documents.

21. Restrictions on Granting DIP Liens. Other than the Carve-Out, or as otherwise provided in this Interim Order, and subject to the terms of the DIP Intercreditor Agreement, no claim having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Agents shall be granted or permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Cases, while (i) any amounts remain outstanding under either of the DIP Facilities (or refinancing thereof), or (ii) the DIP Lenders have any commitment under the DIP Facilities. Except as expressly permitted by the DIP Documents, the Debtors will not, at any time during the Chapter 11 Cases, grant mortgages,

security interests or liens in the DIP Collateral (or any portion thereof) to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise.

22. Automatic Effectiveness of DIP Liens.

(a) Each of the DIP Liens to granted to the respective DIP Agents and DIP Lenders shall not be subject to challenge and shall attach and become valid, perfected, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtors or any other party and without the necessity of execution by the Debtors, or the filing or recordation, of any financing statements, security agreements, vehicle lien applications, mortgages, filings with a governmental unit (including without limitation the U.S. Patent and Trademark Office or the Library of Congress), or other documents or the taking of any other actions. The granting of the DIP Liens on the DIP Collateral shall be free and clear of other liens, claims and encumbrances, except as provided in the DIP Documents and this Interim Order. If either DIP Agent, as directed by the requisite DIP Lenders in accordance with the terms of the applicable DIP Documents, hereafter requests that the Debtors execute and deliver to such DIP Agent financing statements, security agreements, collateral assignments, mortgages, or other instruments and documents considered by such DIP Agent, at the direction of the requisite DIP Lenders in accordance with the terms of the applicable DIP Documents, to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens, the Debtors are hereby authorized and directed to execute and deliver such financing statements, security agreements, mortgages, collateral assignments, instruments, and documents, and such DIP Agent is hereby authorized to file or record such documents, as directed by the requisite DIP Lenders in accordance with the terms of the applicable DIP Documents, without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all

such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order.

(b) Without in any way limiting the foregoing paragraph 22(a), a certified copy of this Interim Order may, at the direction of the requisite DIP Lenders to the applicable DIP Agent in accordance with the terms of the applicable DIP Documents, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording.

(c) Any provision of any lease or other license, contract or other agreement that requires (1) the consent or approval of one or more landlords or other parties or (2) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other post-petition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens in such leasehold interest, or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lenders or the DIP Agents in accordance with the terms of the DIP Documents or this Order.

23. Automatic Stay. Without further order from this Court, but subject to the terms of the DIP Intercreditor Agreement, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agents and DIP Lenders to exercise, upon the occurrence and during the continuance of any Event of Default under their respective DIP Documents, all rights and remedies provided for in such DIP Documents, and to take any or all of the following actions without further order of or application

to this Court (as applicable): (a) immediately terminate the Debtors' limited use of Cash Collateral; (b) cease making any loans or issue DIP Notes under the applicable DIP Facilities to the Debtors; (c) declare all applicable DIP Obligations to be immediately due and payable; (d) freeze monies or balances in the Debtors' accounts (and, with respect to the DIP Note Agreement and the DIP Note Facility, sweep all funds contained in the DIP Collateral Account); (e) immediately set-off any and all amounts in accounts maintained by the Debtors with the applicable DIP Agent or DIP Lenders against the DIP Note Obligations or the Revolving DIP Obligations, as applicable, otherwise enforce any and all rights against the DIP Collateral in the possession of any of the DIP Lenders, including, without limitation, disposition of the DIP Collateral solely for application towards the applicable DIP Obligations; and (f) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Documents or applicable law to effect the repayment of the DIP Obligations; provided, however, that prior to the exercise of any right in clauses (e) or (f) of this paragraph, the applicable DIP Agent shall be required to provide five (5) business days written notice to the Debtors, their bankruptcy counsel, counsel to any Committee, counsel to the respective Secured Lending Entities, and the U.S. Trustee of such DIP Agent's intent to exercise its rights and remedies, and during such five (5) business day period, the Debtors and other parties-in-interest may request an expedited hearing on any motion seeking such a finding, and the applicable DIP Agents shall consent to such expedited hearing; *provided*, *further*, that upon entry of this Interim Order, neither the Debtors nor any other party-in-interest shall have the right to contest the enforcement of the remedies set forth in this Interim Order and the DIP Documents on any basis other than an assertion that an Event of Default (as defined in the applicable DIP Documents) has not occurred or has been cured within the cure periods expressly set forth in the applicable DIP Documents.

The rights and remedies of the DIP Agents and DIP Lenders specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agents and DIP Lenders may have under the DIP Documents or otherwise. The Debtors shall cooperate fully with the DIP Agents and DIP Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise.

24. Prohibition on Use of Cash Collateral. Upon the occurrence and during the continuance of an Event of Default under the DIP Documents or this Interim Order, the DIP Lenders shall have no further obligation to provide financing under the DIP Documents as approved by this Interim Order, and the limited authorization to use Cash Collateral as provided herein shall automatically terminate; except that upon the occurrence and during the continuance of an Event of Default under the DIP Documents or this Interim Order, the Debtors shall be authorized to use Cash Collateral, in the ordinary course of business, to the extent necessary to administer, preserve and protect the value of the DIP Collateral. The Debtors may not seek to use Cash Collateral, other than as expressly provided herein, without the consent of the DIP Agents for so long as either of the DIP Agents (as applicable) or DIP Lenders (as applicable) have commitments which have not terminated under the DIP Documents. Notwithstanding anything herein to the contrary, the Prepetition Secured Entities, the DIP Agents and the DIP Lenders shall not be deemed to have consented to the Debtors' use of Cash Collateral except to the extent expressly set forth herein, and expressly reserve all of their respective rights to object to any request by the Debtors to use Cash Collateral or to seek adequate protection. Further, nothing in this paragraph shall limit in any way the right of the Secured Lending Entities to exercise their respective rights and remedies as set forth in this Interim Order. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral, DIP Collateral or

other proceeds resulting therefrom, except as permitted in this Interim Order, the DIP Facilities, the DIP Documents, and in accordance with the Approved Budget.

25. Binding Effect. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Released Parties, the Debtors and their respective successors and assigns. To the extent permitted by applicable law, this Interim Order shall bind any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of the conversion of any of the Chapter 11 Cases to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Interim Order.

26. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any plan of reorganization in any of the Chapter 11 Cases (and, to the extent not satisfied in full in cash, the DIP Obligations shall not be discharged by the entry of any such order, pursuant to section 1141(d)(4) of the Bankruptcy Code, each of the Debtors having hereby waived such discharge); (ii) converting any of the Chapter 11 Cases to a chapter 7 case; or (iii) dismissing any of the Chapter 11 Cases, and the terms and provisions of this Interim Order as well as the DIP Liens and the DIP Super-Priority Claims granted pursuant to this Interim Order and the DIP Documents shall continue in full force and effect notwithstanding the entry of any such order. Such claims and liens shall maintain their priority as provided by this Interim Order and the DIP Documents (subject to the terms of the DIP Intercreditor Agreement), and to the maximum extent permitted by law, until all of the DIP Obligations are indefeasibly paid in full and discharged. In no event shall any plan of reorganization be allowed to alter the terms of repayment of any of the DIP Obligations from those set forth in the applicable DIP Documents.

27. Modifications of DIP Documents. The Debtors, the DIP Agents and the DIP Lenders are hereby authorized to implement, in accordance with the terms of the respective DIP Documents, any non-material modifications (including without limitation, any change in the number or composition of the DIP Lenders) of the respective DIP Documents without further Order of this Court, or any other modifications to the respective DIP Documents; provided, however, that notice of any material modification or amendment to the respective DIP Documents shall be provided to counsel to any Committee, to the U.S. Trustee, and counsel for the Ad Hoc Committee, each of whom shall have three (3) calendar days from the date of such notice within which to object in writing to such modification or amendment. If any Committee or the U.S. Trustee timely objects to any material modification or amendment to the DIP Documents, such modification or amendment shall only be permitted pursuant to an order of this Court.

28. Access to the Debtors. In accordance with the terms of the DIP Facilities, the DIP Agents and their respective professionals shall be afforded continued reporting as to DIP Collateral amounts and reasonable access to the DIP Collateral and the Debtors' business premises, during normal business hours, for purposes of verifying the Debtors' compliance with the terms of this Interim Order as it pertains to the DIP Facilities.

29. Access to Leased Premises/No Landlord's Liens. Subject to the DIP Intercreditor Agreement, upon written notice to the landlord of any leased premises that an Event of Default (as defined in the applicable DIP Documents) has occurred and is continuing under the DIP Documents, the applicable DIP Agent may, at the direction of the requisite DIP Lenders in accordance with the applicable DIP Documents, subject to any separate agreement by and between such landlord and the applicable DIP Agent (a "Separate Agreement"), enter upon any

leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and, subject to the Separate Agreement, shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from such landlord; provided, that, subject to such Separate Agreement, the applicable DIP Agent shall only pay, to the extent the funds for such payment are first received by the Applicable DIP Agent from the applicable DIP Lenders, rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP Agent, calculated on a per diem basis. Nothing herein shall require the applicable DIP Agent to assume any lease as a condition to the rights afforded to the applicable DIP Agent in this paragraph or impair the Debtors' rights under the lease except as contemplated by the preceding sentence or under Section 365 of the Bankruptcy Code.

30. After Acquired Property. Except as otherwise provided in this Interim Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by the Debtors after the Petition Date, including, without limitation, all DIP Collateral pledged or otherwise granted to the DIP Agents pursuant to the DIP Documents and this Interim Order, is not and shall not be subject to any lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitutes proceeds of property of the Debtors that is subject to a valid, enforceable, perfected, and unavoidable lien as of the Petition Date which is not subject to subordination under section 510(c) of the Bankruptcy Code or other provision or principles of applicable law.

31. Insurance Policies. Upon entry of this Interim Order, on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral: (i) the DIP Agents and the DIP Lenders shall be, and shall be deemed to be, without any further action or

notice, named as additional insureds; and (ii) the DIP Agents, on behalf of the DIP Lenders shall be, and shall be deemed to be, without any further action or notice, named as loss payee. The Debtors are authorized and directed to take any actions necessary to have each of the DIP Agents, on behalf of the applicable DIP Lenders, be added as an additional insured and loss payee on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral.

32. Protection Under Section 364(e). If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not in any way affect the (i) validity of any DIP Obligations incurred prior to the actual receipt by the DIP Agents of written notice of the effective date of such reversal, modification, vacation or stay, or (ii) validity or enforceability of any claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral or the incurrence of DIP Obligations by the Debtors prior to the actual receipt by the DIP Agents of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this Interim Order, and the DIP Agents and DIP Lenders shall be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP Documents with respect to all uses of Cash Collateral, the DIP Collateral and the incurrence of DIP Obligations.

33. Effect of Dismissal of Chapter 11 Cases. If the Chapter 11 Cases are dismissed, converted or substantively consolidated, then neither the entry of this Interim Order nor the dismissal, conversion or substantive consolidation of these Chapter 11 Cases shall affect

the rights of the DIP Agents or DIP Lenders under their respective DIP Documents, the rights of the Secured Lending Entities under the Prepetition Revolving Documents, the rights of the Prepetition Note Parties under the Prepetition Note Documents, or this Interim Order, and all of their respective rights and remedies thereunder shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed, converted, or substantively consolidated. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that: (i) the DIP Liens and DIP Super-Priority Claims granted to and conferred upon the DIP Agents and DIP Lenders and the protections afforded to the DIP Agents and/or the DIP Lenders pursuant to this Interim Order and the DIP Documents shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations shall have been paid and satisfied in full (and that such DIP Liens, DIP Super-Priority Claims and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); and (ii) the effectiveness of any order dismissing the Chapter 11 Cases shall not occur until sixty (60) days after it is entered in order to give the Secured Lending Entities the opportunity to perfect their respective security interests and liens in the collateral under non-bankruptcy law, including, without limitation, the filing or recording of financing statements, mortgages, deeds of trust, security deeds, leasehold mortgages, notices of lien or similar instruments in any jurisdiction (including trademark, copyright, tradename or patent assignment filings with the United States Patent and Trademark Office, Copyright Office or any similar United States entity) and the procurement of waivers from any landlord, tenant, mortgagee, bailee or warehouseman and consents from any licensor or similar party-in-interest.

34. Credit Bid. Subject only to the terms of the DIP Intercreditor Agreement, the DIP Agents and the DIP Lenders shall have the right to credit bid all of the amounts outstanding under the respective DIP Facilities in connection with a sale of the Debtors' assets under either section 363 of the Bankruptcy Code or under a plan of reorganization.

35. Findings of Fact and Conclusions of Law. This Interim Order constitutes, where applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon the execution thereof.

36. Choice of Law; Jurisdiction. The DIP Facilities and the DIP Documents (and the rights and obligations of the parties thereto) shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, including, without limitation, Sections 5-1401 and 5-1402 of the New York General Obligations Law, and, to the extent applicable, the Bankruptcy Code. The Bankruptcy Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facilities or the DIP Documents.

37. Indemnification. Except as otherwise ordered by this Court, the Debtors are hereby authorized and directed to jointly and severally indemnify and hold harmless the applicable DIP Agents, each of the DIP Lenders (as applicable) and their respective affiliates, officers, directors, employees, controlling persons, agents, advisors, attorneys and representatives (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto, arising out of or in connection

with or relating to, as applicable, the DIP Facilities, the DIP Documents or the transactions contemplated thereby, or any use made or proposed to be made with the proceeds of the DIP Facilities, whether or not such investigation, litigation or proceeding is brought by any Debtor or any of its subsidiaries, any shareholders or creditors of the foregoing, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby or under the DIP Documents are consummated, except to the extent such claim, damage, loss, liability or expense is found in a final non appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any of their subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. In no event, however, shall any Indemnified Party be liable on any theory of liability for any special, indirect, consequential or punitive damages. All indemnities of the DIP Agents and the DIP Lenders shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order and the DIP Documents.

38. Discharge Waiver. Absent the consent of the applicable DIP Lenders, the DIP Obligations, evidenced by the DIP Documents, shall not be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash on or before the effective date of a confirmed plan of reorganization. The Debtors shall not propose or

support any plan of reorganization or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full, on or prior to the effective date of such plan of reorganization or sale, of all DIP Obligations unless the applicable DIP Lenders have otherwise consented in writing to such plan or sale.

39. Controlling Effect of Interim Order. To the extent any provision of this Interim Order conflicts with any provision of the Motion, any prepetition agreement or any DIP Documents, the provisions of this Interim Order shall control.

40. Effect of this Interim Order. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

41. Objections. Objections to the entry of the Final Order shall be in writing and shall be filed with the Clerk of this Court, on or before April __, 2011, at 4:00 p.m., with a copy served upon: (i) counsel for the Debtors, Jones Day, 77 West Wacker, Chicago, IL 60601 (Attn: Brad B. Erens Esq.) and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Daniel J. DeFranceschi, Esq. and Paul N. Heath, Esq.), (ii) counsel to the DIP Note Purchasers, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038 (Attn: Kristopher M. Hansen, Esq. and Erez Gilad, Esq.) and Morris, Nichols, Arsht & Tunnell LLP (Attn: Rob Dehny, Esq. and Andrew Remming, Esq.), (iii) counsel to the Revolving DIP Agent and the Prepetition Revolving Agent, Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., Twenty-Fourth Floor, Atlanta, GA 30308

(Attn: Jesse H. Austin, III Esq. and Cassie Coppage, Esq.) and local counsel to the Revolving DIP Agent and the Prepetition Revolving Agent, Duane Morris LLP, Suite 1600, 222 Delaware Avenue, Wilmington, DE 19801-1659, (Attn: Richard W. Riley, Esq.), (iv) counsel to the DIP Note Agent, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Mark R. Somerstein, Esq. and Ben Schneider, Esq.), (v) Munger, Tolles & Olson LLP, 355 South Grand Avenue, Los Angeles, CA 90071 (Attn: Thomas B. Walper, Esq.), (vi) counsel to the Indenture Trustee, Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178 (Attn: David Retter, Esq.), (vii) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036 (Attn: Ira S. Dizengoff, Esq.) (viii) counsel to be selected by the Committee upon its formation if selected by such date, and (ix) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Mark Kenney, Esq.).

42. Final Hearing. A final hearing on the Motion shall be heard before this Court on April __, 2011 at [_:_0 _.m.] in Courtroom [_] at the United States Bankruptcy Court, 824 Market Street, Wilmington, DE 19801.

Dated: March __, 2011

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

DIP REVOLVING LOAN AGREEMENT

$100.0 MILLION

SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of March [29], 2011,

by and among

HARRY AND DAVID,
as Borrower,

HARRY & DAVID HOLDINGS, INC.

and

THE OTHER GUARANTORS PARTY HERETO,
as Guarantors,

THE LENDERS PARTY HERETO,

ALLY COMMERCIAL FINANCE LLC,
as Collateral Agent and Documentation Agent,

UBS SECURITIES LLC,
as Arranger,

UBS AG, STAMFORD BRANCH,
as Issuing Bank, Administrative Collateral Agent and Administrative Agent,

and

UBS LOAN FINANCE LLC,
as Swingline Lender

Paul, Hastings, Janofsky & Walker, LLP
600 Peachtree Street, N.E., Suite 2400
Atlanta, Georgia 30308

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EXHIBITS

SENIOR SECURED, SUPER-PRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "**Agreement**"), dated as of March [29], 2011, is entered into by and among HARRY AND DAVID, an Oregon corporation and a debtor-in-possession ("**Borrower**"), HARRY & DAVID HOLDINGS, INC., a Delaware corporation and a debtor-in-possession ("**Holdings**"), the other Guarantors (such term and each other capitalized term used but not defined herein having the meaning given to it in Article I), the Lenders, UBS SECURITIES LLC, as lead arranger (in such capacity, "**Arranger**"), UBS LOAN FINANCE LLC, as a Lender and as swingline lender (in such capacity, "**Swingline Lender**"), UBS AG, STAMFORD BRANCH ("**UBS AG**"), as issuing bank (in such capacity, "**Issuing Bank**"), as the administrative collateral agent (in such capacity, the "**Administrative Collateral Agent**") and as administrative agent (in such capacity, "**Administrative Agent**") for the Lenders, and ALLY COMMERCIAL FINANCE LLC, as collateral agent (in such capacity, the "**Collateral Agent**") for the Secured Parties and Issuing Bank and as documentation agent.

WITNESSETH:

WHEREAS, on March [**28**], 2011 (the "**Petition Date**"), Borrower, Holdings and some or all of the Guarantors (collectively, the "**Debtors**" and each, individually, a "**Debtor**") commenced Chapter 11 Case Nos. 11-[____] through 11-[____] as administratively consolidated at Chapter 11 Case No. 11-[____] (each a "**Chapter 11 Case**" and collectively, the "**Chapter 11 Cases**") by filing separate voluntary petitions for reorganization under Chapter 11, 11 U.S.C. §§ 101 et. seq. (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

WHEREAS, from and after the Petition Date, the Borrower and each of the Guarantors continues to operate its business and manage its property as a debtor and a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, prior to the Petition Date, the Prior Lenders provided financing to the Company pursuant to that certain Credit Agreement, dated as of March 20, 2006, among the Borrower, Holdings and the other Guarantors, the Prior Agents and the Prior Lenders (as amended, restated, supplemented or otherwise modified through the Petition Date, the "**Pre-Petition Credit Agreement**").

WHEREAS, Borrower has requested the Lenders provide a senior secured, super-priority debtor-in-possession facility to Borrower of up to $100,000,000 in the aggregate to replace the Pre-Petition Credit Agreement and to fund the working capital requirements and other financing needs of the Borrower during the pendency of the Chapter 11 Cases and to be used in accordance with Section 3.11 herein.

NOW, THEREFORE, the Lenders are willing to extend such post-petition loans to Borrower and the Issuing Bank is willing to issue letters of credit for the account of Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I.
DEFINITIONS

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"**13-Week Budget**" shall mean a projected budget of sources and uses of cash for Holdings and its Subsidiaries on a weekly basis for the a 13 calendar week period, including the anticipated uses of proceeds of the Loans for each week during such period, in the form attached hereto as Exhibit L. As used herein, "13-Week Budget" shall initially refer to the "DIP Budget" delivered to the Lenders on the Closing Date and, thereafter, the most recent 13-Week Budget delivered by Borrower and approved by the Administrative Agent and the Required Lenders in accordance with Section 5.17.

"**ABR Borrowing**" shall mean a Borrowing comprised of ABR Loans.

"**ABR Loan**" shall mean any Revolving Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

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

"**Accounting Changes**" shall have meaning assigned to such term in Section 1.04.

"**Accounts**" shall mean, with respect to any Loan Party, all "accounts," as such term is defined in the UCC as in effect on the date hereof in the State of New York, in which such Loan Party now or hereafter has rights.

"**Activation Notice**" shall have the meaning assigned to such term in Section 9.01(e).

"**Adjusted LIBOR Rate**" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate *per annum* (rounded upward, if necessary, to the next 1/100 of 1%) determined by the Administrative Agent to be equal to (a) the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (b) 1 minus the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period.

"**Administrative Agent**" shall have the meaning assigned to such term in the preamble hereto and includes each other Person appointed as the successor of the Administrative Agent pursuant to Article X.

"**Administrative Agent Fees**" shall have the meaning assigned to such term in Section 2.05(b)(i).

"**Administrative Collateral Agent**" shall have the meaning assigned to such term in the preamble hereto and includes each other Person appointed as the successor of the Administrative Collateral Agent pursuant to Article X.

"**Administrative Questionnaire**" shall mean an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Administrative Agent.

"**Advisors**" shall mean outside legal counsel (including local counsel), auditors, accountants, consultants, appraisers or other advisors of the Administrative Agent, the Collateral Agent and the Lenders.

"**Affiliate**" shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, that, for purposes of Section 6.07, the term "Affiliate" shall also include any Person that directly or indirectly owns more than 10% of any class of Equity Interests of the Person specified or that is an executive officer or director of the Person specified.

"**Agents**" shall mean the Arranger, Administrative Agent, the Administrative Collateral Agent, the Collateral Agent, and any syndication agent, documentation agent or other agent appointed pursuant to the provisions of Article X.

"**Agreement**" shall have the meaning assigned to such term in the preamble hereto.

"**Alternate Base Rate**" shall mean, for any day, a fluctuating rate *per annum* (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the greatest of (a) the Base Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) the Adjusted LIBOR Rate for an Interest Period of one-month beginning on such day (or if such day is not a Business Day, on the immediately preceding Business Day) plus 100 basis points. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Base Rate or the Federal Funds Effective Rate, respectively.

"**Anti-Terrorism Laws**" shall have the meaning assigned to such term in Section 3.26.

"**Applicable Margin**" shall mean a per annum rate of interest determined as follows: with respect to each Credit Extension under the Revolving Loan Commitment, the applicable margin shall be 2.75% with respect to an ABR Loan and 3.75% with respect to a Eurodollar Loan.

"**Arranger**" shall have the meaning assigned to such term in the preamble hereto.

"**Asset Sale**" shall mean (a) any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any Property (including stock of any Subsidiary of Holdings by the holder thereof) by Holdings, the Borrower or any of their Subsidiaries to any Person other than

Borrower or any Subsidiary Guarantor (excluding (i) Inventory sold in the ordinary course of business, (ii) any sale or discount, in each case without recourse, of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof, (iii) disposals of obsolete, uneconomical, negligible, worn out or surplus Property in the ordinary course of business, (iv) licenses of intellectual property not intended to effect a disposition thereof and leases of Real Property not intended to effect a disposition thereof or sales of Cash Equivalents and marketable securities) and (b) any issuance or sale by any Subsidiary of Holdings of its Equity Interests to any Person (other than to the Borrower or any Subsidiary Guarantor or, in the case of the Borrower, to Holdings, or, in the case of any SPE License Sub, to a Person that is not a Loan Party solely to the extent required to comply with applicable Requirements of Law relating to the issuance of licenses to sell alcoholic beverages).

"**Assigning Lender**" shall have the meaning assigned to such term in Section 11.04(h).

"**Assignment and Acceptance**" shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent, in the form of Exhibit D, or such other form as shall be approved by the Administrative Agent.

"**Attributable Indebtedness**" shall mean, when used with respect to any sale and leaseback transaction, as at the time of determination, the present value (discounted at a rate equivalent to the then-current weighted average cost of funds for borrowed money of Holdings and all of its Domestic Subsidiaries as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such sale and leaseback transaction.

"**Available Cash**" means, as of any date, the sum as of such date of all cash and Cash Equivalents of Holdings and its Consolidated Subsidiaries that is not subject to any Lien (other than Permitted Liens described in Sections 6.02(a), 6.02(b), 6.02(j) and 6.02(l)), minus all accounts payable of Holdings and/or any of its Consolidated Subsidiaries.

"**Availability Forecast**" means, for each fiscal month, the corresponding availability amount forecasted in the line item entitled "Revolver availability after draw (1)" on page 10 of the Projections (relating to the Borrowing Base), as may be modified or updated pursuant to the terms of this Agreement.

"**Avoidance Actions**" shall mean any and all claims or causes of action arising under Chapter 5 (other than Section 506(c)) or Section 724(a) of the Bankruptcy Code to avoid transfers, preserve or transfer liens or otherwise recover property of the estate. "Avoidance Actions" do not include claims or causes of action pursuant to Section 549 of the Bankruptcy Code and the proceeds thereof, to the extent the transfer avoided was of an asset otherwise constituting Collateral (such term having the meaning ascribed to it in the Pre-Petition Credit Agreement) or Collateral.

"**Bankruptcy Code**" shall have the meaning assigned to such term in the recitals hereto.

"**Bankruptcy Court**" shall have the meaning assigned to such term in the recitals hereto.

"**Base Rate**" shall mean, for any day, a rate *per annum* that is equal to the corporate base rate of interest established by the Administrative Agent from time to time; each change in the Base Rate shall be effective on the date such change is publicly announced as being effective. The corporate base rate is not necessarily the lowest rate charged by the Administrative Agent to its customers.

"**Blocked Accounts**" shall have the meaning assigned to such term in Section 9.01(d).

"**Board**" shall mean the Board of Governors of the Federal Reserve System of the United States.

"**Borrower**" shall have the meaning assigned to such term in the preamble hereto.

"**Borrowing**" shall mean, as the context requires, a borrowing of (a) a Revolving Loan or (b) a Swingline Loan.

"**Borrowing Base**" shall mean at any time, subject to adjustment as provided in Section 2.19, an amount equal to the sum of, without duplication:

(a) the book value of Eligible Accounts of Borrower and the Subsidiary Guarantors multiplied by the advance rate of 80%, plus

(b) the lesser of (i) the sum of (A) during the months of January through and including September in each calendar year, the advance rate of 55%, and (B) at all other times, the advance rate of 75%, in each case, of the Cost of Eligible Inventory of Borrower and the Subsidiary Guarantors, and (ii) the advance rate of 85% of the product of (A) the product of (1) net book value (after reserves as determined in accordance with GAAP) of Inventory of Borrower and the Subsidiary Guarantors and (2) the Inventory Eligibility Factor and (B) the Net Orderly Liquidation Percentage, plus

(c) during the Fixed Asset Loan Period of each fiscal year, the Fixed Asset Loan Value of Borrower and the Subsidiary Guarantors; provided that the Fixed Asset Loan Value of Borrower and the Subsidiary Guarantors shall in no event exceed $50.0 million, plus

(d) for the time period beginning on the first Monday after Labor Day of each calendar year through and including the first Monday after Christmas of each calendar year, the book value of Eligible Credit Card Receivables of Borrower and the Subsidiary Guarantors multiplied by the advance rate of 80%, minus

(e) the Hedging Reserve, minus

(f) the Carve-Out Reserve, minus

(g) effective immediately upon notification thereof to Borrower by the Collateral Agent, any Reserves established from time to time by the Collateral Agent in the exercise of its reasonable credit judgment; provided that the failure to provide such notice shall not affect the application of such Reserves; minus

(h) $9.0 million (except that such amount shall be $6.0 million in fiscal months October and November);

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate theretofore delivered to the Collateral Agent and the Administrative Agent with such adjustments as Administrative Agent and Collateral Agent deem appropriate in their collective reasonable credit judgment (which determinations and adjustments shall be made in a manner that is consistent with determinations and adjustments made under the Pre-Petition Credit Agreement (as modified to take account of the current financial condition of the Loan Parties and commencement and pendency of the Chapter 11 Cases)) to assure that the Borrowing Base is calculated in accordance with the terms of this Agreement.

"**Borrowing Base Certificate**" shall mean an Officer's Certificate from Borrower, substantially in the form of, and containing the information prescribed by, Exhibit K, delivered to the Administrative Agent and the Collateral Agent and setting forth the calculation of the Borrowing Base with respect to the Borrower and all Subsidiary Guarantors.

"**Borrowing Request**" shall mean a request by Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit E, or such other form as shall be approved by the Administrative Agent.

"**Breakage Prepayment Account**" shall have the meaning assigned to such term in Section 2.10(j).

"**Business Day**" shall mean any day other than a Saturday, Sunday or other day on which banks in New York City are authorized or required by law to close; provided, however, that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"**Capital Expenditures**" shall mean, with respect to any Person, for any period, the aggregate amount of all expenditures by such Person and its Subsidiaries during that period for fixed or capital assets that, in accordance with GAAP, are or should be classified as capital expenditures in the consolidated balance sheet of such Person and its Consolidated Subsidiaries, including, without limitation, expenditures made for and in connection with any acquisition of any Person the primary purpose of which is to acquire fixed or capital assets of such Person (to the extent of the purchase price attributed to such fixed or capital assets).

"**Capital Lease Obligations**" of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) Property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"**Carve-Out Amount**" shall have the meaning assigned to such term in Section 2.21.

"**Carve-Out Reserve**" shall mean a reserve in an amount equal to the Carve-Out Amount.

"**Carve-Out Trigger Notice**" shall mean a written notice issued by the Administrative Agent to the Borrower's lead counsel, the U.S. Trustee, and lead counsel to any Committee, which notice may be issued at any time following the occurrence and during the continuation of any Event of Default.

"**Cash Collateral Account**" shall have the meaning assigned to such term in Section 9.04.

"**Cash Dominion Trigger Event**" shall mean the occurrence of any one of the following events: (i) the aggregate outstanding principal balance of the Revolving Loans shall exceed $0 on the first Business Day after December 25th of any calendar year or (ii) an Event of Default shall occur and be continuing; provided that, to the extent that the Cash Dominion Trigger Event has occurred due to clause (i) of this definition, if Excess Availability shall be equal to or greater than $30.0 million at the end of the period specified in Section 2.10(i), the Cash Dominion Trigger Event shall be deemed to be over. At any time that a Cash Dominion Trigger Event shall be deemed to be over or otherwise cease to exist, the Agents shall take such actions, including delivering such notices and directions to depositary institutions at which Blocked Accounts are established, to terminate the cash sweeps and other transfers existing pursuant to Section 9.01(e) as a result of any Activation Notice or other notices or directions given by any Agent during the existence of such Cash Dominion Trigger Event.

"**Cash Equivalents**" shall mean, as to any Person: (a) securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such Person; (b) securities issued, or directly, unconditionally and fully guaranteed or insured, by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Ratings Group or Moody's Investors Services, Inc.; (c) time deposits and certificates of deposit or bankers' acceptances of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of $500.0 million and a rating of "A" (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) with maturities of not more than one year from the date of acquisition by such Person; (d) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) or (b) above entered into with any bank meeting the qualifications specified in clause (c) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities; (e) commercial paper issued by any Person incorporated in the United States rated at least A-1 or the equivalent thereof by Standard & Poor's Rating Service or at least P-1 or the equivalent thereof by Moody's Investors Service, Inc., and in each case maturing not more than one year after the date of acquisition by such Person; (f) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (e) above; and (g) demand deposit accounts maintained in the ordinary course of business.

"**Cash Forecast**" means, for each fiscal month the corresponding cash amount forecasted in the "Ending Book Cash Balance" line item of the 13-Week Budget for such fiscal month, which 13-Week Budget shall reflect any proceeds of the Term B Note received by Borrower; provided that to the extent Borrower makes a pension contribution (which is not reflected in the 13-Week Budget), the Cash Forecast shall be adjusted downward by the actual amount of such pension contribution in an amount not to exceed $704,000.

"**Casualty Event**" shall mean, with respect to any Property (including Real Property) of any Person, any loss of title with respect to such Property or any loss of or damage to or destruction of, or any condemnation or other taking (including by any Governmental Authority) of, such Property for which such Person or any of its Subsidiaries receives insurance proceeds or proceeds of a condemnation award or other compensation. "Casualty Event" shall include but not be limited to any taking of all or any part of any Real Property of any Person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any Person or any part thereof by any Governmental Authority, civil or military.

"**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq*.

"**Chapter 11 Cases**" shall have the meaning assigned to such term in the recitals hereto

A "**Change in Control**" shall be deemed to have occurred if: (a) Holdings at any time ceases to own 100% of the capital stock of Borrower; (b) at any time a change of control occurs under and as defined in any documentation relating to any Material Indebtedness; or (c) either (i) the Permitted Holders cease to own, or to have the power to vote or direct the voting of, Voting Stock representing a majority of the voting power of the total outstanding Voting Stock of Holdings or (ii) the Permitted Holders cease to own Equity Interests representing a majority of the total economic interests of the Equity Interests of Holdings.

"**Change in Law**" shall mean (a) the adoption of any law, treaty, order, rule or regulation after the date of this Agreement, (b) any change in any law, treaty, order, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or Issuing Bank (or for purposes of Section 2.12(b), by any lending office of such Lender or by such Lender's or Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement (and, for purposes of this Agreement, the Dodd-Frank Wall Street Reform and Consumer Protection Act (including regulations promulgated with respect thereto), and all requests, guidelines or directives in connection therewith are deemed to have gone into effect and been adopted after the Closing Date).

"**Charges**" shall have the meaning assigned to such term in Section 11.13.

"**Chattel Paper**" shall mean all "chattel paper," as such term is defined 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.

"**Chief Restructuring Officer**" shall mean a chief restructuring officer acceptable to the Administrative Agent and the Required Lenders, it being understood that the current chief restructuring officer of the Debtors shall be deemed to be acceptable to the Administrative Agent and the Required Lenders.

"**Class**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment, Swingline Commitment or LC Commitment.

"**Closing Date**" shall mean March [**29**], 2011.

"**Closing Fee**" shall have the meaning ascribed to such term in Section 2.05(d).

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

"**Collateral**" shall mean, collectively, all of the Security Agreement Collateral, the Mortgaged Real Property and all other Property of whatever kind and nature pledged as collateral under any Security Document, the Financing Orders or any other order of the Bankruptcy Court in the Chapter 11 Cases; provided, however, that "Collateral" shall not include (a) proceeds of Avoidance Actions until after the entry of the Final Order or (b) the Term B Segregated Account or any cash or Cash Equivalents credited thereto.

"**Collateral Agent**" shall have the meaning assigned to such term in the preamble hereto and includes each other Person appointed as a successor Collateral Agent pursuant to Article X.

"**Collateral Agent Fee**" shall have the meaning ascribed to such term in Section 2.05(b)(ii).

"**Collection Account**" shall have the meaning assigned to such term in Section 9.01(e).

"**Commercial Letter of Credit**" shall mean any letter of credit or similar instrument issued for the account of the Borrower for the benefit of Borrower, any Subsidiary Guarantor or any of their respective Subsidiaries, for the purpose of providing the primary payment mechanism in connection with the purchase of materials, goods or services by Borrower, any Subsidiary Guarantor or any of their respective Subsidiaries in the ordinary course of their businesses.

"**Committee**" shall mean the official committee of unsecured creditors formed in the Chapter 11 Cases.

"**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).

"**Commitments**" shall mean the aggregate sum of each Lender's Commitment.

"**Companies**" shall mean Holdings and its Subsidiaries; and "**Company**" shall mean any one of them.

"**Compliance Certificate**" shall mean a certificate of a Financial Officer substantially in the form of Exhibit B.

"**Concentration Account**" shall have the meaning assigned to such term in Section 9.01(e).

"**Consolidated Companies**" shall mean Holdings and its Consolidated Subsidiaries.

"**Consolidated Current Assets**" shall mean, with respect to any Person as at any date of determination, the total assets of such Person and its Consolidated Subsidiaries which may properly be classified as current assets on a consolidated balance sheet of such Person and its Consolidated Subsidiaries in accordance with GAAP.

"**Consolidated Current Liabilities**" shall mean, with respect to any Person as at any date of determination, the total liabilities of such Person and its Consolidated Subsidiaries which may properly be classified as current liabilities (other than the current portion of any Loans) on a consolidated balance sheet of such Person and its Consolidated Subsidiaries in accordance with GAAP.

"**Consolidated EBITDA**" shall mean, for any applicable measurement period, Consolidated Net Income for such period, as adjusted by adding thereto to the extent deducted in calculating Consolidated Net Income during such measurement period, without duplication, (a) any provision for (or less any benefit from) income and franchise taxes, (b) the amount of Consolidated Interest Expense, (c) amortization and depreciation, (d) losses (or less gains) from Asset Sales (excluding sales expenses or losses related to current assets), (e) non-cash impairments of goodwill, intellectual property and other tangible assets, (f) [**non-cash charges associated with the early termination of leases of retail stores**], (g) the amount of losses and expenses associated with the closing of retail stores of Borrower or any of its Subsidiaries in an amount not to exceed $1.5 million in the aggregate in any fiscal year, (h) non-cash charges (or less gains) relating to the marked to market provision for, the termination of, or terminated, Hedging Agreements, (i) [**key officer and employee retention program payments to the extent approved by the Bankruptcy Court**], (j) any amount paid to Wasserstein & Co., LP pursuant to the Management Services Agreement, (k) fixed asset write-offs in the ordinary course of business not to exceed $2.0 million in any fiscal year, (l) non-cash expenses arising in connection with the grant of stock options, (m) costs and expenses associated with exiting product lines, categories or businesses in an aggregate amount not to exceed $[**3,000,000**], (n) for periods ending on or before the earlier of the Final Maturity Date or June 30, 2012, non-recurring charges relating to Borrower's or any of its Subsidiaries' restructuring an refinancing activities, including, but not limited to, fees paid to financial and legal advisors, post-petition lenders, any court-appointed committee, claims agent, public relations advisors and the U.S. Trustee, (o) non-cash inventory reserve adjustments, (p) for periods ending on or before the earlier of the Final Maturity Date or June 30, 2012, recruiting and relocation costs related to the hiring of employees for senior vice president and more senior positions and (q) any Management Services Termination Fee paid during such period.

"**Consolidated Fixed Charge Coverage Ratio**" shall mean, for any Test Period, the ratio of (a) Consolidated EBITDA for such Test Period to (b) Consolidated Fixed Charges for such Test Period.

"**Consolidated Fixed Charges**" shall mean, for any period, the sum, without duplication, of (a) Consolidated Interest Expense for such period; (b) the amount of all Capital Expenditures made by Holdings and its Subsidiaries during such period; (c) all cash payments in respect of income taxes made during such period (net of any cash refund in respect of income taxes actually received during such period); (d) the scheduled principal amount of all amortization payments on all Indebtedness (including the principal component of all Capital Lease Obligations) of Holdings and its Subsidiaries for such period (as determined on the first day of the respective period); (e) the product of (i) all dividend payments on any series of Disqualified Capital Stock of Holdings during such period multiplied by (ii) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of Holdings, expressed as a decimal; (f) the product of (i) all cash dividend payments on any Preferred Stock (other than Disqualified Capital Stock) of Holdings during such period, multiplied by (ii) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of Holdings, expressed as a decimal and (g) if and when the amounts described in clauses (o) and (p) of the definition of "Consolidated EBITDA" are subsequently paid in cash, the amount of such payments.

"**Consolidated Indebtedness**" shall mean, as at any date of determination, without duplication, the aggregate amount of all Indebtedness (but including in any event the then outstanding principal amount of all Loans, all Capital Lease Obligations and all LC Exposure) of Holdings and its Consolidated Subsidiaries on a consolidated basis as determined in accordance with GAAP.

"**Consolidated Interest Expense**" shall mean, for any period, without duplication, the total consolidated interest expense of Holdings and its Consolidated Subsidiaries for such period (calculated without regard to any limitations on the payment thereof and including, capitalized interest, commitment fees, letter of credit fees and net amounts payable under Interest Rate Protection Agreements, but excluding any interest paid in kind) determined in accordance with GAAP plus, without duplication, (a) the portion of Capital Lease Obligations of Holdings and its Consolidated Subsidiaries representing the interest factor for such period, (b) imputed interest on Attributable Indebtedness, (c) cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than Holdings or a Wholly Owned Subsidiary) in connection with Indebtedness incurred by such plan or trust, (d) the product of (i) all dividend payments on any series of any Preferred Stock of any Subsidiary of Holdings (other than any Preferred Stock held by Holdings or a Wholly Owned Subsidiary), multiplied by (ii) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of Holdings and its Subsidiaries, expressed as a decimal, and (e) all interest on any Indebtedness of the type described in clause (e) or (j) of the definition of "Indebtedness" with respect to Holdings or any of its Subsidiaries.

"**Consolidated Net Income**" shall mean, for any period, the consolidated net income of Holdings and its Consolidated Subsidiaries determined in accordance with GAAP, but excluding in any event (a) after-tax extraordinary gains or extraordinary losses; (b) after-tax gains or losses realized from (i) the acquisition of any securities, or the extinguishment or conversion of any Indebtedness or Equity Interest, of Holdings or any of its Subsidiaries or (ii) any sales of assets (other than Inventory in the ordinary course of business); (c) net earnings or losses of any other Person (other than a Subsidiary of Holdings) in which Holdings or any Consolidated Subsidiary has an ownership interest, except (in the case of any such net earnings) to the extent such net earnings shall have actually been received by Holdings or such Consolidated Subsidiary (subject to the limitation in clause (d) below) in the form of cash dividends or distributions; (d) the net income of any Consolidated Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Consolidated Subsidiary of its net income is not at the time of determination permitted without approval under applicable law or regulation or under such Consolidated Subsidiary's organizational documents or any agreement or instrument applicable to such Consolidated Subsidiary or its stockholders which approval has not been obtained; (e) gains or losses from the cumulative effect of any change in accounting principles; (f) earnings resulting from any reappraisal, revaluation or write-up of assets; and (g) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Holdings or any Consolidated Subsidiary or is merged into or consolidated with Holdings or any Consolidated Subsidiary or that Person's assets are acquired by Holdings or such Consolidated Subsidiary.

"**Consolidated Subsidiary**" shall mean, as to any Person, all Subsidiaries of such Person which are consolidated with such Person for financial reporting purposes in accordance with GAAP.

"**Contested Collateral Lien Conditions**" shall mean, with respect to any Permitted Lien of the type described in paragraphs (a) and (f) of Section 6.02, the following conditions:

(a) Loan Party shall be contesting such Lien in good faith;

(b) to the extent such Lien is in an amount in excess of $250,000, in the aggregate with all other such Liens, the Collateral Agent shall have, at the election of the Borrower, either (i) established a Reserve (to the extent of such Lien on Eligible Accounts, Eligible Inventory, Eligible Equipment or Eligible Real Property) with respect thereto and the Administrative Agent shall endeavor to provide the Borrower with no less than two (2) Business Days prior notice of the amount of any such Reserve or (ii) obtained a bond in an amount sufficient to pay and discharge such Lien and the Administrative Agent's reasonable estimate of all interest and penalties related thereto; provided that the failure to provide such notice shall not affect the application of such Reserve; and

(c) such Lien shall in all respects be subject and subordinate in priority to the Lien and security interest created and evidenced by the Financing Order and the Security Documents, except if and to the extent that the law or regulation creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Lien and security interest created and evidenced by the Security Documents.

"**Contingent Obligation**" shall mean, as to any Person, any obligation, agreement, understanding or arrangement of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any Property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) 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; (d) guaranteeing bankers' acceptances and letters of credit, until a reimbursement obligation arises; or (e) 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 or any product warranties provided 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 less, the maximum amount of such primary obligation for which such Person may be liable, whether severally or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) 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.

"**Control**" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "**Controlling**" and "**Controlled**" shall have meanings correlative thereto.

"**Control Agreement**" shall have the meaning assigned to such term in the Security Agreement.

"**Cost**" shall mean, as determined by the Collateral Agent in good faith, with respect to Inventory, the lower of (a) landed cost computed on first-in a first-out basis in accordance with GAAP or (b) market value; provided that, for purposes of the calculation of the Borrowing Base, (i) the Cost of the 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 Borrower or the Subsidiary Guarantors or (B) write-ups or write-downs in cost with respect to currency exchange rates, and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent Inventory Appraisal which has been approved by Collateral Agent in its reasonable credit judgment.

"**Credit Card Receivables**" means amounts due to any Loan Party from any major credit card company acceptable to the Collateral Agent in its reasonable credit judgment, and subject to such terms and conditions as may be acceptable to the Collateral Agent in its reasonable credit judgment.

"**Credit Card Receivables Control Agreement**" means an agreement in form and substance reasonably satisfactory to the Collateral Agent among the Collateral Agent, Borrower or a Subsidiary Guarantor to which any Credit Card Receivable is owing, and the credit card company obligated on such Credit Card Receivable, which agreement provides, among other things, that (a) such credit card company shall comply with instructions originated by the Collateral Agent directing the payment of such Credit Card Receivables and (b) such credit card company shall agree that it shall have no Lien on, or right of setoff against, such Credit Card Receivable other than as may be reasonably acceptable to the Collateral Agent.

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

"**Debt Issuance**" shall mean the incurrence by Holdings, Borrower or any of their Subsidiaries of any Indebtedness after the Closing Date (other than as permitted by Section 6.01).

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

"**Default Allocation Percentage**" as to any Lender shall mean the quotient (determined as a percentage) determined as of the date of an Event of Default, whose numerator equals the principal, interest, fees and other Obligations owing to such Lender (including all advances made by such Lender following such Event of Default) plus, without duplication, the amount of such Lender's (and such Lender's Affiliate's) marked-to-market exposure under Hedging Agreements as of such date and all obligations in respect of overdrafts and related liabilities owed to such Lender (and such Lender's Affiliates) arising from treasury, depositary and cash management services, or in connection with any automated clearinghouse transfers of funds (subject in each case to the limitations on such obligations set forth in the definition of "Obligations") and whose denominator equals the principal, interest, fees and other Obligations owing to all Lenders (including all advances made by the Lenders following such Event of Default) plus, without duplication, the amount of all Lenders' (and such Lenders' Affiliates) marked-to-market exposure under Hedging Agreements as of such date and all obligations in respect of overdrafts and related liabilities owed to such Lenders (and such Lenders' Affiliates) arising from treasury, depositary and cash management services, or in connection with any automated clearinghouse transfers of funds (subject in each case to the limitations on such obligations set forth in the definition of "Obligations").

"**Defaulting Lender**" shall mean any Lender, as determined by the Administrative Agent, that (a) has failed to fund any portion of its Loans or participations in Letters of Credit or Swingline Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has notified the Administrative Agent, the Issuing Bank, the Swingline Lender, any Lender and/or Borrower in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit (provided, however,

solely for purposes of limitations on the exercise of voting rights hereunder, but not for any other purposes hereunder, Ally Commercial Finance LLC shall not be deemed to be a Defaulting Lender under this clause (b) unless it has notified the Administrative Agent, the Issuing Bank, the Swingline Lender, any Lender and/or Borrower in writing that it does not intend to comply with any of its funding obligations under this Agreement (or all agreements under which it commits to extend credit) or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement, regardless of whether it has otherwise made a public statement to the effect that it does not intend to comply with its funding obligations generally under other agreements in which it commits to extend credit), (c) has failed, within three Business Days after request by the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans, (d) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, or (e) in the case of a Lender that has a Commitment, LC Exposure or Swingline Exposure outstanding at such time, shall take, or (other than in the case of Ally Commercial Finance LLC) is the Subsidiary of any person that has taken, any action or be (or is) the subject of any Insolvency Proceeding.

"**Deposit Account Control Agreement**" shall have the meaning assigned to such term in the Security Agreement.

"**Disqualified Capital Stock**" shall mean any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the first anniversary of the Final Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in (a) above, in each case at any time prior to the first anniversary of the Final Maturity Date, or (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations.

"**Dividend**" with respect to any Person shall mean that such Person has declared or paid a dividend or returned any equity capital to its equityholders or authorized or made any other distribution, payment or delivery of Property (other than Equity Interests or warrants or options having customary terms to acquire common stock or other Equity Interests of such Person) or cash to its equityholders 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 (or any options or warrants issued by such Person with respect to its capital stock), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for a consideration any shares of any class of the Equity Interests of such Person outstanding (or any options or warrants issued by such Person with respect to its Equity Interests). Without limiting the foregoing, "Dividends" with respect to any Person shall also include all payments made or required to be made by such Person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

"**Documents**" shall mean all "documents," as such term is defined 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.

"**Dollars**" and "**$**" shall mean lawful money of the United States.

"**Eligible Accounts**" shall have the meaning assigned to such term in Section 2.19(a).

"**Eligible Credit Card Receivables**" shall means all Credit Card Receivables other than any of the following: (i) any Credit Card Receivable in which the Collateral Agent, on behalf of the Secured Parties, does not have a first priority and perfected Lien subject to Permitted Liens described in Sections 6.02(a), (b), and (e); (ii) any Credit Card Receivable with respect to which a Credit Card Receivables Control Agreement is not in full force and effect; (iii) any Credit Card Receivable that is not owned by Borrower or a Subsidiary Guarantor; (iv) any Credit Card Receivable that is payable in any currency other than Dollars; (v) any Credit Card Receivable 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; (vi) any Credit Card Receivable (A) upon which Borrower's or a Subsidiary Guarantor's, as applicable, right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever unless such condition is satisfied or (B) as to which Borrower or a Subsidiary Guarantor, as applicable, is not able to bring suit or otherwise enforce its remedies against the obligor on such Credit Card Receivable through judicial or administrative proceeding; (vii) to the extent that any defense, counterclaim, chargeback, setoff or dispute is asserted as to such Credit Card Receivable, it being understood that the remaining balance of the Credit Card Receivable shall be eligible; (viii) any Credit Card Receivable that is in default; provided that, without limiting the generality of the foregoing, a Credit Card Receivable shall be deemed in default upon the occurrence of any of the following: (A) the Person obligated upon such Credit Card Receivable suspends business, makes a general assignment for the benefit of creditors or fails to pay its debts generally as they come due; or (B) a petition is filed by or against any Person obligated upon such Credit Card Receivable under any bankruptcy law or any other federal, state or foreign (including any provincial) receivership, insolvency relief or other law or laws for the relief of debtors; and (ix) any Credit Card Receivable as to which any of the representations or warranties in the Loan Documents are untrue in any material respect (without duplication of any materiality qualifier contained therein).

"**Eligible Equipment**" shall mean any Equipment owned by Borrower or a Subsidiary Guarantor which is acceptable to Collateral Agent in its reasonable credit judgment for lending purposes and which, without limiting Collateral Agent's discretion, meets, and so long as it continues to meet, the following requirements:

(a) is located at one of the business locations in the United States of such Persons set forth on Schedule 1.01(d) (except that Equipment used in the Companies' "outside pack" operations with a fair market value not to exceed $500,000 in the aggregate may be located at locations other than those set forth on Schedule 1.01(d)),

(b) is subject to a valid and perfected first priority lien in favor of Collateral Agent subject to the Liens permitted under Sections 6.02(a), (b) and (e),

(c) is owned by Borrower or Subsidiary Guarantor free and clear of all liens and rights of any other Person, except the valid and perfected first priority Lien in favor of Collateral Agent and Permitted Liens, if any, which are subordinated to the Lien of Collateral Agent or are described in paragraph (b) above,

(d) does not breach any of the representations or warranties pertaining to such Equipment set forth in this Agreement or the other Loan Documents in any material respect (without duplication of any materiality qualifier contained therein),

(e) is covered by insurance reasonably acceptable to Collateral Agent,

(f) is appraised by an independent appraisal or audit firm designated by Collateral Agent and reasonably acceptable to Borrower, and

(g) is not ineligible by virtue of one or more of the criteria set forth below; provided, however, that such criteria may be revised from time to time by Collateral Agent in its reasonable credit judgment to address the results of any audit or appraisal performed by Collateral Agent from time to time after the date hereof.

An item of Equipment shall be excluded from Eligible Equipment if:

(i) Borrower or Subsidiary Guarantor does not have good, valid, and saleable title thereto;

(ii) except as provided in clause (a) above, or otherwise agreed to by the Collateral Agent, it is located on Real Property leased by Borrower or a Subsidiary Guarantor, unless it is subject to a Landlord Lien Waiver and Access Agreement executed by the lessor, or other third party, as the case may be, and unless it is segregated or otherwise separately identifiable from goods of other Persons, if any, stored on such leased premises;

(iii) it is damaged, defective or obsolete, or it constitutes furnishings or parts or fixtures affixed to Real Property, unless such Equipment is affixed to the Mortgaged Real Property listed on Schedule 1.01(d);

(iv) Collateral Agent has not received evidence of the property or casualty insurance required by this Agreement with respect to such Equipment;

(v) it is subject to a lease with any Person (other than Borrower or a Subsidiary Guarantor, unless a Lien on and security interest in the related lease shall be granted to the Collateral Agent and Collateral Agent shall have received all control agreements and instruments and all actions shall be taken as reasonably requested by the Collateral Agent to perfect the Collateral Agent's security interest in such lease); or

(vi) it is located at an owned location subject to a mortgage in favor of a lender other than the Collateral Agent (unless a reasonably satisfactory mortgagee waiver has been delivered to the Collateral Agent) or the removal of

which is subject to restrictions relating to financing arrangement, including any industrial revenue bond financing.

"**Eligible Inventory**" shall mean, subject to adjustment as set forth in Section 2.19(b), items of Inventory of the Borrower and the Subsidiary Guarantors.

"**Eligible Real Property**" shall mean the Real Properties which (a) are set forth on Schedule 1.01(c), or (b) are owned by Borrower or a Subsidiary Guarantor and designated from time to time by the Collateral Agent as being Eligible Real Property, provided that with respect to each such parcel of Eligible Real Property, each of the material improvements thereon is acceptable to the Collateral Agent in its reasonable credit judgment for lending purposes and each of which, without limiting such reasonable credit judgment, meets, or continues to meet, the following requirements: (i) it is subject to a first priority mortgage or leasehold mortgage and lien in favor of Collateral Agent, (ii) it is owned by the Borrower or the applicable Subsidiary Guarantor free and clear of all liens and rights of any other Person, except the mortgage or leasehold mortgage and lien in favor of Collateral Agent and Permitted Liens permitted under Sections 6.02(a), (b), (d), (e), (g), (r) and (v), (iii) it does not breach any of the representations or warranties pertaining to such property set forth in this Agreement or any other Loan Documents in any material respect (without duplication of any materiality qualifier contained therein), (iv) it is covered by title insurance with respect to the Lien of Collateral Agent and casualty and property insurance reasonably acceptable to the Collateral Agent, (v) it is appraised by an independent appraisal or audit firm designated by Collateral Agent and reasonably acceptable to Borrower and (vi) it is the subject of an environmental report reasonably requested by, and reasonably acceptable to, the Collateral Agent.

"**Embargoed Person**" shall have the meaning assigned to such term in Section 6.20.

"**Environment**" shall mean ambient air, surface water and groundwater (including, without limitation, potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources, the workplace or as such term is otherwise defined in any Environmental Law.

"**Environmental Claim**" shall mean any claim, notice, demand, order, action, suit, proceeding or other communication in each case alleging liability for investigation, remediation, removal, cleanup, response, corrective action, damages to natural resources, personal injury, Property damage, fines, penalties or other costs resulting from, related to or arising out of (i) the presence, Release or threatened Release in or into the Environment of Hazardous Material at any location or (ii) any violation of Environmental Law, and shall include, without limitation, any claim seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Materials or alleged injury or threat of injury to health, safety, or the Environment.

"**Environmental Law**" shall mean any and all applicable present and future treaties, laws, statutes, ordinances, regulations, rules, decrees, orders, judgments, consent orders, consent decrees or other binding requirements, and the common law, relating to protection of public health or the Environment, the Release or threatened Release of Hazardous Materials, natural resources or natural resource damages, or occupational safety or health.

"**Environmental Liabilities**" shall mean, all liabilities, obligations, responsibilities, Responses, losses, damages, costs and expenses, fines, penalties, sanctions arising under any Environmental Law, Environmental Permit, order or agreement with any Governmental Authority relating to any Release or threatened Release and resulting from the operation of the Companies.

"**Environmental Permit**" shall mean any permit, license, approval, consent or other authorization required by or from a Governmental Authority under Environmental Law.

"**Equipment**" shall have the meaning assigned such term in the Security Agreement.

"**Equity Interest**" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on the date hereof or issued after the Closing Date, but excluding debt securities convertible or exchangeable into such equity.

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

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

"**ERISA Event**" shall mean (a) any "reportable event," as such term is defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Company or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Company or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (f) the incurrence by any Company or any of its ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (g) the receipt by any Company or its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability 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 or is in critical or endangered status under Section 432 of the Code or Section 305 of ERISA; (h) the making of any amendment to any Plan which could result in the imposition of a lien or the posting of a bond or other security; and (i) the occurrence of a nonexempt prohibited transaction

(within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Company.

"**Eurodollar Borrowing**" shall mean a Borrowing comprised of Eurodollar Loans.

"**Eurodollar Loan**" shall mean any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

"**Event of Default**" shall have the meaning assigned to such term in Article VIII.

"**Excess Availability**" shall mean (a) the lesser of (i) the Revolving Commitments of all of the Lenders and (ii) the Borrowing Base on the date of determination less (b) all outstanding Loans and LC Exposure less (c) in the Collateral Agent's reasonable credit judgment, the aggregate amount of all the outstanding and unpaid trade payables and other obligations of Borrower or any Subsidiary Guarantor which are not paid within 60 days past the due date according to their original terms of sale, in each case as of such date of determination less (d) in the Collateral Agent's reasonable credit judgment, the amount of checks issued by Borrower or any Subsidiary Guarantor to pay trade payables and other obligations which are not paid within 60 days past the due date according to their original terms of sale, in each case as of such date of determination, but which checks either have not yet been sent or are subject to other arrangements which are expected to delay the prompt presentation of such checks for payment.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Excluded Taxes**" shall mean, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States, or by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or carries on business (other than as a result of a connection arising solely from the Lender, Issuing Bank or Administrative Agent having executed, delivered or performed its obligations or received a payment under this Agreement or any other Loan Document) or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits tax imposed by the United States or any similar tax imposed by any other jurisdiction in which such lending office is located, and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by Borrower under Section 2.16), withholding tax that is imposed on amounts payable to such Foreign Lender (x) at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or (y) that is attributable to such Foreign Lender's failure or inability to deliver or furnish to Borrower the documentation specified in Section 2.15(e) where the provision of such documentation would have resulted in such Foreign Lender's entitlement to an exemption from or reduction of withholding tax, except to the extent that such Foreign Lender (or its assignor or seller of a participation interest, if any) was entitled, at the time of designation of a new lending office (or in the case of an assignment or sale of a participation interest, at the time of assignment or acquisition of such participation interest), to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 2.15(a) (it being understood and agreed, for the avoidance of doubt, that any withholding tax imposed on a Foreign Lender as a result of a Change in Law or regulation or interpretation thereof occurring

after the time such Foreign Lender became a party to this Agreement shall not be an Excluded Tax).

"**Executive Orders**" shall have the meaning assigned to such term in Section 6.20.

"**Existing Leases**" shall have the meaning assigned to such term in Section 6.02(g).

"**Exit Closing Fee**" shall have the meaning ascribed to such term in Section 2.05(e).

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

"**Fee Letter**" shall mean that certain letter agreement dated as of March 25, 2011 by and among the Borrower, UBS AG, Stamford Branch, UBS Loan Finance LLC, UBS Securities LLC and Ally Commercial Finance LLC.

"**Fees**" shall mean the Closing Fee, the Exit Closing Fee, the Commitment Fee, the Administrative Agent Fee, the Collateral Agent Fee, the LC Participation Fee and the Fronting Fee.

"**Final Maturity Date**" shall mean the earliest to occur of (a) the date on which all of the Obligations have been indefeasibly repaid in full and the Commitments have terminated, (b) March [**29**], 2012, (c) the date of (i) the closing a sale of all or substantially all of the Loan Parties' assets or stock under Section 363 of the Bankruptcy Code, unless otherwise waived by the Administrative Agent and the Required Lenders, and (ii) the delivery of budgets, acceptable to the Administrative Agent and the Collateral Agent in their sole discretion, for the Chapter 11 Cases for the period thereafter, (d) the effective date of a confirmed plan of reorganization in any Chapter 11 Case pursuant to Chapter 11 of the Bankruptcy Code ("**Plan of Reorganization**") and (e) the date of termination of the Commitments and/or acceleration of the Obligations following an Event of Default pursuant to Article VIII.

"**Final Order**" shall mean collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court which order shall be substantially in the form of the Interim Order and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent and the Required Lenders, together with all extensions, modifications, amendments or supplements thereto, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders and their counsel.

"**Financial Officer**" of any Person shall mean the Chief Financial Officer, Treasurer or Controller of such Person.

"**Financing Orders**" shall mean the Interim Order, the Final Order and any amendment, modification or supplement thereto in form and substance reasonably acceptable to the Administrative Agent and the Required Lenders and their counsel.

"**FIRREA**" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

"**First Day Orders**" shall mean the First Day Orders set forth on Schedule A-1, which shall be in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders and their counsel.

"**Fixed Asset Loan Period**" shall mean, in any fiscal year, the five fiscal month period beginning with the first day of the fiscal month of the Borrower commencing closest to July 31 of such fiscal year.

"**Fixed Asset Loan Value**" shall mean an amount equal to the sum of (a) the advance rate of 55% of the appraised net orderly liquidation value of the Eligible Equipment plus (b) the advance rate of 55% of the appraised fair market value of the Eligible Real Property. The appraised net orderly liquidation value of Eligible Equipment and the appraised fair market value of Eligible Real Property are set forth on Schedule 1.01(c), as Schedule 1.01(c) may be amended from time to time as provided herein. If any Eligible Equipment or Eligible Real Property listed on Schedule 1.01(c) is sold, liquidated or otherwise ceases to be Eligible Equipment or Eligible Real Property, the Fixed Asset Loan Value shall be determined without giving effect to the appraised net orderly liquidation value of such Eligible Equipment or the appraised fair market value of such Eligible Real Property and such Eligible Equipment and Eligible Real Property shall be deleted from Schedule 1.01(c) and the Collateral Agent shall correspondingly amend Schedule 1.01(c) without any further action of any party hereto. The Collateral Agent may also amend Schedule 1.01(c) in its reasonable credit judgment upon the receipt of any updated appraisal that is receives pursuant to Section 9.03.

"**Foreign Lender**" shall mean any Lender or any Issuing Bank that is not, for United States federal income tax purposes, (i) a citizen or resident of the United States, (ii) a corporation or partnership or entity treated as a corporation or partnership created or organized in or under the laws of the United States, or any political subdivision thereof, (iii) an estate the income of which is subject to U.S. federal income taxation regardless of its source or (iv) a trust if a court within the United States is able to exercise primary supervision over the administration of such trust and one or more United States Persons have the authority to control all substantial decisions of such trust.

"**Foreign Subsidiary**" shall mean a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia.

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

"**FSA**" shall mean the Food Security Act of 1985 (codified in 7 U.S.C. § 1631).

"**Funding Date**" shall mean the date on which all of the conditions set forth in Section 4.02 have been satisfied which date shall be no later than the date on which the Final Order is entered.

"**GAAP**" shall mean generally accepted accounting principles in the United States applied on a consistent basis.

"**Governmental Authority**" shall mean any federal, state, local or foreign court, central bank or governmental agency, authority, instrumentality or regulatory body.

"**Governmental Real Property Disclosure Requirements**" shall mean any Requirement of Law of any Governmental Authority requiring notification of the buyer, lessee, mortgagee, assignee or other transferee of any Real Property, facility, establishment or business, or notification, registration or filing to or with any Governmental Authority, in connection with the sale, lease, mortgage, assignment or other transfer (including, without limitation, any transfer of control) of any Real Property, facility, establishment or business, of the actual or threatened presence or Release in or into the Environment, or the use, disposal or handling of Hazardous Materials on, at, under or near the Real Property, facility, establishment or business to be sold, leased, mortgaged, assigned or transferred.

"**Guaranteed Obligations**" shall have the meaning assigned to such term in Section 7.01.

"**Guarantees**" shall mean the guarantees issued pursuant to Article VII by the Guarantors.

"**Guarantors**" shall mean Holdings and each Subsidiary Guarantor.

"**Hazardous Materials**" shall mean the following: hazardous substances; hazardous wastes; polychlorinated biphenyls ("**PCBs**") or any substance or compound containing PCBs; asbestos or any asbestos-containing materials in any form or condition; radon or any other radioactive materials including any source, special nuclear or by-product material; petroleum, crude oil or any fraction thereof; and any other pollutant or contaminant or hazardous, toxic or dangerous chemicals, wastes, materials, compounds, constituents or substances, as all such terms are used in their broadest sense and defined by or under any Environmental Laws.

"**Hedging Agreement**" shall mean any Interest Rate Protection Agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"**Hedging Reserve**" shall mean a reserve determined by the Administrative Agent in its reasonable credit judgment and giving effect to the aggregate amount owing to Loan Parties by a counterparty to a Hedging Agreement, less the amount the applicable Loan Party owes such counterparty thereunder, less the aggregate amount of Property pledged to cash collateralize such obligation (other than the Collateral granted under the Loan Documents), in each case valued on a mark-to-market basis as of the last Business Day of the month (or if not available, the nearest prior Business Day for which such evaluation is available). The Administrative Agent shall endeavor to provide the Borrower with no less than two (2) Business Days prior notice of any

such Hedging Reserve; provided that the failure to provide such notice shall not affect the application of such Hedging Reserve.

"**Holdings**" shall have the meaning assigned to such term in the preamble hereto.

"**Indebtedness**" of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money or advances; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person under conditional sale or other title retention agreements relating to Property purchased by such Person; (d) all obligations of such Person issued or assumed as the deferred purchase price of Property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business on normal trade terms and, in the case of post-petition trade accounts payable only, not overdue by more than 90 days); (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on Property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; (f) the principal portion of all Capital Lease Obligations, Purchase Money Obligations and synthetic lease obligations of such Person; (g) all obligations of such Person in respect of Hedging Agreements to the extent required to be reflected on a balance sheet of such Person; (h) all Attributable Indebtedness of such Person; (i) all obligations for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers' acceptances and similar credit transactions; and (j) all Contingent Obligations of such Person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (i) above. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent that terms of such Indebtedness provide that such Person is not liable therefor.

"**Indemnified Taxes**" shall mean Taxes other than Excluded Taxes.

"**Indemnitee**" shall have the meaning assigned to such term in Section 11.03(b).

"**Information**" shall have the meaning assigned to such term in Section 11.12.

"**Insolvency Proceeding**" shall mean any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state, federal or non-US bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"**Instruments**" shall mean all "instruments," as such term is defined 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.

"**Intellectual Property**" shall have the meaning assigned to such term in Section 3.05(c).

"**Intercompany Note**" shall mean a subordinated promissory note substantially in the form of Exhibit J.

"**Intercreditor Agreement**" shall mean that certain Intercreditor and Subordination Agreement, dated as of the date hereof, by and among the Collateral Agent, the Administrative Agent and the Term B Note Agent.

"**Interest Election Request**" shall mean a request by Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.08(b), substantially in the form of Exhibit F.

"**Interest Payment Date**" shall mean (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December to occur during the period that such Loan is outstanding and the Final Maturity Date, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Loan with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period, and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

"**Interest Period**" shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as Borrower may elect; provided that (a) 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 and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing; provided, however, that an Interest Period shall be limited to two weeks to the extent required under Section 2.03(e).

"**Interest Rate Protection Agreement**" shall mean any swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates, either generally or under specific contingencies, which agreements or arrangements shall not have been entered into for speculative purposes.

"**Interim Order**" shall mean collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), which, among other matters, but not by way of limitation, authorizes, on an interim basis, the Borrower to execute and perform under the terms of this Agreement and the other Loan Documents, together with all extensions, modifications, amendments and supplements thereto, in form and substance reasonably satisfactory to the Administrative Agent, the Required Lenders and their counsel.

"**Inventory**" shall mean all "inventory," as such term is defined in the UCC as in effect on the date hereof in the State of New York, wherever located, in which any Person now or hereafter has rights.

"**Inventory Appraisal**" shall mean the most recent inventory appraisal approved by the Collateral Agent (by written notice to the Borrower as soon as practicable after the Collateral Agent's receipt thereof) in its reasonable credit judgment.

"**Inventory Eligibility Factor**" shall mean, as of any date of determination, the percentage set forth in the most recent Inventory Appraisal.

"**Investments**" shall have the meaning assigned to such term in Section 6.04.

"**Issuing Bank**" shall mean, as the context may require, (a) UBS AG, Stamford Branch, with respect to Letters of Credit issued by it; (b) any other Lender that may become an Issuing Bank pursuant to Section 2.18(k), with respect to Letters of Credit issued by such Lender; or (c) collectively, all of the foregoing.

"**Joinder Agreement**" shall mean that certain joinder agreement substantially in the form of Exhibit G.

"**Landlord Lien Waiver and Access Agreement**" shall mean the Landlord Lien Waiver and Access Agreement, substantially in the form of Exhibit H, with such modifications thereto as shall be acceptable to the Collateral Agent and the Administrative Agent, in their reasonable credit judgment.

"**LC Commitment**" shall mean the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.18.

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

"**LC Exposure**" shall mean at any time 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 Participation Fee**" shall have the meaning assigned to such term in Section 2.05(c).

"**LC Request**" shall mean a request by Borrower in accordance with the terms of Section 2.18(b) and substantially in the form of Exhibit C, or such other form as shall be approved by the Administrative Agent.

"**Leases**" shall mean any and all leases, subleases, tenancies, lease options, concession agreements, rental agreements, occupancy agreements, franchise agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence

or hereafter entered into, granting to another the right to use or possess all or any portion of any Real Property.

"**Lender Affiliate**" shall mean with respect to any Lender that is a fund or similar investment vehicle that makes or invests in bank loans or other commercial loans, any other fund or similar investment vehicle that invests in commercial loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such advisor.

"**Lenders**" shall mean (a) the financial institutions signatory hereto (other than any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any financial institution that has become a party hereto pursuant to an Assignment and Acceptance. Unless the context clearly indicates otherwise, the term "Lenders" shall include the Swingline Lender.

"**Letter of Credit**" shall mean any (i) Standby Letter of Credit and (ii) Commercial Letter of Credit, in each case, issued or to be issued by an Issuing Bank for the account of Borrower pursuant to Section 2.18.

"**Letter of Credit Expiration Date**" shall mean the date which is three (3) Business Days prior to the Final Maturity Date.

"**Leverage Ratio**" shall mean, at any date of determination, the ratio of Consolidated Indebtedness (other than Subordinated Debt issued to and held by any Permitted Holder) on such date to Consolidated EBITDA for the Test Period then most recently ended.

"**LIBOR Rate**" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate *per annum* determined by the Administrative Agent to be the arithmetic mean of the offered rates for deposits in Dollars with a term comparable to such Interest Period that appears on the Telerate British Bankers Assoc. Interest Settlement Rates Page (as defined below) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; provided, however, that (i) if no comparable term for an Interest Period is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period and (ii) if there shall at any time no longer exist a Telerate British Bankers Assoc. Interest Settlement Rates Page, "LIBOR Rate" shall mean, with respect to each day during each Interest Period pertaining to Eurodollar Borrowings comprising part of the same Borrowing, the rate *per annum* equal to the rate at which the Administrative Agent is offered deposits in Dollars at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to its portion of the amount of such Eurodollar Borrowing to be outstanding during such Interest Period. Notwithstanding the foregoing, for purposes of clause (c) of the definition of Alternate Base Rate, the rates referred to above shall be the rates as of 11:00 a.m., London, England time, on the date of determination (rather than the second Business Day preceding the date of determination). "**Telerate British Bankers Assoc. Interest Settlement Rates Page**" shall mean the display designated as Reuters Screen LIBOR01 Page (or such other page as may replace such page on

such service for the purpose of displaying the rates at which Dollar deposits are offered by leading banks in the London interbank deposit market).

"**Lien**" shall mean, with respect to any Property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind, any other type of preferential arrangement having the practical effect of any of the foregoing in respect of such Property or any filing of any financing statement under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such Property; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Line Reserve**" shall have the meaning assigned to such term in Section 2.10(g).

"**Loan Documents**" shall mean this Agreement, any Borrowing Base Certificate, the Letters of Credit, the Notes (if any), the Intercreditor Agreement, the Security Documents, the Fee Letter, the Management Fee Subordination Agreement and each Hedging Agreement entered into with any counterparty that was a Lender or an Affiliate of a Lender at the time such Hedging Agreement was entered into.

"**Loan Parties**" shall mean Holdings, Borrower and the Subsidiary Guarantors.

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

"**Management Fee Subordination Agreement**" shall mean that certain Management Fee Subordination Agreement, dated as March 20, 2006 and reaffirmed as of the date hereof, among Borrower, Holdings, each Subsidiary Guarantor, Wasserstein & Co., LP, the Administrative Agent and certain other parties.

"**Management Services Agreement**" shall mean the management services agreement dated as of June 17, 2004 between Wasserstein & Co., LP and the Borrower having terms and conditions reasonably acceptable to the Administrative Agent. [1]

"**Management Services Agreement Termination Fee**" means a termination fee in an amount not to exceed $10.0 million paid by the Borrower or Holdings to Wasserstein & Co., LP with the proceeds of an initial public offering in connection with the termination of the Management Services Agreement.

"**Margin Stock**" shall have the meaning assigned to such term in Regulation U.

[1] Please provide a copy of this agreement.

"**Material Adverse Effect**" shall mean, other than the events leading up to the filing of the Chapter 11 Cases that have been disclosed to the Prior Lenders or publicly disclosed in a filing with the Securities and Exchange Commission, the filing of the Chapter 11 Cases and the information disclosed in the Borrower's June 27, 2010 audited financial statements, which shall not be deemed to constitute or give rise to a Material Adverse Effect, (a) a material adverse effect on the business, Property, results of operations, prospects or financial condition of Borrower and the Subsidiaries, taken as a whole; (b) a material impairment of the ability of the Loan Parties to fully and timely perform any of their obligations under any Loan Document; (c) a material impairment of the rights of or benefits or remedies available to the Lenders or the Collateral Agent under any Loan Document; or (d) a material adverse effect on the Collateral or the Liens in favor of the Collateral Agent (for its benefit and for the benefit of the other Secured Parties) on the Collateral or the priority of such Liens.

"**Material Indebtedness**" shall mean (a) Indebtedness evidenced by the Senior Notes and (b) any other Indebtedness (other than the Loans and Letters of Credit or trade payables in the ordinary course of business), or obligations in respect of one or more Hedging Agreements, of any Loan Party evidencing an aggregate outstanding principal amount exceeding $3.0 million. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of such Loan Party in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party would be required to pay if such Hedging Agreement were terminated at such time.

"**Maximum Rate**" shall have the meaning assigned to such term in Section 11.13.

"**Mortgaged Real Property**" shall mean (a) each parcel of Real Property identified on Schedule 1.01(a) hereto, which schedule shall list, among other things, each county in which such Real Property is located and (b) each parcel of Real Property, if any, which shall be subject to a mortgage delivered after the Closing Date pursuant to Section 5.11(c).

"**Multiemployer Plan**" shall mean a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which any Company or any ERISA Affiliate is then making or accruing an obligation to make contributions; (b) to which any Company or any ERISA Affiliate has within the preceding five plan years made contributions; or (c) with respect to which any Company could incur material liability.

"**Net Cash Proceeds**" shall mean:

(a) with respect to any Asset Sale, the cash proceeds received by any Loan Party (including cash proceeds subsequently received (as and when received by any Loan Party) in respect of noncash consideration initially received) net of (i) selling expenses (including reasonable brokers' fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and Borrower's good faith estimate of income taxes paid or payable in connection with such sale); (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated with such Asset Sale (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); (iii) Borrower's good faith estimate of payments required

to be made with respect to unassumed liabilities relating to the assets sold within 90 days of such Asset Sale (provided that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 90 days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by a Lien on the asset sold in such Asset Sale and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset);

(b) with respect to any Debt Issuance, the cash proceeds thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith; and

(c) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof, net of all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event.

For purposes of determining the amount of any prepayments required pursuant to this Agreement except to the extent needed to make a prepayment or other payment or cash collateralization required pursuant to Section 2.10(b)(iii), "Net Cash Proceeds" shall not include any of the foregoing amounts to the extent at the time of the receipt thereof (i) a Cash Dominion Trigger Event shall not be continuing and (ii) such amounts are not prohibited under Section 6.09 of this Agreement from being used to prepay the Senior Notes.

"**Net Orderly Liquidation Percentage**" shall mean (i) for the months of January through and including September of each calendar year, 48.99% and (ii) at all other times, 70.36% or such other percentages as determined by the Collateral Agent in the exercise of its reasonable credit judgment in connection with the most recent Inventory Appraisal.

"**Notes**" shall mean any notes evidencing the Revolving Loans or Swingline Loans issued pursuant to this Agreement, if any, substantially in the form of Exhibit I-1 or I-2, as the case may be.

"**Obligations**" shall mean (a) obligations of Borrower and any and all of the other Loan Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by Borrower and any and all of the other Loan Parties under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations

incurred, and specifically including the Exit Closing Fee, during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of Borrower and any and all of the other Loan Parties under this Agreement and the other Loan Documents, (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of Borrower and each Loan Party under or pursuant to this Agreement and the other Loan Documents, (c) the due and punctual payment and performance of all obligations of Borrower and any and all of the other Loan Parties under each Hedging Agreement entered into with any counterparty that was a Lender or an Affiliate of a Lender at the time such Hedging Agreement was entered into; provided that the aggregate amount of such obligations described in this clause (c) and owing by the Borrower and such Loan Parties (determined on a net basis under each Hedging Agreement) and included in the "Obligations" shall not exceed $5.0 million in the aggregate, and (d) the due and punctual payment and performance of all obligations in respect of overdrafts and related liabilities owed to any Lender, any Affiliate of a Lender, the Administrative Agent or the Collateral Agent arising from treasury, depositary and cash management services or in connection with any automated clearinghouse transfer of funds; provided that the aggregate amount of such obligations described in this clause (d) and included in the "Obligations" shall not exceed $5.0 million in the aggregate.

"**Officer's Certificate**" shall mean a certificate executed by the Chief Executive Officer, the President, or the Chief Financial Officer, each in his or her official (and not individual) capacity.

"**Other List**" shall have the meaning assigned to such term in Section 6.20.

"**Other Taxes**" shall mean any and all present or future stamp or documentary taxes or any other excise or Property taxes, charges or similar levies (including interest, fines solely in respect of the payment of such Other Taxes, penalties and additions to tax) arising from any payment made or required to be made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

"**Overadvance**" shall have the meaning assigned to such term in Section 10.10.

"**PACA**" shall mean the Perishable Agricultural Commodities Act, 17 U.S.C. 499.e(c) (or any successor legislation thereto), as amended from time to time, and any regulations promulgated thereunder.

"**Participant**" shall have the meaning assigned to such term in Section 11.04(e).

"**PBGC**" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"**Permitted Holders**" shall mean each Sponsor and each of its Affiliates.

"**Permitted Liens**" shall have the meaning assigned to such term in Section 6.02.

"**Person**" shall mean any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership or government, or any agency or political subdivision thereof.

"**Petition Date**" shall have the meaning assigned in the recitals hereto.

"**Plan**" shall mean any "employee pension benefit plan" as such term is defined in Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA which is maintained or contributed to by any Company or its ERISA Affiliate or with respect to which any Company could incur liability (including, without limitation, under Section 4069 of ERISA).

"**Pre-Petition**" shall mean the time period ending immediately prior to the filing of the Chapter 11 Cases.

"**Pre-Petition Credit Agreement**" shall have the meaning assigned in the recitals hereto.

"**Pre-Petition Loan Documents**" shall mean the Loan Documents (as defined in the Pre-Petition Credit Agreement.

"**Prior Agents**" shall mean the Administrative Agent, the Administrative Collateral Agent and the Collateral Agent (each as defined in the Pre-Petition Credit Agreement).

"**Prior Lender Obligations**" shall mean all obligations of any Loan Party and any of their Subsidiaries to the Prior Lenders pursuant to the Pre-Petition Credit Agreement or any other Pre-Petition Loan Document, and all instruments and documents executed pursuant thereto or in connection therewith**.**

"**Prior Lenders**" shall mean the Lenders (as defined in the Pre-Petition Credit Agreement).

"**Preferred Stock**" shall mean, with respect to any Person, any and all preferred or preference Equity Interests (however designated) of such Person whether now outstanding or issued after the Closing Date.

"**Prior Lien**" shall have the meaning assigned to such term in the applicable Security Document.

"**Pro Forma Basis**" shall mean on a basis in accordance with GAAP and Regulation S-X and otherwise reasonably satisfactory to the Administrative Agent.

"**Pro Rata Percentage**" of any Revolving Lender at any time shall mean the percentage of the total Revolving Commitments of all Revolving Lenders represented by such Lender's Revolving Commitment; provided that for purposes of Section 2.20(b) and (c), "Pro Rata Percentage" shall mean the percentage of the total Revolving Commitments (disregarding the Revolving Commitment of any Defaulting Lender to the extent its Swingline Exposure or LC Exposure is reallocated to the non-Defaulting Lenders) represented by such Lender's Revolving Commitment. If the Revolving Commitments have terminated or expired, the Pro Rata

Percentage shall be determined based upon the Revolving Commitments most recently in effect, after giving effect to any assignments.

"**Projections**" means (a) that certain Harry & David Business Plan, dated as of March 4, 2011, (b) that certain Harry & David Borrowing Base, DIP Sizing and Liquidity Forecast, dated as of March 9, 2011 and (c) updates to the items set forth in clauses (a) and (b) approved in accordance with Section 6.08(d).

"**Property**" shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any Person and whether now in existence or owned or hereafter entered into or acquired, including, without limitation, all Real Property.

"**Purchase Money Obligation**" shall mean, for any Person, the obligations of such Person in respect of Indebtedness incurred for the purpose of financing all or any part of the purchase price of any Property (including Equity Interests of any Person) and/or the cost of installation, construction or improvement of any Property or assets and any refinancing thereof; provided, however, that such Indebtedness is incurred within 90 days after such acquisition of such Property by such Person.

"**Qualified Capital Stock**" of any Person shall mean any capital stock of such Person that is not Disqualified Capital Stock.

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

"**Register**" shall have the meaning assigned to such term in Section 11.04(c).

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

"**Regulation S-X**" shall mean Regulation S-X promulgated under the Securities Act.

"**Regulation T**" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation U**" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation X**" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Reinvestment Reserves**" shall have the meaning assigned to such term in Section 2.10(g).

"**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Materials in, into, onto or through the Environment.

"**Released Parties**" shall have the meaning assigned to such term in Section 2.24.

"**Required Lenders**" shall mean, at any time, Lenders having more than fifty percent (50%) of the Revolving Commitments or, if the Revolving Commitments have been terminated, more than fifty percent (50%) of the Revolving Exposure; provided that the Loans, LC Exposure and unused Commitments held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided, further, that whenever there are three or fewer Lenders, "Required Lenders" must include at least two Lenders that are not Affiliates of one another.

"**Requirements of Law**" shall mean, collectively, any and all requirements of any Governmental Authority including any and all laws, ordinances, rules, regulations or similar statutes or case law.

"**Reserves**" shall mean reserves established against the Borrowing Base that the Collateral Agent may, in its reasonable credit judgment, establish from time to time, including, without limitation, reserves with respect to any potential claims against any Company or its respective Property pursuant to PACA. The Administrative Agent shall endeavor to provide the Borrower with no less than two (2) Business Days prior notice of any such Reserve; provided that the failure to provide such notice shall not affect the application of such Reserve.

"**Response**" shall mean (a) "response" as such term is defined in CERCLA, 42 U.S.C. § 9601(24), and (b) all other actions required by any Governmental Authority or voluntarily undertaken to: (i) clean up, remove, treat, abate or in any other way address any Hazardous Materials in the environment; (ii) prevent the Release or threat of Release, or minimize the further Release, of any Hazardous Materials; or (iii) perform studies and investigations in connection with, or as a precondition to, clause (i) or (ii) above.

"**Responsible Officer**" of any Person shall mean any executive officer or Financial Officer of such Person and any other officer or similar official thereof with responsibility for the administration of the obligations of such Person in respect of this Agreement.

"**Restructuring Support Agreement**" shall mean that certain Support Agreement, dated as of March 27, 2011, by and among Holdings and its Subsidiaries and each of holders of the Senior Notes party thereto.

"**Revolving Availability Period**" shall mean the period from and including the date on which the conditions set forth in Section 4.01 are satisfied to but excluding the earlier of the Final 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 C, or in the Assignment and Acceptance 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 11.04. The aggregate amount of the Lenders' Revolving Commitments on the Closing Date is $100.0 million.

"**Revolving Exposure**" shall mean, with respect to any Lender at any time, 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 time of such Lender's Swingline Exposure.

"**Revolving Lender**" shall mean a Lender with a Revolving Commitment.

"**Revolving Loans**" shall mean the Loans made by the Lenders to Borrower pursuant to Section 2.01(b).

"**SDN List**" shall have the meaning assigned to such term in Section 6.20.

"**Secured Parties**" shall mean, collectively, the Administrative Agent, the Collateral Agent, each other Agent, the Lenders (and Affiliates thereof with respect to overdrafts and related liabilities as described in clause (d) of the definition of "Obligations"), each Issuing Bank and each party to a Hedging Agreement if at the date of entering into such Hedging Agreement such Person was a Lender or an Affiliate of a Lender and such Affiliate executes and delivers to the Administrative Agent a letter agreement in form and substance acceptable to the Administrative Agent pursuant to which such Person (i) appoints the Collateral Agent as its agent under the applicable Loan Documents and (ii) agrees to be bound by the provisions of Section 9.05.

"**Securities Act**" shall mean the Securities Act of 1933, as amended.

"**Security Agreement**" shall mean that certain Security Agreement, dated as of the date hereof, by and among the Loan Parties and the Collateral Agent for the benefit of the Secured Parties.

"**Security Agreement Collateral**" shall mean all Property pledged or granted as collateral pursuant to the Security Agreement delivered on the Closing Date or thereafter pursuant to Section 5.11.

"**Security Documents**" shall mean the Security Agreement, the Mortgages and each other security document or pledge agreement delivered in accordance with applicable local or foreign law to grant a valid, perfected Lien in any Property, and all UCC or other financing statements or instruments of perfection required by this Agreement, the Security Agreement or any Mortgage to be filed with respect to the Liens in Property and fixtures created pursuant to the Security Agreement or any Mortgage and any other document or instrument utilized to pledge as collateral for the Obligations any Property of whatever kind or nature.

"**Senior Fixed Rate Notes**" shall mean Borrower's 9.0% Senior Notes due 2013 issued pursuant to the Senior Notes Indenture in an aggregate principal amount not to exceed $175.0

million, and any registered notes issued by Borrower in exchange for, and as contemplated by, such notes with substantially identical terms as such notes.

"**Senior Floating Rate Notes**" shall mean Borrower's Floating Rate Senior Notes due 2012 issued pursuant to the Senior Notes Indenture in an aggregate principal amount not to exceed $70.0 million and any registered notes issued by Borrower in exchange for, and as contemplated by, such notes with substantially identical terms as such notes.

"**Senior Note Documents**" shall mean the Senior Notes, the Senior Notes Indenture, the Senior Note Guarantees and all other documents executed and delivered with respect to the Senior Notes or the Senior Notes Indenture.

"**Senior Note Guarantees**" shall mean the guarantees of Holdings and the Subsidiary Guarantors pursuant to the Senior Notes Indenture.

"**Senior Notes**" shall mean the Senior Fixed Rate Notes and the Senior Floating Rate Notes.

"**Senior Notes Indenture**" shall mean any indenture, note purchase agreement or other agreement pursuant to which the Senior Notes are issued as in effect on the date hereof and thereafter amended from time to time subject to the requirements of this Agreement.

"**Special Agent Advance**" shall have the meaning assigned to such term in Section 10.11.

"**SPE License Sub**" means a Wholly Owned Subsidiary of Holdings or one of its Subsidiaries that is formed for the sole purposes of holding one or more licenses to sell alcoholic beverages.

"**Sponsor**" shall mean each of U.S. Equity Partners II, LP and Highfields Capital Management LP.

"**SPV**" shall have the meaning assigned to such term in Section 11.04(h).

"**Standby Letter of Credit**" shall mean any standby letter of credit or similar instrument issued for the purpose of supporting (a) workers' compensation liabilities of Borrower, any Subsidiary Guarantor or their respective Subsidiaries, (b) the obligations of third-party insurers of Borrower, any Subsidiary Guarantor or any of their respective Subsidiaries arising by virtue of the laws of any jurisdiction requiring third-party insurers to obtain such letters of credit, or (c) performance, payment, deposit or surety obligations of Borrower, any Subsidiary Guarantor or any of their respective Subsidiaries if required by law or governmental rule or regulation or in accordance with custom and practice in the relevant industry.

"**Statutory Reserves**" shall mean, for any Interest Period for any Eurodollar Borrowing in Dollars, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion Dollars against "Eurodollar liabilities" (as such term is used

in Regulation D). Eurodollar Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under Regulation D.

"**Subordinated Debt**" means unsecured Indebtedness of Holdings that (i) has a final maturity date no earlier than one year after the Final Maturity Date and that requires no mandatory prepayments or redemptions or other scheduled repayments prior to one year after the Final Maturity Date, (ii) contains covenants, events of default, remedies and terms of subordination reasonably satisfactory to the Administrative Agent (as evidenced by the written approval of the Administrative Agent) and (iii) does not have the benefit of a guarantee or any other credit support from the Borrower or any other Subsidiary of Holdings.

"**Subsidiary**" shall mean, with respect to any Person (the "**parent**") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent. Unless otherwise set forth herein, reference in this Agreement to "Subsidiary" shall mean Holdings' direct and indirect Subsidiaries.

"**Subsidiary Guarantors**" shall mean each of (a) Harry & David Operations, Inc., a Delaware corporation, and Bear Creek Orchards, Inc., a Delaware corporation, and (b) any other Wholly Owned Subsidiary of Borrower which (i) is organized in a State within the United States and (ii) has executed and delivered to Collateral Agent such joinder agreements to guarantees, contribution and set-off agreements and other Security Documents as Collateral Agent has reasonably requested and has otherwise complied with the requirements of Section 5.11(b), and so long as Collateral Agent has received and approved, in its reasonable discretion, (A) a collateral audit and Inventory Appraisal and (B) all UCC search results necessary to confirm Collateral Agent's first priority Lien on all of such Subsidiary Guarantor's personal Property, encumbered by no Lien other than Permitted Liens.

"**Supermajority Lenders**" shall mean at any time, Lenders having at least 66⅔% of the Revolving Commitments and, if the Revolving Commitments have been terminated, at least 66⅔% of the sum of Revolving Exposure; provided that the Loans, LC Exposure and unused Commitments held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Supermajority Lenders.

"**Swingline Commitment**" shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.17, as the same may be reduced from time to time pursuant to Section 2.07 or Section 2.17.

"**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 have the meaning assigned to such term in the preamble hereto.

"**Swingline Loan**" shall mean any Loan made by the Swingline Lender pursuant to Section 2.17.

"**Tax Return**" shall mean all returns, statements, filings, attachments and other documents or certifications required to be filed in respect of Taxes.

"**Tax Sharing Agreements**" shall mean all tax sharing, tax allocation and other similar agreements entered into by Holdings or any Subsidiary of Holdings.

"**Taxes**" shall mean any and all present or future taxes, duties, levies, fees, imposts, assessments, deductions, withholdings or other charges imposed by a Governmental Authority and any and all liabilities (including interest, fines solely in respect of any payment of such Taxes, penalties or additions to tax) with respect to the foregoing.

"**Term B Note**" shall mean that certain Junior Secured Super-Priority Debtor-In-Possession Note Purchase Agreement, dated as of March [__], 2011, among Borrower, as debtor and debtor-in-possession and issuer, Holdings, as parent guarantor and a debtor and debtor-in-possession, the Subsidiaries of Holdings party thereto, as subsidiary guarantors, debtors and debtors-in-possession, the note purchasers from time to time party thereto and Wilmington Trust FSB, as administrative agent.

"**Term B Note Agent**" shall mean Wilmington Trust FSB, as administrative agent for the Term B Noteholders.

"**Term B Note Documents**" shall mean the Term B Note and the Note Documents (as defined in the Term B Note).

"**Term B Noteholders**" shall mean the Note Purchasers (as defined in the Term B Note).

"**Term B Segregated Account**" shall mean that certain deposit account of Borrower maintained at KeyBank National Association having account number 379681065148, which contains proceeds of the Term B Note advanced to Borrower.

"**Test Period**" shall mean, at any time, the four consecutive fiscal quarters of Borrower then last ended (in each case taken as one accounting period).

"**Total Liquidity**" shall mean at any time, the sum of (i) Excess Availability at such time plus (ii) the sum of cash and Cash Equivalents of Holdings and its Consolidated Subsidiaries at such time.

"**Transaction Documents**" shall mean, as applicable, the Loan Documents, the Term B Note Documents and the Restructuring Support Agreement.

"**Transactions**" shall mean, collectively, the transactions to occur on or prior to the Closing Date pursuant to the Transaction Documents, including (a) the execution and delivery of the Loan Documents; (b) the execution and delivery of the Term B Note Documents and the issuance of the Term B Note thereunder and the initial funding of $30,000,000 thereunder; (c) the execution and delivery of the Restructuring Support Agreement; and (d) the payment of all fees and expenses to be paid on or prior to the Closing Date and owing in connection with the foregoing.

"**Treasury Regulation**" means the regulations promulgated under the Code.

"**Type**," when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR Rate or the Alternate Base Rate.

"**UBS AG**" shall have the meaning assigned to such term in the preamble hereto.

"**UCC**" shall mean the Uniform Commercial Code as in effect in the applicable state or jurisdiction.

"**Voting Participant**" shall have the meaning assigned to such term in Section 11.04(e).

"**Voting Participant Notification**" shall have the meaning assigned to such term in Section 11.04(e).

"**Voting Stock**" shall mean any class or classes of capital stock of Holdings pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the Board of Directors of Holdings.

"**Wholly Owned Subsidiary**" shall mean, as to any Person, (a) any corporation 100% of whose capital stock (other than directors' qualifying shares and any shares issued to Persons that are not Loan Parties to satisfy any applicable Requirements of Law in connection with obtaining licenses to sell alcoholic beverages) is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person and (b) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person has or have a 100% Equity Interest (other than Equity Interests of SPE License Subs issued to Persons that are not Loan Parties to satisfy any applicable Requirements of Law in connection with obtaining licenses to sell alcoholic beverages) at such time. Unless otherwise set forth herein, reference in this Agreement to "Wholly Owned Subsidiary" shall mean Holding's direct and indirect Wholly Owned Subsidiaries.

"**Withdrawal Liability**" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (*e.g.*, a "Revolving Loan") or by Type (*e.g.*, a "Eurodollar Loan"). Borrowings also may be classified and referred to by Class (*e.g.*, a "Revolving Borrowing") or by Type (*e.g.*, a "Eurodollar Borrowing").

SECTION 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will"shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any Loan Document, agreement, instrument of other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time, (f) the words "asset" and "Property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (g) an Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 11.02 or is cured in a manner satisfactory to Administrative Agent, if such Event of Default is capable of being cured as determined by the Administrative Agent and (h) the word "month," for the purposes of Sections 5.01(c), 5.15 and 6.06(e), shall be construed as referring to fiscal months and not calendar months.

SECTION 1.04 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect on the date hereof unless agreed to by Borrower and the Required Lenders. In the event that any "Accounting Change" (as defined below), including, without limitation, any change in the treatment of leases under GAAP, shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement or if the Borrower shall change its fiscal year at any time (as may be permitted by this Agreement), then, at the option of either the Borrower or the Administrative Agent, the Borrower and the Administrative Agent will enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrower's financial condition and the scope of restrictions in the other covenants set forth herein shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "**Accounting Changes**" shall mean changes in accounting principles required by the

promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the Securities and Exchange Commission (or successors thereto or agencies with similar functions).

SECTION 1.05 Timing of Payment and Deliveries. Solely in connection with the payment of any obligation or the performance of any covenant, duty or obligation (other than the covenants set forth in Section 6.08), if stated to be due on a day that is not a Business Day or delivery of any notice, document, certificate or other writing is stated to be required on a day that is not a Business Day, the date of such payment (other than as described in the definition of Interest Period), performance or delivery shall extend to the immediately succeeding Business Day.

SECTION 1.06 Resolutions of Drafting Ambiguities. Each Loan Party acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

ARTICLE II.
THE CREDITS

SECTION 2.01 Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, to make Revolving Loans to Borrower, at any time and from time to time after the date on which all of the conditions set forth in Section 4.01 have been satisfied until the earlier of (a) one Business Day prior to the Final Maturity Date and (b) 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 (subject to the provisions of Sections 10.10 and 10.11) result in such Lender's Revolving Exposure exceeding the lesser of (A) such Lender's Revolving Commitment less such Lender's Pro Rata Percentage of any Line Reserve 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, Borrower may borrow, pay or prepay and reborrow Revolving Loans.

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 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 ABR Loans, integral multiples of $1.0 million and not less than $5.0 million, or (B) in the case of Eurodollar Loans, integral multiples of $1.0 million and not less than

$5.0 million or (ii) equal to the remaining available balance of the applicable Revolving Commitments.

(b) Subject to Sections 2.11 and 2.12, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar 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 Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; provided, further, that Borrower shall not be entitled to request any Borrowing that, if made, would result in more than ten Eurodollar Borrowings 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 11:00 a.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account maintained with the Administrative Agent as directed by Borrower in the applicable Borrowing Request or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, 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 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 Borrower 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 Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of Borrower, 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, Borrower 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 Final Maturity Date.

(f) If the Issuing Bank shall not have received from Borrower the payment required to be made by Section 2.18(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), an amount equal to such Lender's Pro Rata Percentage of such LC Disbursement (it being understood that such amount shall be deemed to constitute an ABR Loan 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 Borrower pursuant to Section 2.18(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 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 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 Effective Rate, and for each day thereafter, the Alternate Base Rate.

SECTION 2.03 Borrowing Procedure. To request a Revolving Borrowing, Borrower shall notify the Administrative Agent of such request by telephone (promptly confirmed by fax) (i) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (ii) in the case of an ABR Borrowing (other than Swingline Loans), not later than 9:00 a.m., New York City time, on the Business Day of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or fax to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(a) whether the requested Borrowing is to be a Revolving Borrowing;

(b) the aggregate amount of such Borrowing;

(c) the date of such Borrowing, which shall be a Business Day;

(d) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(e) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(f) the location and number of Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.02; and

(g) that the conditions set forth in Section 4.03(b), (c), (d) and (e) are satisfied as of the date of the notice.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then Borrower shall be deemed to have selected an Interest Period of one month's duration (subject to the proviso in clause (e) 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) Borrower 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 Final Maturity Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Final Maturity Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least three (3) Business Days after such Swingline Loan is made; provided that on each date that a Revolving Borrowing is made, Borrower shall repay all Swingline Loans that were outstanding on the date such Borrowing was requested.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower 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.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type and Class 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 Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; 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 Borrower to repay the Loans in accordance with their terms.

(e) Any Lender may request that Loans of any Class made by it be evidenced by a promissory note. In such event, Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in the form of Exhibit I-1, or I-2, as the case may be. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 11.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

(f) All funds held by Borrower or any other Loan Party shall be deposited in one or more dominion and control bank or investment accounts, in form and substance reasonably satisfactory to Collateral Agent or in other accounts permitted under Section 9.01(e)(iii), in each case, to be used by the Borrower and the other Loan Parties for purposes permitted or required hereby, and, following the occurrence and during the continuance of a Cash Dominion Trigger Event, shall be forwarded daily to the Concentration Account and applied in accordance with Section 9.01(f).

SECTION 2.05 Fees.

(a) Commitment Fee. Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee (a "**Commitment Fee**") during the period from and including the Closing Date to but excluding the date on which such Commitment terminates in an amount equal to 1.00% *per annum* on the average daily unused amount of each Commitment of such Lender. Accrued Commitment Fees shall be payable in arrears on the last day of March, June, September and December of each calendar year and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof. All Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing Commitment Fees with respect to Revolving Commitments, a Revolving Commitment of a Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and LC Exposure of such Lender (and the Swingline Exposure of such Lender shall be disregarded for such purpose).

(b) Administrative Agent Fees; Collateral Agent Fees. Borrower agrees to pay to the (i) Administrative Agent, for its own account, the administrative fees set forth in the Fee Letter or such other fees payable in the amounts and at the times separately agreed upon between Borrower and the Administrative Agent (the "**Administrative Agent Fees**") and (ii) Collateral Agent, for its own account, a collateral monitoring fee payable in the amounts and at the times mutually agreed upon in writing between Borrower and the Collateral Agent (the "**Collateral Agent Fees**").

(c) LC and Fronting Fees. Borrower agrees 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 Eurodollar 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 0.25% *per annum* on the average 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 fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. LC Participation Fees and Fronting Fees accrued through and including the last day of March, June, September and December of each calendar year shall be payable on the third Business Day following such last day, commencing on the first such 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. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. 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 (including the first day but excluding the last day). During the continuance of an Event of Default, the LC Participation Fee shall be increased to a *per annum* rate equal to 2% plus the otherwise applicable rate with respect thereto.

(d) Closing Fee. Borrower agrees to pay to the Administrative Agent, for the pro rata benefit of each Lender, a closing fee (the "**Closing Fee**") which shall be payable in the amounts and at the times mutually agreed upon in writing between Borrower and the Administrative Agent.

(e) Exit Closing Fee. Borrower agrees to pay to the Administrative Agent, for the pro rata benefit of each Lender, an exit fee (the "**Exit Closing Fee**") which shall be payable in the amounts and at the times mutually agreed upon in writing between Borrower and the Administrative Agent.

(f) All Fees shall be paid on the dates due, in immediately available funds in Dollars, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that the Fronting Fees shall be paid directly to the Issuing Bank. Once paid, none of the Fees shall be refundable under any circumstances.

SECTION 2.06 Interest on Loans and Default Compensation.

(a) Subject to the provisions of Section 2.06(c), the Loans comprising each ABR Borrowing, including each Swingline Loan, shall bear interest at a rate *per annum* equal to the Alternate Base Rate plus the Applicable Margin in effect from time to time.

(b) Subject to the provisions of Section 2.06(c), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate *per annum* equal to the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(c) Notwithstanding the foregoing, during the continuance of an Event of Default, all Obligations shall bear interest, after as well as before judgment, at a *per annum* rate equal to (i) in the case of principal of or interest on any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.06, (ii) in the case of the LC Participation Fee, such increase as provided in Section 2.05(c), and (iii) in the case of any other amount then due and payable, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section 2.06.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date 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 (provided that, absent demand, such interest shall be payable on each Interest Payment 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 an ABR 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 Eurodollar 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 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), 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 Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error.

SECTION 2.07 Termination and Reduction of Commitments.

(a) The Revolving Commitments, the Swingline Commitment, and the LC Commitment shall automatically terminate on the Final Maturity Date.

(b) Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class; provided, that (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of $1.0 million and not less than $3.0 million and (ii) the Commitments shall not be terminated or reduced if, after giving effect to any concurrent prepayment, the Swingline Exposures would exceed the

Swingline Commitment, the sum of the Revolving Exposures would exceed the aggregate amount of Revolving Commitments or the LC Exposures would exceed the LC Commitment.

(c) Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section 2.07 at least three (3) 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 Borrower pursuant to this Section 2.07 shall be irrevocable. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

SECTION 2.08 Interest Elections.

(a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.08. 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, Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than ten Eurodollar Borrowings outstanding hereunder at any one time. This Section 2.08 shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section 2.08, Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if Borrower was requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or fax to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit F.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request 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 Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, 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 Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then Borrower shall be deemed to have selected an Interest Period of one month's duration (subject to the proviso in clause (iv) above).

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If an Interest Election Request with respect to a Eurodollar Borrowing 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 Eurodollar Borrowing with a one month Interest Period. 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 Borrower, 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 Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09 [Intentionally Omitted.]

SECTION 2.10 Optional and Mandatory Prepayments of Loans.

(a) Optional Prepayments. Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, subject to the requirements of this Section 2.10; provided that each partial prepayment shall be in an amount that is an integral multiple of $1.0 million and not less than $3.0 million.

(b) Revolving Loan Prepayments.

(i) In the event of the termination of all the Revolving Commitments, Borrower shall, on the date of such termination, repay or prepay all its outstanding Revolving Borrowings and all outstanding Swingline Loans and replace all outstanding Letters of Credit or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(j).

(ii) In the event of any partial reduction of the Revolving Commitments, then (x) at or prior to the effective date of such reduction, the Administrative Agent shall notify Borrower and the Revolving Lenders of the sum of the Revolving Exposures after giving effect to such reduction and (y) if the sum of the Revolving Exposures would exceed the aggregate amount of Revolving Commitments after giving effect to such reduction, then Borrower shall, on the date of such reduction, first, repay or prepay all Swingline Loans, second, repay or prepay Revolving Borrowings and third, replace or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(j), in an amount sufficient to eliminate such excess.

(iii) In the event that the sum of all Lenders' Revolving Exposures exceeds the Borrowing Base then in effect, the Borrower shall, without notice or demand, immediately apply an amount equal to such excess to prepay the Loans and any interest accrued thereon, in accordance with this Section 2.10(b)(iii). The Borrower shall, first, repay or prepay all Swingline Loans, second, repay or prepay Revolving Borrowings, and third, replace or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(j), in an amount sufficient to eliminate such excess.

(iv) In the event that the sum of all Lenders' Revolving Exposures exceeds the Revolving Commitments then in effect, the Borrower shall, without notice or demand, immediately first, repay or prepay all Swingline Loans, second, repay or prepay Revolving Borrowings, and third, replace or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(j), in an amount sufficient to eliminate such excess.

(v) In the event that the aggregate LC Exposure exceeds the LC Commitment then in effect, the Borrower shall, without notice or demand, immediately replace or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(j), in an amount sufficient to eliminate such excess.

(c) Asset Sales. Not later than one Business Day following the receipt of any Net Cash Proceeds of any Asset Sale by a Loan Party, Borrower shall, and shall cause the applicable Loan Party (with appropriate adjustments to any intercompany loan account balances), to, apply 100% of the Net Cash Proceeds received with respect thereto to make prepayments in accordance with Section 2.10(j); provided that:

(i) no such prepayment shall be required with respect to (A) any Asset Sale permitted by Section 6.05(b)(ii), (d), (e), (i) or (m), (B) the disposition of assets subject to a condemnation or eminent domain proceeding or insurance settlement to the extent such proceeding or settlement does not constitute a Casualty Event, or (C) Asset Sales for fair market value resulting in no more than $250,000 in Net Cash Proceeds per Asset Sale (or series of related Asset Sales) and less than $1.0 million in Net Cash Proceeds in any four consecutive fiscal quarters of the Borrower; and

(ii) subject to Section 2.10(g) and so long as no Event of Default shall then exist or would arise therefrom and the aggregate of such Net Cash Proceeds of Asset Sales shall not exceed $5.0 million in any four consecutive fiscal quarters of Borrower, such proceeds shall not be required to be so applied on such date to the extent that Borrower shall have delivered an Officer's Certificate to the Administrative Agent on or prior to such date stating that such Net Cash Proceeds shall be used to purchase replacement assets or other assets useful in the business of the Companies or acquire 100% of the Equity Interests of any Person that owns such assets no later than one year following the date of such Asset Sale (which Officer's Certificate shall set forth the estimates of the proceeds to be so expended); provided that if the Property subject to such Asset Sale constituted Collateral, then all Property purchased with the Net Cash Proceeds thereof pursuant to this subsection shall be made subject to the Lien of the applicable Security Documents in favor of the Collateral Agent, for its benefit and for the benefit of the other Secured Parties in accordance with Sections 5.11 and 5.12; provided, further, that if the Property subject to such Asset Sale did not constitute Collateral but the Property purchased with the net cash proceeds thereof is intended to be subject to the Lien created by any of the Security Documents, then all such Property purchased with the net cash proceeds thereof pursuant to this subsection shall be made subject to the Lien of the applicable Security Documents in favor of the Collateral Agent, for its benefit and for the benefit of the other Secured Parties in accordance with Sections 5.11 and 5.12.

(d) Debt Issuance. Upon any Debt Issuance, Borrower shall, and shall cause the other Loan Parties to, make prepayments in accordance with Sections 2.10(j) in an aggregate principal amount equal to 100% of the Net Cash Proceeds of such Debt Issuance.

(e) [Intentionally Omitted.]

(f) Casualty Events. Not later than one Business Day following the receipt of any net cash proceeds (whether or not otherwise constituting Net Cash Proceeds) in excess of $250,000 from a Casualty Event, Borrower shall, and shall cause the other Loan Parties, to apply an amount equal to 100% of the Net Cash Proceeds to make prepayments required pursuant to Section 2.10(b)(iii), or to the extent that a Cash Dominion Trigger Event has occurred and is continuing, in accordance with Section 2.10(j); provided that subject to Section 2.10(g) and so long as no Event of Default shall then exist or arise therefrom, such proceeds shall not be required to be so applied on such date to the extent that (A) Borrower shall have delivered an Officer's Certificate to the Administrative Agent on or prior to such date stating that such proceeds shall be used to repair, replace or restore any Property the subject of a Casualty Event (which Officer's Certificate shall set forth the estimates of the proceeds to be so expended) and (B) the Administrative Agent shall have determined that (i) such proceeds, together with Borrower's cash on hand (or reasonably projected to be on hand) and Excess Availability shall be adequate to enable Borrower to complete any such repairs, replacements, or restorations to any such Property and that such repairs, replacements and restorations shall be completed within 360 days after the receipt of such proceeds and

(ii) such Property, after the completion of such repairs, replacements or restorations, shall provide the Companies with substantially similar or greater benefits as were provided by the Property subject to such Casualty Event; provided that if the Property subject to such Casualty Event constituted Collateral under the Security Documents, then all Property purchased with the Net Cash Proceeds thereof pursuant to this subsection shall be made subject to the Lien of the applicable Security Documents in favor of the Collateral Agent, for its benefit and for the benefit of the other Secured Parties in accordance with Sections 5.11 and 5.12;

(g) In the event that Borrower has delivered an Officer's Certificate in accordance with Section 2.10(c)(ii) or in accordance with Section 2.10(f), (i) the applicable Net Cash Proceeds shall be applied in accordance with Section 2.10(j), without a permanent reduction in the Commitments, (ii) both a Reserve and a reserve against the Commitments ("**Line Reserve**"; and together with the other Reserve established pursuant to this clause (ii), the "**Reinvestment Reserves**") shall be established (in the amount of the Net Cash Proceeds less, in the case of a Casualty Event, the Net Cash Proceeds attributable to lost or destroyed Inventory) to the extent of the prepayment required under clause (g)(i) above, which shall each be released simultaneously with and to the extent of any Loans advanced to the Borrower for the purpose of purchasing or replacing or repairing or restoring assets in accordance with Section 2.10(c)(ii) or 2.10(f), as applicable (including the making of progress payments therefor); provided that, Borrower submits (with the applicable Borrowing Request) an Officer's Certificate setting forth the use of proceeds of the requested Loan and confirming that such use is in compliance with Section 2.10(c)(ii) or 2.10(f), as applicable, and (iii) in the event that any part or all of the Reinvestment Reserves remain in place at the end of the time period set forth in Section 2.10(c)(ii) or 2.10(f), as applicable, such remaining Reinvestment Reserves shall be released; provided that, if such Reinvestment Reserves relate to Eligible Equipment or Eligible Real Property, (x) such Eligible Equipment or Eligible Real Property shall be deleted from Schedule 1.01(c) and Schedule 1.01(c) shall be amended in accordance with the definition of the term "Fixed Asset Loan Value", and (y) the Fixed Asset Loan Value of the Person owning such Eligible Equipment or such Eligible Real Property shall be calculated without giving effect to an amount equal to the appraised net orderly liquidation value of such Eligible Equipment or the appraised fair market value of such Eligible Real Property, as applicable.

(h) [Intentionally Omitted.]

(i) Pay-Downs. The Borrower shall make a mandatory payment during the month of December in each year (which payment shall be made on or prior to the first Business Day after December 25th of each year) of all outstanding Revolving Loans and Swingline Loans. In addition, for 30 consecutive days during each period commencing on the Business Day after December 25th of each year through but excluding February 1 of the immediately succeeding year, the Borrower shall not have outstanding any Revolving Loans or Swingline Loans.

(j) Application of Prepayments.

(i) Prior to any optional or mandatory prepayment of Borrowings hereunder, 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 2.10(j). Subject to Section 9.05 and so long as no Event of Default shall then exist and be continuing, all mandatory prepayments shall be applied as follows: first, to reimbursable expenses of Agents then due and payable pursuant to the Loan Documents and Fees due and payable to the Agents and Lenders pursuant to the Loan Documents; second, to interest then due and payable on all Loans; third, to Overadvances; fourth, to the principal balance of the Swingline Loans until the same have been repaid in full; fifth, to the outstanding principal balance of Revolving Loans until the same have been paid in full, including accompanying accrued interest and charges under Sections 2.12, 2.13 and 2.15 (Borrower may elect which of any Eurodollar Borrowings is to be prepaid); sixth, to cash collateralize all LC Exposures plus any accrued and unpaid Fees with respect thereto (to be held and applied in accordance with Section 2.18(j) hereof); seventh, to all other Obligations *pro rata* in accordance with the amounts that such Lender certifies are outstanding and due and payable; and, eighth, returned to Borrower or to such party as otherwise required by law.

(ii) Amounts to be applied pursuant to this Section 2.10 to the prepayment of Revolving Loans shall be applied, as applicable, first to reduce outstanding ABR Loans. Any amounts remaining after each such application shall be applied to prepay Eurodollar Loans. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.10 shall be in excess of the amount of the ABR Loans at the time outstanding, only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and, at the election of Borrower:

(A) the balance of such required prepayment shall be prepaid immediately, together with any amounts owing to the Lenders under Section 2.13 or

(B) amounts to be applied pursuant to this Section 2.10(j) to prepay any Eurodollar Borrowing shall be deposited in a Breakage Prepayment Account (as defined below) if the Borrower so requests to avoid the incurrence of costs under Section 2.13. On the last day of the Interest Period of each Eurodollar Borrowing, the Administrative Agent shall apply any cash on deposit in such Breakage Prepayment Account to amounts due in respect of such Eurodollar Borrowing in the order that Borrower shall specify until all amounts required to be prepaid have been repaid (with any remaining funds being returned to Borrower) or until all the allocable cash on deposit has been exhausted. For purposes of this Section 2.10(j), the term "**Breakage Prepayment Account**" shall mean an account established by the Borrower with the Administrative Agent and over which the Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal for application in

accordance with this Section 2.10(j). The Administrative Agent will, at the request of Borrower, invest amounts on deposit in a Breakage Prepayment Account in short-term, cash equivalent investments selected by the Administrative Agent in consultation with Borrower that mature prior to the last day of the Interest Period of the applicable Eurodollar Borrowing; provided, however, that the Administrative Agent shall have no obligation to invest amounts on deposit in a Breakage Prepayment Account if an Event of Default shall have occurred and be continuing. The Borrower shall indemnify the Administrative Agent for any losses relating to the investments made at the request or direction of Borrower so that the amount available to prepay amounts due in respect of the applicable Eurodollar Borrowing on the last day of the applicable Interest Period is not less than the amount that would have been available had no investments been made pursuant thereto. Other than any interest earned on such investments (which shall be for the account of the Borrower, to the extent not necessary for the prepayment of Eurodollar Borrowings in accordance with this Section 2.10(j)), the Breakage Prepayment Account shall not bear interest. Interest or profits, if any, on such investments in any Breakage Prepayment Account shall be deposited in such Breakage Prepayment Account and reinvested and disbursed as specified above. If the maturity of the Loans and all amounts due hereunder has been accelerated pursuant to Article VIII, the Administrative Agent may, in its sole discretion, apply all amounts on deposit in the Breakage Prepayment Accounts to satisfy any of the Obligations (and Borrower has pursuant to the Security Agreement or another Security Document granted to the Administrative Agent a security interest in each of its Breakage Prepayment Accounts to secure such Obligations).

(k) Notice of Prepayment. Except in the case of any prepayment hereunder that is required to be made sooner, Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by fax) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 11:00 a.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and 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. 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 as provided in Section 2.10(a), 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 2.11 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBOR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to Borrower and the Lenders by telephone or fax as promptly as practicable thereafter and, until the Administrative Agent notifies Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.12 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBOR Rate) or the Issuing Bank; or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar 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 of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then Borrower will pay to Administrative Agent for the account of such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the

Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.12 shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay Administrative Agent for the account of such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section 2.12 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided, further 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 not begin earlier than the date of effectiveness of the Change in Law.

SECTION 2.13 Breakage Payments. In the event of (a) the payment or prepayment, whether optional or mandatory, of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, (d) any automatic rollover of any Revolving Loan to a Eurodollar Loan pursuant to Section 2.08(f), or (e) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by Borrower pursuant to Section 2.16, then, in any such event, Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest

rate which such Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to Borrower and Administrative Agent and shall be conclusive absent manifest error. Borrower shall pay Administrative Agent for the account of such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.14 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 2.12, 2.13 or 2.15, or otherwise) on or before the time expressly required hereunder or under such other Loan 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, deduction or counterclaim. Any amounts received after such time on any date may, in the 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 its offices at 677 Washington Boulevard, Stamford, Connecticut, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.12, 2.13, 2.15 and 11.03 shall be made to the Administrative Agent for the benefit of the Persons entitled thereto and payments pursuant to other Loan 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 Loan 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 payments under each Loan Document shall be made in Dollars.

(b) Subject to Section 9.05 hereof, 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 (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(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, 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, 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 Borrower 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 Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). 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 Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from 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 Borrower will not make such payment, the Administrative Agent may assume that 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 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 Effective 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), 2.14(d), 2.17(d), 2.18(d) or 11.03(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 2.15 Taxes.

(a) Any and all payments by or on account of any obligation of Borrower to the Administrative Agent, any Lender or any Issuing Bank hereunder or under any other

Loan Document shall be made free and clear of and without deduction or withholding for any and all Indemnified Taxes; provided that if Borrower shall be required by law to deduct any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions or withholdings applicable to additional sums payable under this Section 2.15(a)) the Administrative Agent, Lender or Issuing Bank (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) Borrower shall make such deductions or withholdings and Borrower shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Borrower shall indemnify and pay the Administrative Agent, each Lender and the Issuing Bank, within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) and any penalties, interest and reasonable 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 Borrower by a Lender or the Issuing Bank, 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. Notwithstanding anything in this Section 2.15 to the contrary, Borrower shall not have any obligation to a Lender, an Issuing Bank or the Administrative Agent with respect to an Indemnified Tax, Other Tax or other indemnity payment to the extent arising from the willful misconduct of such Lender, Issuing Bank or the Administrative Agent, as applicable.

(d) Within 30 days after any payment of Indemnified Taxes or Other Taxes by Borrower to a Governmental Authority, Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement or under any other Loan Document shall deliver to Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law or reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate. Each Foreign Lender either (1) (i) agrees, to the extent it may lawfully do so, to furnish either U.S. Internal Revenue Service Form W-8ECI or U.S. Internal

Revenue Service Form W-8BEN (or successor form) and (ii) agrees (for the benefit of Borrower and the Administrative Agent), to the extent it may lawfully do so at such times, upon reasonable request by Borrower or the Administrative Agent, to provide a new Form W-8ECI or Form W-8BEN (or successor form) upon the expiration or obsolescence of any previously delivered form to reconfirm any complete exemption from, or any entitlement to a reduction in, U.S. federal withholding tax with respect to any interest payment hereunder; (2) in the case of any such Foreign Lender that is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (i) agrees, to the extent it may lawfully do so, to furnish either (a) a "Non-Bank Certificate" (certifying that such Foreign Lender is not (x) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (y) a "10-percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code or (z) a "controlled foreign corporation" related to Borrower within the meaning of Section 864(d)(4) of the Code) in a form acceptable to the Administrative Agent and the Borrower and two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN (or successor form) or (b) an Internal Revenue Form W-8ECI (or successor form), certifying (in each case) to such Foreign Lender's legal entitlement to an exemption or reduction from U.S. federal withholding tax with respect to all interest payments hereunder and (ii) agrees (for the benefit of Borrower and the Administrative Agent) to the extent it may lawfully do so at such times, upon reasonable request by Borrower or the Administrative Agent, to provide a new Form W-8BEN or W-8ECI (or successor form) upon the expiration or obsolescence of any previously delivered form to reconfirm any complete exemption from, or any entitlement to a reduction in, U.S. federal withholding tax with respect to any interest payment hereunder; or (3) (i) agrees, to the extent it may lawfully do so, to furnish any other form prescribed by applicable law as a basis for claiming exemption from, or a reduction in, U.S. federal withholding tax together with any supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine any withholding or deduction required to be made and (ii) agrees (for the benefit of Borrower and the Administrative Agent), to the extent it may lawfully do so at such times, upon reasonable request by Borrower or the Administrative Agent, to provide a new applicable form upon the expiration or obsolescence of any previously delivered form to reconfirm any complete exemption from, or any entitlement to a reduction in, U.S. federal withholding tax with respect to any interest payment hereunder. Each such Foreign Lender shall promptly notify the Borrower and the Administrative Agent of any change in circumstances that would modify or render invalid any claimed exemption or reduction.

(f) If the Administrative Agent or a Lender (or an assignee) determines in its reasonable discretion that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 2.15, it shall pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section 2.15 with respect to the Indemnified Taxes or the Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (or assignee) and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, however, that Borrower, upon the request of the Administrative Agent or such

Lender (or assignee), agrees to repay the amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender (or assignee) in the event the Administrative Agent or such Lender (or assignee) is required to repay such refund to such Governmental Authority. Nothing contained in this Section 2.15(f) shall require the Administrative Agent or any Lender (or assignee) to make available its tax returns or any other information which it deems confidential to Borrower or any other Person. Notwithstanding anything to the contrary, in no event will any Lender be required to pay any amount to Borrower the payment of which would place such Lender in a less favorable net after-tax position than such Lender would have been in had the additional amounts or indemnification payments giving rise to such refund of any Indemnified Taxes or Other Taxes never been paid in the first place.

(g) If any Lender or Issuing Bank changes its residence, place of business or applicable lending office, or takes any similar action (other than pursuant to Section 2.16(a)) and the effect of such change or action, as of the date thereof, would be to increase the amounts that Borrower is obligated to pay under Section 2.15, then the Borrower shall not be obligated to pay the amount of such increase.

(h) Each Lender or Issuing Bank that is not a Foreign Lender and that is not an "exempt recipient" (as defined in Treasury Regulation Section 1.6049-4(c)) with respect to which no withholding is required shall, in the case of each Lender or Issuing Bank that is a signatory hereto, on or prior to the date of its execution and delivery of this Agreement and, in the case of an assignee or a participant, on or prior to the date of the assignment or sale of a participation interest to which it becomes a Lender or Issuing Bank, provide to Borrower and the Administrative Agent two complete copies of Form W-9 or any successor form.

SECTION 2.16 Mitigation Obligations; Replacement of Lenders.

(a) Mitigation of Obligations. If any Lender requests compensation under Section 2.12, or if Borrower is required to pay any additional amount to the Administrative Agent, any Lender, any Issuing Bank or any Governmental Authority for the account of any Lender or Issuing Bank pursuant to Section 2.15, then such Lender or Issuing Bank, as the case may be, shall use reasonable efforts to designate a different lending office for funding or booking its Loans, Letters of Credit or other assets in respect of which Borrower has Obligations pursuant to this Agreement or any other Loan Document or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable or that may thereafter accrue pursuant to Section 2.12 or 2.15, as the case may be and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.12, or if Borrower is required to pay any additional amount to the

Administrative Agent, any Lender, any Issuing Bank or any Governmental Authority for the account of any Lender or Issuing Bank pursuant to Section 2.15, or if any Lender is a Defaulting Lender, or if Borrower exercises its replacement rights under Section 11.02(c), then Borrower may, at its sole expense and effort, upon notice to such Lender or Issuing Bank, as the case may be, and the Administrative Agent, require such Lender or Issuing Bank, as applicable, to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.04), all of its interests, rights and obligations under this Agreement to an assignee selected by Borrower that shall assume such obligations (which assignee may be another Lender or Issuing Bank, as applicable, if a Lender or Issuing Bank, as applicable, accepts such assignment); provided that (i) Borrower shall have received the prior written consent of the Administrative Agent and the Collateral Agent (and, if a Revolving Commitment is being assigned, the Issuing Bank and Swingline Lender), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.15, such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the applicable Borrower to require such assignment and delegation cease to apply. No replacement of an Issuing Bank shall be made unless concurrently with such replacement such Issuing Bank shall have received all original Letters of Credit issued by it marked "cancelled" or otherwise be satisfied that such Letters of Credit have been surrendered by the beneficiaries thereof and will be promptly returned to such Issuing Bank.

SECTION 2.17 Swingline Loans.

(a) Swingline Commitment. Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to Borrower from time to time during the Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding $10.0 million or (ii) the sum of the total Revolving Exposures exceeding the lesser of (A) the total Revolving Commitments minus any Line Reserve and (B) the Borrowing Base 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, Borrower may borrow, repay and reborrow Swingline Loans. Any outstanding Swingline Loan shall be repaid in full on the first date that any Revolving Loan is made subsequent to the date such Swingline Loan is made.

(b) Swingline Loans. To request a Swingline Loan, Borrower shall notify the Administrative Agent of such request by telephone (confirmed by fax), not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice

shall be irrevocable and shall 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 Borrower. The Swingline Lender shall make each Swingline Loan available to Borrower by means of a credit to the general deposit account of 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 2.18(e), by remittance to the Issuing Bank) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan. Borrower 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 and integral multiples of $100,000 above such amount.

(c) Prepayment. Borrower shall have the right at any time and from time to time to repay any Swingline Loan, in whole or in part, upon giving written or fax notice (or telephone notice promptly confirmed by written or fax notice) to the Swingline Lender and to the Administrative Agent before 12:00 (noon), 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 12:00 noon, 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 (provided such notice requirements shall not apply if the Swingline Lender and the Administrative Agent are the same entity). 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 Commitments, 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. The Administrative Agent shall notify Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to

the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from Borrower (or other party on behalf of 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 Borrower of any default in the payment thereof.

SECTION 2.18 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, Borrower may request the issuance of Letters of Credit by the Issuing Bank for Borrower's account or the account of any Subsidiary Guarantor in a form reasonably acceptable to the Administrative Agent and the Issuing Bank and the Issuing Bank hereby agrees to issue such Letters of Credit, at any time and from time to time during the Revolving Availability Period and otherwise pursuant to the terms and conditions hereof (provided that Borrower shall be a co-applicant with respect to each Letter of Credit issued for the account of or for the benefit of any Subsidiary Guarantor). The Issuing Bank shall have no obligation to issue, and the Borrower shall not request the issuance of, any Letters of Credit at any time if, after giving effect to such issuance, the LC Exposure would exceed the LC Commitment or the total Revolving Exposure would exceed the lesser of (A) the total Revolving Commitments and (B) the Borrowing Base then in effect. 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 Borrower to, or entered into by Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(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, Borrower shall hand deliver or fax (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) an LC Request to the Issuing Bank and the Administrative Agent not later than 11:00 a.m. on the third Business Day preceding the requested date of issuance, amendment, renewal or extension (or such later date and time as is acceptable to the Issuing Bank). A request for an initial issuance of a Letter of Credit shall specify in form and detail 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 require. A request for an amendment, renewal or extension of any outstanding Letter of Credit shall specify in form and detail satisfactory to the Issuing Bank (i) the Letter of Credit to be amended, renewed or extended; (ii) the proposed date of amendment, renewal or extension thereof (which shall be a Business Day); (iii) the nature of the proposed amendment, renewal or

extension; and (iv) such other matters as the Issuing Bank may require. If requested by the Issuing Bank, Borrower also shall submit a letter of credit application 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 Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed $8.0 million, (ii) the total Revolving Exposures shall not exceed the lesser of (A) the total Revolving Commitments minus any Line Reserve and (B) the Borrowing Base then in effect and (iii) the conditions set forth in Article IV in respect of such issuance, amendments, renewal or extension shall have been satisfied. Unless the Issuing Bank shall agree otherwise, no Letter of Credit shall be in an initial amount less than $75,000, in the case of a Commercial Letter of Credit, or $100,000, in the case of a Standby Letter of Credit.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) in the case of a Standby Letter of Credit, (x) the date which is not more than one year after the date of the issuance of such Standby Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (y) the Letter of Credit Expiration Date and (ii) in the case of a Commercial Letter of Credit, (x) the date that is not more than 180 days after the date of issuance of such Commercial Letter of Credit (or, in the case of any renewal or extension thereof, 180 days after such renewal or extension) and (y) 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 made by the Issuing Bank and not reimbursed by Borrower on the date due as provided in paragraph (e) of this Section 2.18, or of any reimbursement payment required to be refunded to 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 Commitments, 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, Borrower 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 date that such LC Disbursement is made, if Borrower shall

have received notice of such LC Disbursement prior to 11:00 a.m., New York City time, on such date, or, if such notice has not been received by Borrower prior to such time, on such date, then not later than 2:00 p.m., New York City time on (i) the Business Day that Borrower receives such notice, if such notice is received prior to 11:00 a.m., New York City time, on the day of receipt, or (ii) the Business Day immediately following the day that Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.17 that such payment be financed with an ABR Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, Borrower' obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing or Swingline Loan. If 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 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. Promptly following receipt by the Administrative Agent of any payment from 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 ABR Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve Borrower of their obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The obligation of Borrower to reimburse LC Disbursements as provided in paragraph (e) of this Section 2.18 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 (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) 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, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.18, constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of Borrower hereunder. 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 Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable law) suffered by Borrower 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 or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent 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.

(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 Borrower by telephone (confirmed by fax) 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 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 2.18(e)).

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless 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 Borrower reimburses such LC Disbursement, at the rate *per annum* then applicable to ABR Loans; provided that, if Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section 2.18, 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 2.18 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 notice to the Lenders, the Administrative Agent and Borrower. The Issuing Bank may be replaced at any time by written agreement among Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. 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, Borrower 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 additional Issuing Bank 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, Borrower may, in its discretion, select which Issuing Bank is to issue any particular Letter of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, Borrower shall deposit in the Cash Collateral Account, in the name of the Collateral Agent and for the benefit of the Secured Parties, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon. Each such deposit shall be held by the Collateral Agent in a Cash Collateral Account pursuant to Section 9.01, as collateral for the payment and performance of the obligations of Borrower under this Agreement. The Collateral 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 solely in cash and Cash Equivalents, and at the option and sole discretion of the Collateral Agent, and at the risk and expense of Borrower) 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 Collateral 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 Borrower 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 Borrower under this Agreement. If Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount plus any accrued interest or realized profits of such amounts (to the extent not applied as aforesaid) shall be returned to Borrower within three (3) Business Days after all Events of Default have been cured or waived. If Borrower is required to provide an amount of such collateral hereunder pursuant to Section 2.10(b), such amount plus any accrued interest or realized profits on account of such amount (to the extent not applied as aforesaid) shall be returned to Borrower as and

to the extent that, after giving effect to such return, Borrower would remain in compliance with Section 2.10(b) and no Default or Event of Default shall have occurred and be continuing.

(k) Additional Issuing Banks. Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) 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 Loan 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) No Obligation to Issue Under Certain Circumstances. 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) No Obligation to Amend Under Certain Circumstances. The Issuing Bank shall be under no obligation to amend any Letter of Credit if (A) 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 (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(n) Outstanding Letters of Credit. The letters of credit set forth on Schedule 2.18(n) (the "**Outstanding Letters of Credit**") were originally issued under the Pre-Petition Credit Agreement and remain outstanding as of the Closing Date. Each of the Borrower, each Guarantor, each Lender and the Issuing Bank hereby agree that with respect to the Outstanding Letters of Credit, for all purposes of this Agreement, such Outstanding Letters of Credit shall constitute Letters of Credit hereunder. Each Lender agrees to participate in each Outstanding Letter of Credit issued by the Issuing Bank in an amount equal to its Pro Rata Percentage of the stated amount of such Outstanding Letter

of Credit. On the Closing Date, the Collateral Agent shall release to Borrower all amounts in the Cash Collateral Account on such date.

SECTION 2.19 Determination of Borrowing Base.

(a) Eligible Accounts. On any date of determination of the Borrowing Base, all of the Accounts owned by Borrower and each Subsidiary Guarantor, as applicable, and reflected in the most recent Borrowing Base Certificate delivered by the Borrower to the Collateral Agent and the Administrative Agent shall be "Eligible Accounts" for the purposes of this Agreement, except any Account to which any of the exclusionary criteria set forth below applies. In addition, the Collateral Agent and the Administrative Agent reserve the right, at any time and from time to time after the Closing Date (but otherwise in a manner consistent with the Pre-Petition Credit Agreement, as modified to take account of the current financial condition of the Loan Parties and commencement and pendency of the Chapter 11 Cases), to adjust any of the criteria set forth below, to establish new criteria and to adjust the applicable advance rate with respect to Eligible Accounts, in their collective reasonable credit judgment, subject to the approval of the Required Lenders in the case of adjustments or new criteria which have the effect of making more credit available and, in the case of any increase in the applicable advance rates, the Supermajority Lenders. 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 and perfected Lien subject to Permitted Liens described in Sections 6.02(a), (b), and (e);

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

(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 of the foregoing;

(iv) any Account that is payable in any currency other than Dollars;

(v) any Account that does not arise from the sale of goods or the performance of services by Borrower or such Subsidiary Guarantor 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) upon which Borrower's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever unless such condition is satisfied or (b) as to which Borrower, is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial or administrative process or (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 Borrower's, as applicable, completion of further performance under such contract or is subject to the equitable lien of a surety bond issuer;

(viii) to the extent that any defense, counterclaim, setoff or dispute is asserted as to such Account, 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 Collateral 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 Borrower or such Subsidiary Guarantor, as applicable, including, without limitation, unbilled sales listed in the "future" column of any due date aging report;

(xi) any Account that (A) arises from a sale to any director, officer, other employee or Affiliate of Borrower or such Subsidiary Guarantor, or to any entity that has any common officer or director with Borrower or such Subsidiary Guarantor, to the extent that the aggregate amounts of such Accounts exceeds $250,000 of (B) that arises from a sale from any Loan Party to any other Loan Party;

(xii) to the extent Borrower or any Subsidiary is liable for goods sold or services rendered by the applicable Account Debtor to Borrower or any Subsidiary but only to the extent of the potential offset;

(xiii) any Account 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;

(xiv) any Account that is in default; provided that, without limiting the generality of the foregoing, an Account shall be deemed in default upon the occurrence of any of the following:

(A) any Account not paid within 120 days following its original invoice date or that is more than 60 days past due according to its original terms of sale; or

(B) the Account Debtor obligated upon such Account suspends business, makes a general assignment for the benefit of creditors or fails to pay its debts generally as they come due; or

(C) a petition is filed by or against any Account Debtor obligated upon such Account under any bankruptcy law or any other federal, state or foreign (including any provincial) receivership, insolvency relief or other law or laws for the relief of debtors;

(xv) 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 that Account Debtor are ineligible under the other criteria set forth in this Section 2.19(a);

(xvi) any Account as to which any of the representations or warranties in the Loan Documents are untrue in any material respect (without duplication of any materiality qualifier contained therein);

(xvii) to the extent such Account is evidenced by a judgment, Instrument or Chattel Paper;

(xviii) to the extent such Account exceeds any credit limit established by the Collateral Agent, in its reasonable credit judgment, following prior notice of such limit by the Collateral Agent to the Borrower;

(xix) that portion of any Account (a) in respect of which there has been, or should have been, established by Borrower or such Subsidiary Guarantor a contra account, whether in respect of contractual allowances with respect to such Account, audit adjustment, anticipated discounts or otherwise, or (b) which is due from an Account Debtor to whom Borrower or such Subsidiary Guarantor owes a trade payable (unless a "no-offset" agreement in form and substance reasonably satisfactory to the Collateral Agent shall have been executed by such Account Debtor), but only to the extent of such trade payable or (c) which Borrower or such Subsidiary Guarantor knows is subject to the exercise by an Account Debtor of any right of recession, set-off, recoupment, counterclaim or defense;

(xx) that portion of any Account to the extent representing sales tax; or

(xxi) any Account on which the Account Debtor is a Governmental Authority, unless Borrower or such Subsidiary Guarantor, as applicable, 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.

(b) Eligible Inventory. For purposes of this Agreement, Eligible Inventory shall exclude any Inventory to which any of the exclusionary criteria set forth below applies. The Collateral Agent shall have the right to establish, modify or eliminate Reserves against Eligible Inventory from time to time in its reasonable credit judgment. In addition, the Collateral Agent and the Administrative Agent reserve the right, at any time and from time to time after the Closing Date (but otherwise in a manner consistent

with the Pre-Petition Credit Agreement, as modified to take account of the current financial condition of the Loan Parties and commencement and pendency of the Chapter 11 Cases), to adjust any of the criteria set forth below, to establish new criteria and to adjust the applicable advance rate with respect to Eligible Inventory, in their collective reasonable credit judgment, subject to the approval of the Required Lenders in the case of adjustments or new criteria or the elimination of Reserves which have the effect of making more credit available and, in the case of any increase in the applicable advance rates, the Supermajority Lenders. Eligible Inventory shall not include any Inventory of Borrower or any Subsidiary Guarantor that:

(i) the Collateral Agent, on behalf of Secured Parties, does not have a first priority and perfected Lien on such Inventory subject to Permitted Liens described in Sections 6.02(a), 6.02(b) and 6.02(e);

(ii) (a) that is stored at a location where the aggregate value of Inventory exceeds $50,000 unless the Collateral Agent has given its prior consent thereto and unless either (x) a reasonably satisfactory Landlord Lien Waiver and Access Agreement has been delivered to the Collateral Agent, or (y) Reserves reasonably satisfactory to the Collateral Agent have been established with respect thereto or (b) is stored with a bailee or warehouseman where the aggregate value of Inventory exceeds $50,000 unless either (x) a reasonably satisfactory, acknowledged bailee waiver letter has been received by the Collateral Agent or (y) Reserves reasonably satisfactory to the Collateral Agent have been established with respect thereto, or (c) is located at an owned location subject to a mortgage in favor of a lender other than the Collateral Agent where the aggregate value of Inventory exceeds $50,000 unless either (x) a reasonably satisfactory mortgagee waiver has been delivered to the Collateral Agent or (y) Reserves reasonably satisfactory to the Collateral Agent have been established with respect thereto;

(iii) is placed on consignment, unless a valid consignment agreement which is reasonably satisfactory to Collateral Agent is in place with respect to such Inventory;

(iv) is covered by a negotiable document of title, unless such document has been delivered to the Collateral Agent with all necessary endorsements, free and clear of all Liens except those in favor of the Collateral Agent and the Lenders and landlords, carriers, bailees and warehousemen if clause (ii) above has been complied with;

(v) is to be returned to suppliers;

(vi) is obsolete, unsalable, shopworn, seconds, damaged or unfit for sale;

(vii) consists of display items, samples or packing or shipping materials (excluding specialty packing and shipping materials used to ship products to customers with an aggregate value not to exceed $8.0 million at any time during

the months of August, September, October, November and December and $6.0 million at any other time), manufacturing supplies, work-in-process Inventory (excluding deferred growing costs for Harry & David Operations, Inc. for the current year harvest, and excluding other work-in-process that the Collateral Agent determines in its reasonable credit judgment should not be excluded from "Eligible Inventory" as a consequence of its work-in-process status) or replacement parts;

(viii) is not of a type held for sale in the ordinary course of Borrower's or such Subsidiary Guarantor's, as applicable, business;

(ix) breaches any of the representations or warranties pertaining to Inventory set forth in the Loan Documents in any material respect (without duplication of any materiality qualifier contained therein);

(x) consists of Hazardous Material or goods that can be transported or sold only with licenses that are not readily available (other than alcoholic beverages to the extent determined in the most recent Inventory Appraisal to be capable of being liquidated by the Collateral Agent);

(xi) is not covered by casualty insurance maintained as required by Section 5.04; or

(xii) is subject to any licensing arrangement the effect of which would be to limit the ability of Collateral Agent, or any Person selling the Inventory on behalf of Collateral Agent, to sell such Inventory in enforcement of the Collateral Agent's Liens, without further consent or payment to the licensor or other.

(c) Eligible Equipment and Eligible Real Property. The Collateral Agent shall have the right to establish, modify or eliminate Reserves against Eligible Equipment and Eligible Real Property from time to time in its reasonable credit judgment. In addition, the Collateral Agent reserves the right, at any time and from time to time after the Closing Date (but otherwise in a manner consistent with the Pre-Petition Credit Agreement, as modified to take account of the current financial condition of the Loan Parties and commencement and pendency of the Chapter 11 Cases), to adjust any of the criteria set forth in the definitions of the terms "Eligible Equipment" and "Eligible Real Property", to establish new criteria and to adjust the applicable advance rate with respect to Eligible Equipment or Eligible Real Property, in its reasonable credit judgment, subject to the approval of the Administrative Agent and the Supermajority Lenders in the case of adjustments, new criteria, changes in the applicable advance rate or the elimination of Reserves which have the effect of making more credit available. Any Equipment affixed to the Mortgaged Real Property listed on Schedule 1.01(d), if otherwise eligible hereunder, shall be deemed Eligible Equipment rather than Eligible Real Property.

(d) Notice of Changes in Borrowing Base. With respect to the establishment or modification of any Reserve, a change of any eligibility criteria, or a change in any of the advance rates with respect to any Collateral comprising a part of the Borrowing Base,

the Collateral Agent shall endeavor to provide the Borrower with at least two (2) Business Days' prior notice thereof; provided that the failure of the Collateral Agent to provide any such notice shall not affect the application of any such action or impose any liability of any kind on the Collateral Agent.

SECTION 2.20 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) the Commitment Fee shall cease to accrue on the Commitment of such Lender so long as it is a Defaulting Lender (except to the extent it is payable to the Issuing Bank pursuant to clause (c)(v) below);

(b) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of such Swingline Exposure and LC Exposure shall be reallocated among the non-Defaulting Lenders in accordance with their respective Pro Rata Percentages but only to the extent the sum of all non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's Swingline Exposure and LC Exposure does not exceed the lesser of the total of all non-Defaulting Lenders' Revolving Commitments and the Borrowing Base;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, Borrower shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Defaulting Lender's Swingline Exposure and (y) second, cash collateralize such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.18(j) for so long as such LC Exposure is outstanding;

(iii) if any portion of such Defaulting Lender's LC Exposure is cash collateralized pursuant to clause (ii) above, Borrower shall not be required to pay the LC Participation Fee with respect to such portion of such Defaulting Lender's LC Exposure so long as it is cash collateralized;

(iv) if any portion of such Defaulting Lender's LC Exposure is reallocated to the non-Defaulting Lenders pursuant to clause (i) above, then the LC Participation Fee with respect to such portion shall be allocated among the non-Defaulting Lenders in accordance with their Pro Rata Percentages; or

(v) if any portion of such Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.20 (b), then, without prejudice to any rights or remedies of the Issuing Bank or any Lender hereunder, the Commitment Fee that otherwise would have been payable to such Defaulting Lender (with respect to the portion of such Defaulting Lender's Revolving Commitment that was utilized by such LC Exposure) and the LC Participation Fee payable with respect to such Defaulting Lender's LC Exposure shall be

payable to the Issuing Bank until such LC Exposure is cash collateralized and/or reallocated;

(c) so long as any Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders and/or cash collateralized in accordance with Section 2.20(b), and participations in any such newly issued or increased Letter of Credit or newly made Swingline Loan shall be allocated among non-Defaulting Lenders in accordance with their respective Pro Rata Percentages (and Defaulting Lenders shall not participate therein); and

(d) any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 2.14(d) but excluding Section 2.16(b)) may, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated non-interest bearing account and, subject to any applicable Requirements of Law, be applied at such time or times as may be determined by the Administrative Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (ii) second, *pro rata*, to the payment of any amounts owing by such Defaulting Lender to the Issuing Bank or Swingline Lender hereunder, (iii) third, to the funding of any Loan or the funding or cash collateralization of any participation in any Swingline Loan or Letter of Credit in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent, (iv) fourth, if so determined by the Administrative Agent and Borrower, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (v) fifth, *pro rata*, to the payment of any amounts owing to Borrower or the Lenders as a result of any judgment of a court of competent jurisdiction obtained by Borrower or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement and (vi) sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is (x) a prepayment of the principal amount of any Loans or Reimbursement Obligations in respect of LC Disbursements which a Defaulting Lender has funded its participation obligations and (y) made at a time when the conditions set forth in Section 4.03 are satisfied, such payment shall be applied solely to prepay the Loans of, and Reimbursement Obligations owed to, all non-Defaulting Lenders *pro rata* prior to being applied to the prepayment of any Loans, or Reimbursement Obligations owed to, any Defaulting Lender.

In the event that the Administrative Agent, Borrower, the Issuing Bank or the Swingline Lender, as the case may be, each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Pro Rata Percentage. The rights and remedies against

a Defaulting Lender under this Section 2.20 are in addition to other rights and remedies that Borrower, the Administrative Agent, the Issuing Bank, the Swingline Lender and the non-Defaulting Lenders may have against such Defaulting Lender. The arrangements permitted or required by this Section 2.20 shall be permitted under this Agreement, notwithstanding any limitation on Liens or the *pro rata* sharing provisions or otherwise.

SECTION 2.21 Super-Priority Nature of Obligations and Lenders' Liens. Each Loan Party represents, warrants, covenants and agrees that:

(a) The priority of the Agents' and Lenders' Liens on the Collateral owned by the Loan Parties shall be as set forth in the Financing Orders.

(b) In accordance with Section 364(c)(1) of the Bankruptcy Code, but subject to the terms of the Intercreditor Agreement, the Obligations shall constitute claims with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provision of the Bankruptcy Code and shall be payable from and have recourse to all Collateral, including all pre- and post-petition property of the Debtors and all proceeds thereof, including, upon entry of the Final Order, Avoidance Actions.

(c) Upon entry of the Interim Order, Agents' and Lenders will be granted valid and perfected security interests and Liens on the Collateral, subject to the terms of the Intercreditor Agreement and subject to the Carve-Out, as follows (i) pursuant to Section 364(c)(2) of the Bankruptcy Code, a first priority perfected Lien on and security interest in all of the Debtors' right, title and interest in, to and under all Collateral that is not otherwise subject to or encumbered by a validly perfected unavoidable security interest or lien on the Petition Date, (ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, a junior perfected Lien on and security interest in all of the Debtors' right, title and interest in, to and under all Collateral that is subject to or encumbered by a validly perfected, unavoidable security interest or Lien on the Petition Date or subject to a Lien or security interest in existence on the Petition Date that is perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code (other than the priming Liens and security interests granted pursuant to clause (iii) below and (iii) pursuant to Section 364(d)(1) of the Bankruptcy Code, a first priority, senior, priming, perfected Lien on and security interest in all of the Debtors' right, title and interest in, to and under the Collateral that is subject to or encumbered by a validly perfected, unavoidable security interest or Lien on the Petition Date or subsequently perfected thereafter. The Liens of the Agents and Lenders on the Collateral and the Liens of the Term B Note Agent and the Term B Noteholders shall have the relative ranking and priority set forth in the Intercreditor Agreement. As used in this Agreement, "**Carve-Out**" means the following (and "**Carve-Out Amount**" means the amount that results from summing the following): (a) all unpaid fees required to be paid in the Chapter 11 Cases to the Clerk of the Bankruptcy Court and to the office of the U.S. Trustee under 28 U.S.C. §1930, whether arising prior to or after the delivery of the Carve-Out Trigger Notice, (b) all reasonable and documented unpaid fees, costs, disbursements and expenses, including, without limitation, success, financing, completion and similar fees (collectively, "**Transaction**

Fees") and the reasonable expenses of any member of the Committee in the Chapter 11 Cases (collectively, the "**Professional Fees**"), of professionals retained by the Debtors and any Committee in the Chapter 11 Cases (collectively, the "**Professionals**") in the Chapter 11 Cases, in each case that (x) are incurred, and in the case of a professional seeking compensation for a Transaction Fee, the services giving rise to the Transaction Fee, actually occur or the event that triggers the Transaction Fee occurs (regardless of any provision contained in any engagement letter or retention order with respect to the professional seeking compensation for a Transaction Fee), prior to the delivery by the Administrative Agent of a Carve-Out Trigger Notice and are ultimately allowed by the Bankruptcy Court (regardless of the time of such allowance); and (y) that remain unpaid after application of any retainers; and (c) all Professional Fees incurred on or after the delivery by the Administrative Agent of a Carve-Out Trigger Notice, that are allowed by the Bankruptcy Court (and remain unpaid after application of any retainers) in an aggregate amount not to exceed $1,750,000.

SECTION 2.22 Payment of Obligations. Upon the Final Maturity Date (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents, the Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

SECTION 2.23 No Discharge; Survival of Claims. Each Loan Party agrees that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization in the Chapter 11 Cases (and each Loan party pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (b) the super priority administrative claim granted to the Agents and the Lenders pursuant to the Financing Orders and described in Section 2.21 and the Liens granted to the Agents pursuant to the Financing Orders and described in Section 2.21 shall not be affected in any manner by the entry of an order confirming a plan of reorganization in the Chapter 11 Cases.

SECTION 2.24 Release. The Loan Parties hereby acknowledge effective upon the entry of each Financing Order, that Loan Parties have no defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of the Loan Parties' liability to prepare or repay the Agents or any Lender as provided in this Agreement or the other Loan Documents, Prior Agents or any Prior Lender as provided in the Pre-Petition Credit Agreement or other Pre-Petition Loan Documents or to seek affirmative relief or damages of any kind or nature from the Agents or any Lender or Prior Agents or any Prior Lender. The Loan Parties, in their own right, on behalf of each of their bankruptcy estates and on behalf of all their successors, assigns, Subsidiaries, Guarantors and any Affiliates and any Person acting for and on behalf of, or claiming through them, (collectively, the "**Releasing Parties**"), hereby, effective upon the entry of the Final Order, fully, finally and forever release and discharge the Agents, Lenders, Prior Agents and Prior Lenders and all of Agents', Lenders', Prior Agents' and Prior Lenders' past and present officers, directors, agents, attorneys, assigns, heirs, parents, subsidiaries, and each person acting for or on behalf of any of them (collectively, the "**Released Parties**") of and from any and all past and present actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever,

whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the Loan Documents, the Pre-Petition Credit Agreement, the Pre-Petition Loan Documents, the Financing Orders and the transactions contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing; *provided*, that nothing herein shall be deemed to be a release of any Secured Party from its obligations under the Loan Documents; *provided*, *further*, that nothing contained herein shall be deemed to limit or modify the rights granted to third parties under the Financing Orders.

SECTION 2.25 Waiver of any Priming Rights. Upon the Closing Date, and on behalf of itself and its estate, and for so long as any Obligations shall be outstanding, the Borrower and each Loan Party hereby irrevocably waives any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien or equal or greater priority than the Obligations (or the adequate protection claims and Liens, if any, granted to the Prior Agents or Prior Lenders in the Financing Orders), unless effective upon the granting of any such Lien or claim, the Obligations and adequate protection obligations shall be paid in full in cash and the Commitments terminated.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders:

SECTION 3.01 Organization; Powers. Each Company (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has, upon entry of the Interim Order (or the Final Order, when applicable) by the Bankruptcy Court, and subject to the terms thereof, all requisite corporate or other organization power and authority to carry on its business as now conducted and to own and lease its Property and (c) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.02 Authorization; Enforceability. Upon entry of the Interim Order (or the Final Order, when applicable) by the Bankruptcy Court, and subject to the terms thereof, the Transactions to be entered into by each Loan Party are within such Loan Party's corporate or other organization powers and have been duly authorized by all necessary action. Subject to the entry of the Interim Order (or the Final Order, when applicable) by the Bankruptcy Court, and

subject to the terms thereof this Agreement has been duly executed and delivered by each Loan Party and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03 Governmental Approvals; No Conflicts. Except for the Financing Orders and as set forth on Schedule 3.03, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created under the Loan Documents and (iii) consents, approvals, registrations, filings or actions the failure to obtain or perform which could not reasonably be expected to result in a Material Adverse Effect, (b) will not violate the charter, by-laws or other organizational documents of any Company or any order of any Governmental Authority applicable to any Company or its assets, (c) will not violate, result in a default or require any consent or approval under any applicable law or regulation, indenture, agreement or other instrument, in each case binding upon any Company or its assets, or give rise to a right thereunder to require any payment to be made by any Company, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any Property of any Company, except Liens created under the Loan Documents and Permitted Liens (including pursuant to the Financing Orders).

SECTION 3.04 Financial Statements.

(a) Borrower has heretofore furnished to the Lenders the consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Borrower and its consolidated Subsidiaries as of and for the fiscal year ended June 27, 2010, audited by and accompanied by the opinion of PricewaterhouseCoopers LLP, independent public accountants certified by the Chief Financial Officer of Holdings. Such financial statements and all financial statements delivered pursuant to Sections 5.01(a), (b) and (c) have been prepared in accordance with GAAP (subject in the case of each of Section 5.01(b) and (c) to normal year-end audit adjustments) consistently applied and present fairly and accurately the financial condition and results of operations and cash flows of Holdings and its consolidated Subsidiaries as of such dates and for such periods. Except as set forth in such financial statements or schedules hereto, there are no liabilities of any Company of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which if unpaid could reasonably be expected to result in a Material Adverse Effect, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability.

(b) The Projections furnished to the Administrative Agent have been prepared in good faith by Holdings and based on assumptions believed by Holdings to be reasonable.

(c) Since March 4, 2011, there has been no event, change or occurrence that, individually or in the aggregate, has had or could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.05 Properties.

(a) Each Company has good title to, or valid leasehold interests in, all its Property material to its business, except for minor irregularities or deficiencies in title that, individually or in the aggregate, do not interfere in any material respect with its ability to conduct its business as currently conducted or to utilize such Property for its intended purpose. Title to all such Property held by such Company is free and clear of all Liens except for Permitted Liens (including pursuant to the Financing Orders). The Property of the Companies, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted) (except to the extent that the failure to be in such condition could not reasonably be expected to result in a Material Adverse Effect) and (ii) constitutes all the Property which is required in any material respect for the business and operations of the Companies as presently conducted.

(b) Schedule 3.05(b) contains a true and complete list of each interest in Real Property owned by any Company as of the date hereof and describes the type of interest therein held by such Company. Schedule 3.05(b) contains a true and complete list of each Real Property leased, subleased or otherwise occupied or utilized by any Company, as lessee, sublessee, franchisee or licensee, as of the date hereof and describes the type of interest therein held by such Company.

(c) Each Company owns, or is licensed to use, all patents, patent applications, trademarks, trade names, servicemarks, copyrights, technology, trade secrets, proprietary information, information technology, software, databases, domain names, know-how and processes necessary for the conduct of its business as currently conducted (the "**Intellectual Property**"), except for those the failure to own or license which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Company know of any valid basis for any such claim except as would not reasonably be expected to have a Material Adverse Effect. The use of such Intellectual Property by each Company does not infringe the rights of any Person, except for such claims and infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Except pursuant to licenses and other user agreements entered into by each Loan Party in the ordinary course of business that are listed in Schedules 1(a), 1(b) and 1(c) to the Security Agreement, on and as of the date hereof (i) each Loan Party owns and possesses the right to use, and has done nothing to authorize or enable any other person to use, any copyright, patent or trademark (as such terms are defined in the Security Agreement) listed in Schedules 1(a), 1(b) and 1(c) to the Security Agreement delivered on the date hereof and (ii) all material registrations listed in Schedules 1(a), 1(b) and 1(c) to the Security Agreement delivered on the date hereof are valid and in full force and effect. To each Loan Party's knowledge, on and as of the date hereof, there is no material violation

by others of any right of such Loan Party with respect to any copyright, patent or trademark listed in Schedules 1(a), 1(b) and 1(c) to the Security Agreement, respectively, pledged by it under the name of such Loan Party except as may be set forth on Schedule 3.05(c).

(d) As of the date hereof, (i) no Company has received any notice of, nor has any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any material portion of the Property and (ii) no Mortgage encumbers improved Real Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968.

(e) The Equipment of each Company is in good repair, working order and condition, reasonable wear and tear excepted. Each Company shall cause the Equipment to be maintained and preserved in good repair, working order and condition, reasonable wear and tear excepted, and shall as quickly as commercially practicable make or cause to be made all repairs, replacements and other improvements to the Equipment, in each case which are necessary or appropriate in the conduct of each Company's business.

SECTION 3.06 Equity Interests and Subsidiaries.

(a) Schedule 3.06(a) sets forth a list of (i) all the Subsidiaries and their jurisdiction of organization as of the Closing Date and (ii) the number of shares of each class of its Equity Interests authorized, and the number outstanding (and the record holder of such Equity Interests), on the Closing Date and the number of shares covered by all outstanding options, warrants, rights of conversion or purchase and similar rights at the Closing Date. All Equity Interests of each Company (other than Holdings) are duly and validly issued and are fully paid and non-assessable and are owned by Holdings or Borrower, directly or indirectly through Wholly Owned Subsidiaries and all Equity Interests of the Borrower are owned directly by Holdings. Each Loan Party is the record and beneficial owner of, and has good and marketable title to, the Equity Interests pledged by it under the Security Agreement, free of any and all Liens, rights or claims of other Persons, except the security interest created by the Security Agreement and the Liens permitted by Sections 6.02(a) and (r), and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or Property that is convertible into, or that requires the issuance or sale of, any such Equity Interests. No Subsidiaries exist other than Borrower, the Subsidiary Guarantors, and Subsidiaries in the process of complying with the requirements of Section 5.11(b) and other SPE License Subs (but solely to the extent not required hereunder to comply with the requirements of Section 5.11(b)).

(b) Upon entry of the Interim Order (or the Final Order, when applicable) by the Bankruptcy Court, and subject to the terms thereof, no consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or desirable in connection with the creation, perfection or first priority status of the security interest of

the Collateral Agent in any Equity Interests pledged to the Collateral Agent for the benefit of the Secured Parties under the Security Agreement or the exercise by the Collateral Agent of the voting or other rights provided for in the Security Agreement or the exercise of remedies in respect thereof.

(c) An accurate organization chart, showing the ownership structure of Holdings, Borrower and each Subsidiary on the Closing Date, and after giving effect to the Transaction, is set forth on Schedule 3.06(c).

SECTION 3.07 Litigation; Compliance with Laws.

(a) Except for the Chapter 11 Cases and for litigation that is stayed by the commencement and continuation of the Chapter 11 Cases, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the knowledge of any Company, threatened against or affecting any Company or any business, Property or rights of any such Person (i) that involve any Loan Document or the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for matters described in Section 3.17, no Company or any of its Property is in violation of, nor will the continued operation of its Property as currently conducted violate, any Requirements of Law (including any zoning or building ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Real Property or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where such violation or default could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08 Agreements.

(a) No Company is a party to any agreement or instrument or subject to any corporate or other constitutional restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(b) No Company is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other agreement or instrument to which it is a party or by which it or any of its Property are or may be bound (including after giving effect to the Transactions), in each case entered into after the Petition Date, where such default could reasonably be expected to result in a Material Adverse Effect.

(c) Schedule 3.08(c) accurately and completely lists all material agreements (other than leases of Real Property set forth on Schedule 3.05(b)) to which any Company is a party which are in effect on the date hereof in connection with the operation of the business conducted thereby and Borrower has delivered to the Administrative Agent complete and correct copies of all such material agreements, including any amendments, supplements or modifications with respect thereto.

SECTION 3.09 Federal Reserve Regulations.

(a) No Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T, U or X. The pledge of the Security Agreement Collateral pursuant to the Security Agreement does not violate such regulations.

SECTION 3.10 Investment Company Act. No Company is an "investment company" or a company "controlled" by an "investment company," as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.11 Use of Proceeds. Borrower will use the proceeds of the Loans after the Closing Date in a manner consistent with the 13-Week Budget for payment of (a) post-petition operating expenses and other working capital and financing requirements of the Borrower subject to the 13-Week Budget or as otherwise agreed to by the Required Lenders, (b) certain transaction fees, costs and expenses, (c) the Carve-Out, (d) Pre-Petition claims to the extent consistent with the 13-Week Budget, approved by the Required Lenders and allowed by the Bankruptcy Court, and (e) to cash collateralize Letters of Credit. The Borrower shall not be permitted to use the proceeds of the Loans or the Swingline Loans or proceeds of Collateral: (i) to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to: (A) the interests of the Agents and Lenders or their rights or remedies under this Agreement, the other Loan Documents or the Financing Orders, or (B) the interests of the Prior Agents and Prior Lenders under the Pre-Petition Loan Documents, including, without limitation, for the payment of any services rendered by the professionals retained by the Borrower or any Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, 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 (x) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Prior Lender Obligations or the Liens securing same, or the Obligations or the Liens securing same, (y) for monetary, injunctive or other similar relief against any Prior Lender or Prior Agents or any Lender or agent or their respective collateral, or (z) preventing, hindering or otherwise delaying the exercise by any Prior Lender, Prior Agents, Lender or Agents of any rights and remedies under the Financing Orders, the Pre-Petition Loan Documents, the Loan Documents or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the court or otherwise) by any or all of the Prior Lenders, the Prior Agents, the Lenders and the Agents upon any of their collateral; provided, however, that an amount not in excess of $50,000 will be available for the payment of fees and expenses of professionals of any Committee incurred in investigating the claims of Prior Agents and Prior Lenders; (ii) to make any distribution under a plan of reorganization in the Chapter 11 Cases; (iii) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of the Administrative Agent and the Required Lenders; and (iv) to pay any fees

or similar amounts to any Person who has proposed or may propose to purchase interests in Borrower or any other Loan Party (including so-called "topping fees" and similar amounts) without the prior written consent of the Administrative Agent and the Required Lenders.

SECTION 3.12 Taxes. Each Company has (a) filed or caused to be filed all federal Tax Returns and all material state, local and foreign Tax Returns or materials required to have been filed by it and all such Tax Returns are true and correct in all material respects and has (b) duly paid or caused to be duly paid all Taxes (whether or not shown on any Tax Return) due and payable by it and all assessments received by it, except in each case Taxes (i) that have been or are being contested in good faith by appropriate proceedings and for which such Company shall have set aside on its books adequate reserves in accordance with GAAP, (ii) which could not, individually or in the aggregate, have a Material Adverse Effect or (iii) any taxes, fees, or other charges, the nonpayment of which is required or permitted by the Bankruptcy Code; provided that any such contest of Taxes with respect to Collateral shall also satisfy the Contested Collateral Lien Conditions. Each Company has made adequate provision in accordance with GAAP for all Taxes not yet due and payable. Each Company is unaware of any proposed or pending tax assessments, deficiencies or audits that could be reasonably expected to, individually or in the aggregate, result in a Material Adverse Effect.

SECTION 3.13 No Material Misstatements. None of any information, report, financial statement, exhibit or schedule furnished by or on behalf of any Company to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto contained, contains or will contain any material misstatement of fact or omission, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading as of the date such information is dated or certified; provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, each Loan Party represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule.

SECTION 3.14 Labor Matters. As of the Closing Date, there are no strikes, lockouts or slowdowns against any Company pending or, to the knowledge of any Company, threatened. The hours worked by and payments made to employees of any Company have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters in any manner which could reasonably be expected to result in a Material Adverse Effect. All payments due from any Company, or for which any claim may be made against any Company, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Company except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Company is bound.

SECTION 3.15 Reserved.

SECTION 3.16 Employee Benefit Plans. Each Company and its ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event (other than the commencement of the Chapter 11 Cases) has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in material liability of any Company or any of its ERISA Affiliates or the imposition of a Lien on any of the assets of a Company. The present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) sponsored or maintained by the Companies immediately after the consummation of the Transactions did not, as of the date of the first financial statements of the Companies issued on or after the Closing Date reflecting such amounts, exceed by more than $15.0 million the fair market value of the assets of all such underfunded Plans. Using actuarial assumptions and computation methods consistent with subpart 1 of subtitle E of Title IV of ERISA, the aggregate liabilities of each Company or its ERISA Affiliates to all Multiemployer Plans in the event of a complete withdrawal therefrom, as of the close of the most recent fiscal year of each such Multiemployer Plan, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.17 Environmental Matters.

(a) Except as set forth in Schedule 3.17 or except as, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect:

(i) The Companies and their businesses, operations and Real Property are, and in the last six years have been, in compliance with applicable Environmental Laws, including obtaining and complying with all Environmental Permits, and all such Environmental Permits are valid and in good standing and, under the currently effective business plan of the Companies, no expenditures or operational adjustments will be required in order to renew or modify such Environmental Permits during the next five years, and the Companies have no Environmental Liabilities;

(ii) There has been no Release or threatened Release of Hazardous Materials on, at, under or from any Real Property or facility presently or formerly owned, leased or operated by the Companies or their predecessors in interest that could result in Environmental Liabilities which could reasonably be expected to have a Material Adverse Effect;

(iii) There is no Environmental Claim pending or, to the knowledge of the Companies, threatened against the Companies, or relating to the Real Property currently or formerly owned, leased or operated by the Companies or relating to the operations of the Companies, and there are no actions, activities, circumstances, conditions, events or incidents that could form the basis of such an Environmental Claim; and

(iv) No Person with an indemnity or contribution obligation to the Companies relating to compliance with or liability under Environmental Law is in default with respect to such obligation.

(b) Except as set forth in Schedule 3.17:

(i) No Company is obligated to perform any action or otherwise incur any expense under Environmental Law pursuant to any order, decree, judgment or agreement by which it is bound or has assumed by contract or agreement, and no Company is conducting or financing any Response pursuant to any Environmental Law with respect to any Real Property or any other location except any action or Response which could not reasonably be expected to have a Material Adverse Effect;

(ii) No Real Property or facility owned, operated or leased by the Companies and, to the knowledge of the Companies, no real Property or facility formerly owned, operated or leased by the Companies or any of their predecessors in interest is (i) listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA or (ii) listed on the Comprehensive Environmental Response, Compensation and Liability Information System promulgated pursuant to CERCLA or (iii) included on any similar list maintained by any Governmental Authority including, without limitation, any such list relating to petroleum;

(iii) As of the date hereof, no Lien is recorded or, to the knowledge of any Company, threatened under any Environmental Law with respect to any Real Property or assets of the Companies;

(iv) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not require any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup pursuant to any Environmental Real Property Disclosure Requirements or any other Environmental Law except any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup that could not be reasonably expected to have a Material Adverse Effect; and

(v) The Companies have made available to Lenders all material reports and assessments in the possession, custody or control of, or otherwise reasonably available to, the Companies concerning compliance with or liability under Environmental Law including, without limitation, those concerning the existence of Hazardous Material at Real Property or facilities currently or formerly owned, operated, leased or used by the Companies.

SECTION 3.18 Insurance. Schedule 3.18 sets forth a true, complete and correct description of all insurance maintained by each Company as of the Closing Date. As of each such date, such insurance is in full force and effect and all premiums have been duly paid. Each

Company has insurance in such amounts and covering such risks and liabilities as are in accordance with normal industry practice.

SECTION 3.19 Security Documents.

(a) Upon the entry of the Financing Orders by the Bankruptcy Court and the occurrence of the Closing Date, the Security Agreement is effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, a legal, valid and enforceable security interest in and Lien on the Security Agreement Collateral and, upon the taking of possession or control by the Collateral Agent of the Security Agreement Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent possession or control by the Collateral Agent is required by each Security Agreement), the Lien created by the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the Security Agreement Collateral (other than the Intellectual Property and equipment subject to a certificate of title statute), in each case encumbered by no Liens other than Permitted Liens.

(b) Upon the entry of the Financing Orders by the Bankruptcy Court and the occurrence of the Closing Date, when the Security Agreement or a short form thereof is filed in the United States Patent and Trademark Office and the United States Copyright Office, the Lien created by such Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the Intellectual Property, in each case encumbered by no Liens other than Permitted Liens.

(c) Reserved.

(d) Upon the entry of the Financing Orders by the Bankruptcy Court and the occurrence of the Closing Date, each Security Document delivered pursuant to Sections 5.11 and 5.12 will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in and Lien on all of the Loan Parties' right, title and interest in and to the Collateral thereunder, and when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable law, such Security Document will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral (other than equipment subject to a certificate of title statute and Collateral in which a security interest may be perfected solely by possession or control), in each case encumbered by no Liens other than the applicable Permitted Liens.

SECTION 3.20 Term B Note Documents. As of the Closing Date, Borrower shall have delivered to the Administrative Agent a complete and correct copy of the Term B Note Documents and all related documents (including all schedules, exhibits, amendments, supplements, modifications, assignments and all other documents delivered pursuant thereto or in connection therewith). Borrower has the corporate power and authority to execute, deliver and perform the Term B Note Documents and incur the obligations thereunder.

SECTION 3.21 Location of Material Inventory. As of Closing Date, Schedule 3.21 sets forth all locations in the United States where the aggregate value of Inventory owned by the Loan Parties exceeds $50,000.

SECTION 3.22 Accuracy of Borrowing Base. At the time any Borrowing Base Certificate is delivered pursuant to this Agreement, (a) each Account and each item of Inventory included in the calculation of the Borrowing Base satisfies all of the criteria stated herein (or of which Borrower has hereafter been notified by Collateral Agent under Section 2.19) to be an Eligible Account and an item of Eligible Inventory, respectively, (b) each item of Equipment included in the calculation of the Borrowing Base satisfies all of the criteria stated herein to be an item of Eligible Equipment and (c) each parcel of Real Property included in the calculation of the Borrowing Base satisfies all of the criteria stated herein satisfies all of the criteria stated herein to be an item of Eligible Real Property.

SECTION 3.23 Holdings. Holdings does not engage in any business activities or have any assets or liabilities, other than (a) its ownership of the Equity Interests of Borrower, (b) rights and obligations under the Loan Documents, the Senior Note Documents, the Term B Note Documents and the other Transaction Documents and Tax Sharing Agreements and (c) activities, obligations and assets incidental to the foregoing clauses (a) and (b).

SECTION 3.24 Common Enterprise. Holdings is the direct or indirect and beneficial owner and holder of all of the issued and outstanding shares of stock or other Equity Interests in Borrower and the other Subsidiary Guarantors. Borrower and Subsidiary Guarantors make up a related organization of various entities constituting a single economic and business enterprise so that Borrower and Guarantors share a substantial identity of interests such that any benefit received by any one of them benefits the others. Borrower and certain Guarantors render services to or for the benefit of Borrower and/or the other Guarantors, as the case may be, purchase or sell and supply goods to or from or for the benefit of the others, make loans, advances and provide other financial accommodations to or for the benefit of Borrower and Guarantors (including, inter alia, the payment by Borrower and Guarantors of creditors of the Borrower or Guarantors and guarantees by Borrower and Guarantors of indebtedness of Borrower and Guarantors and provide administrative, marketing, payroll and management services to or for the benefit of Borrower and Guarantors). Borrower and Guarantors have centralized accounting, common officers and directors and are in certain circumstances identified to creditors as a single economic and business enterprise.

SECTION 3.25 Foreign Assets Control Regulations. No Loan Party or, to the knowledge of any Loan Party, any Affiliate of any Loan Party, is, or will be after the consummation of the transactions contemplated by the Loan Documents and application of the proceeds of the Loans, by reason of being a "national" of a "designated foreign country" or "specially designated national" within the meaning of the Regulations of the Office of Foreign Assets Control, United States Treasury Department (31 C.F.R., Subtitle B, Chapter V), or for any other reason, in violation of, any United States Federal statute or Presidential Executive Order concerning trade or other relations with any foreign country or any citizen or national thereof or the ownership or operation of any property.

SECTION 3.26 Anti-Terrorism Laws.

(a) No Loan Party and, to the knowledge of the Loan Parties, none of its Affiliates is in violation of any laws relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) No Loan Party and, to the knowledge of the Loan Parties, no Affiliate or broker or other agent of any Loan Party acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a person that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("**OFAC**") at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party and, to the knowledge of the Loan Parties, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

SECTION 3.27 PACA and FSA. Except Harry & David Operations, Inc., no Company is a "dealer", "commission merchant" or "broker" under PACA, and no Company's assets (except Harry & David Operations, Inc.'s) are subject to the trust provisions provided for under PACA. No Company has received any notice with respect to any FSA or similar state statutory lien.

SECTION 3.28 Farmer Bankruptcy. No Company is a "farmer" as defined in the federal bankruptcy code except Bear Creek Orchards, Inc.

SECTION 3.29 Water Availability. The Companies possess water rights that are expected to provide from verifiable surface and ground water sources sufficient water to conduct operations materially similar to prior years' operations. Borrower and each applicable Subsidiary Guarantor has filed with all applicable Governmental Authorities, all notices and other documents required under federal, state and local laws and regulations in connection with the supply of water to and use of water upon the Mortgaged Real Property, except for such failures as do not and are not reasonably likely to have a Material Adverse Effect.

SECTION 3.30 Reorganization Matters.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and property notice for (x) the motion seeking approval of the Interim Order and (y) the hearing for the approval of the Interim Order and (z) the hearing for the approval of the Final Order has been given. The Borrower shall give, on a timely basis as specified in the Financing Orders, all notices required to be given to all parties specified in the Financing Orders.

(b) After entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against each Loan Party now existing or hereafter arising of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 326, 330, 331, 503(b), 507(a), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject, as to priority only, to the Carve-Out Amount.

(c) After entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral, subject to the Carve-Out Amount.

(d) The Interim Order (with respect to the period prior to the entry of the Final Order) or the Final Order (with respect to the period on and after the entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed, modified or amended.

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code and subject to the applicable provisions of the Interim Order or the Final Order, as the case may be, upon the Final Maturity Date (whether by acceleration or otherwise) of any of the Obligations, the Administrative Agent and Lenders shall be entitled to immediate payment of such Obligations in cash and to enforce the remedies provided for hereunder or under applicable law, without further application to or order by the Bankruptcy Court, subject to the terms of the Loan Documents and the Financing Orders.

ARTICLE IV.
CONDITIONS TO EFFECTIVENESS OF AGREEMENT AND INITIAL CREDIT EXTENSIONS HEREUNDER

SECTION 4.01 Conditions to Effectiveness of Agreement and Deemed Issuance of the Outstanding Letters of Credit. The effectiveness of this Agreement and the deemed issuance of the Outstanding Letters of Credit shall be subject to the satisfaction on the Closing Date of each of the conditions precedent set forth in this Section 4.01.

(a) Loan Documents. All legal matters incident to this Agreement, the Borrowings and extensions of credit hereunder and the other Loan Documents shall be satisfactory to the Lenders, to the Issuing Bank and to the Administrative Agent and there shall have been delivered to counsel for the Administrative Agent an executed counterpart of (i) this Agreement, together with the exhibits and schedules hereto, (ii) the Security Agreement, together with the exhibits and schedules thereto, (iii) the Intercreditor Agreement and (iv) a flow of funds statement.

(b) Corporate Documents. The Administrative Agent shall have received:

(i) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the certificate or articles of incorporation or other constitutive documents, including all amendments thereto certified as of a recent date by the Secretary of State of the state of its organization, (B) that attached thereto is a true and complete copy of the by-laws of such Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (C) below, (C) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party (together with a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate in this clause (i));

(ii) a certificate as to the good standing of each Loan Party as of a recent date, from the Secretary of State of its state of organization; and

(iii) such other documents as the Lenders, the Issuing Bank or the Administrative Agent may reasonably request.

(c) Closing Date Officer's Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by the Chief Executive Officer, the President or the Chief Financial Officer of Borrower, confirming compliance with the conditions precedent set forth in Section 4.01 and paragraphs (b) and (c) of Section 4.03.

(d) Transactions.

(i) The Lenders shall be reasonably satisfied with the capitalization, the terms and conditions of any equity, indemnity, employment or other

arrangements entered into in connection with the Transactions and the corporate, legal, tax, management or other organizational structure of the Companies.

(ii) The Transactions shall have been consummated or shall be consummated simultaneously on the Closing Date, in each case in all material respects in accordance with the terms hereof and the terms of the Transaction Documents, without the waiver or amendment of any terms in a manner adverse to the interests of the Lenders not approved by the Administrative Agent.

(iii) There shall have occurred an initial issuance of the Term B Note in an amount of $30,000,000 and the net proceeds thereof shall have been deposited into the Term B Segregated Account.

(e) Financial Statements; Balance Sheet; Projections. The Lenders shall have received and shall be satisfied with the form and substance of the financial statements described in Section 3.04 and with the forecasts of the Borrowing Base and the financial performance of Holdings, Borrower and their respective Subsidiaries.

(f) Indebtedness and Minority Interests. After giving effect to the Transactions and the other transactions contemplated hereby, no Company shall have outstanding any Indebtedness for borrowed money, preferred stock or minority interests other than (i) the Loans and extensions of credit hereunder, (ii) the Term B Note, (iii) the Senior Notes, (iv) Indebtedness owed to Borrower or any Guarantor and (i) minority interests in Holdings owned by the Permitted Holders.

(g) Opinion of Counsel. The Administrative Agent shall have received, on behalf of itself, the other Agents, the Arranger, the Lenders and the Issuing Bank, a favorable written opinion of Jones Day, special counsel for the Loan Parties, in form and substance reasonably acceptable to the Administrative Agent that is (i) dated the Closing Date, (ii) addressed to the Agents, the Issuing Bank and the Lenders and (iii) covering such other matters relating to the Loan Documents and the Transactions as the Administrative Agent shall reasonably request.

(h) Requirements of Law. The Lenders shall be satisfied that the Transactions shall be in compliance with all material Requirements of Law, including without limitation Regulations T, U and X of the Board. To the extent requested, the Lenders shall have received satisfactory evidence of compliance in all material respects with all applicable material Requirements of Law, including all applicable environmental laws and regulations.

(i) Consents. The Lenders shall be satisfied that all consents and approvals required from Governmental Authorities and third parties, to the extent necessary to enable Borrower to accurately make the representations and warranties set forth in Section 3.03 as of the Closing Date, shall have been obtained and be in full force and effect, and there shall be no governmental or judicial action, actual or threatened, that has or would have, singly or in the aggregate, a reasonable likelihood of, in any material

respect, restraining, preventing or imposing burdensome conditions on the Transactions or the other transactions contemplated hereby.

(j) Litigation. Other than the commencement and effect of the Chapter 11 Cases and for litigation that is stayed by the commencement and continuation of the Chapter 11 Cases, there shall be no litigation, public or private, or administrative proceedings, governmental investigation or other legal or regulatory developments, actual or threatened, that, singly or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or could materially and adversely affect the ability of Holdings, Borrower and the Subsidiaries to fully and timely perform their respective obligations under the Transaction Documents, or the ability of the parties to consummate the financings contemplated hereby or the other Transactions.

(k) Sources and Uses. No Revolving Loan shall be requested on the Closing Date.

(l) Fees. The Arranger, Collateral Agent and Administrative Agent shall have received all Fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses (including the reasonable legal fees and expenses of Paul, Hastings, Janofsky & Walker, LLP, special counsel to the Agents, and the reasonable fees and expenses of any local counsel, appraisers, consultants and other advisors) required to be reimbursed or paid by Borrower hereunder or under any other Loan Document.

(m) Personal Property Requirements. The Collateral Agent shall have received:

(i) UCC financing statements in appropriate form for filing under the UCC;

(ii) copies of UCC, tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Loan Party as debtor and that are filed in those state and county jurisdictions in which any Real Property owned by such Loan Party is located and the state and county jurisdictions in which any Loan Party is organized or maintains its principal place of business and such other searches that the Collateral Agent deems necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Security Documents (other than those relating to Liens acceptable to the Collateral Agent); and

(iii) evidence acceptable to the Collateral Agent of payment by the Loan Parties of all applicable recording taxes, fees, charges, costs and expenses required for the recording of the Security Documents.

(n) Reserved.

(o) Initial Borrowing Base Certificate. The Collateral Agent and the Administrative Agent shall have received a Borrowing Base Certificate, dated as of the Closing Date (with respect to the Borrowing Base as of March __, 2011).

(p) USA Patriot Act. The Lenders shall have received, sufficiently in advance of the Closing Date, all documentation and other information that may be required by the Lenders in order to enable compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the United States PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**") including the information described in Section 11.15.

(q) Budgets. The Administrative Agent and the Required Lenders shall have received a copy of the 13-Week Budget, in form and substance acceptable to the Required Lenders, which may be updated from time to time pursuant to amendments thereto as approved by the Required Lenders.

(r) Chapter 11 Case Administration. Entry by the Bankruptcy Court of the Interim Order, by no later than five (5) days after the Petition Date.

(s) First Day Orders and Motions. All first day motions described on Schedule A-1 that are filed in the Chapter 11 Case and all related orders entered by the Bankruptcy Court shall be in form and substance reasonably satisfactory to the Administrative Agent and its counsel and the Required Lenders.

SECTION 4.02 Conditions to Initial Credit Extension. The obligation of each Lender and, if applicable, each Issuing Bank to fund the initial Credit Extension requested to be made by it pursuant to this Agreement (other than, in the case of an Issuing Bank in respect of the Outstanding Letters of Credit) shall be subject to the satisfaction of each of the conditions precedent set forth in this Section 4.02; provided, however that if the conditions set forth in this Section 4.02 (other than clause (j) of Section 4.02) are not satisfied on or prior to the date on which the Final Order is entered, then the obligations of the Lenders under this Agreement shall automatically terminate without any further action.

(a) Loan Documents. All legal matters incident to this Agreement, the Borrowings and extensions of credit hereunder and the other Loan Documents shall be satisfactory to the Lenders, to the Issuing Bank and to the Administrative Agent and there shall have been delivered to counsel for the Administrative Agent an executed counterpart of each of the following Loan Documents:

(i) Intercompany Note;

(ii) Trademark Security Agreement;

(iii) Patent Security Agreement;

(iv) Copyright Security Agreement.

(b) Final Issuance of Term B Notes. There shall have occurred an additional issuance of the Term B Note such that the total aggregate amount of Term B Note issued (taking into account the initial issuance of Term B Note on the Closing Date) is equal to $55,000,000, and the net proceeds of such additional issuance shall have been deposited into the Term B Segregated Account.

(c) Funding Date Officer's Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by the Chief Executive Officer, the President or the Chief Financial Officer of Borrower, confirming compliance with the conditions precedent set forth in Section 4.01 and paragraphs (b) and (c) of Section 4.03.

(d) Personal Property Requirements. The Collateral Agent shall have received:

(i) all certificates, agreements or instruments representing or evidencing the Initial Pledged Interests, the Initial Pledged Shares and Intercompany Notes (each as defined in the Security Agreement) accompanied by instruments of transfer and stock powers endorsed in blank shall have been delivered to the Collateral Agent;

(ii) all other certificates or instruments necessary to perfect on the Closing Date the Collateral Agent's security interest in all Chattel Paper and all Instruments of each Loan Party (as each such term is defined in the Security Agreement and to the extent required by Article III of the Security Agreement);

(iii) filings with the United States Patent and Trademark Office and such other documents under applicable Requirements of Law in each jurisdiction as may be necessary or appropriate or, in the opinion of the Collateral Agent, desirable to perfect the Liens created, or purported to be created, by the Security Documents;

(iv) copies of UCC, tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Loan Party as debtor and that are filed in those state and county jurisdictions in which any Real Property owned by such Loan Party is located and the state and county jurisdictions in which any Loan Party is organized or maintains its principal place of business and such other searches that the Collateral Agent deems necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Security Documents (other than those relating to Liens acceptable to the Collateral Agent); and

(v) evidence acceptable to the Collateral Agent of payment by the Loan Parties of all applicable recording taxes, fees, charges, costs and expenses required for the recording of the Security Documents.

(e) Insurance. The Administrative Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.04 and the

applicable provisions of the Security Documents, each of which shall be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement and to name the Collateral Agent as additional insured, in form and substance satisfactory to the Administrative Agent.

(f) Other Reports. The Administrative Agent and the Collateral Agent shall have received all field examinations, reports and opinions of appraisers, consultants or other Advisors retained by them to review the Collateral, business, operation or condition of the Loan Parties and shall be reasonably satisfied with the form and substance of all such field examinations, audits, reports and opinions.

(g) Requirements of Law. The Lenders shall be satisfied that the Transactions shall be in compliance with all material Requirements of Law, including without limitation Regulations T, U and X of the Board. To the extent requested, the Lenders shall have received satisfactory evidence of compliance in all material respects with all applicable material Requirements of Law, including all applicable environmental laws and regulations.

(h) Consents. The Lenders shall be satisfied that all consents and approvals required from Governmental Authorities and third parties, to the extent necessary to enable Borrower to accurately make the representations and warranties set forth in Section 3.03 as of the Closing Date, shall have been obtained and be in full force and effect, and there shall be no governmental or judicial action, actual or threatened, that has or would have, singly or in the aggregate, a reasonable likelihood of, in any material respect, restraining, preventing or imposing burdensome conditions on the Transactions or the other transactions contemplated hereby.

(i) Litigation. Other than the commencement and effect of the Chapter 11 Cases and for litigation that is stayed by the commencement and continuation of the Chapter 11 Cases, there shall be no litigation, public or private, or administrative proceedings, governmental investigation or other legal or regulatory developments, actual or threatened, that, singly or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or could materially and adversely affect the ability of Holdings, Borrower and the Subsidiaries to fully and timely perform their respective obligations under the Transaction Documents, or the ability of the parties to consummate the financings contemplated hereby or the other Transactions.

(i) No Excess Cash. The Administrative Agent and the Required Lenders shall have received evidence that the proceeds of the Term B Note shall have been utilized prior to the initial Credit Extension in accordance with the Financing Orders, the balance in the Term B Segregated Account shall be $0 and Borrower shall have no more than $7,5000,000 of cash on hand.

SECTION 4.03 Conditions to All Credit Extensions. The obligation of each Lender and each Issuing Bank to make any Credit Extension (including the initial Credit Extension but other than, in the case of an Issuing Bank, in respect of the Outstanding Letters of Credit) shall be subject to, and to the satisfaction of, each of the conditions precedent set forth below.

(a) Notice. The Administrative Agent shall have received a Borrowing Request 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, amendment, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.18(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 2.17(b).

(b) No Default. No Default shall have occurred and be continuing on such date or after giving effect to the Credit Extension requested to be made on such date.

(c) Representations and Warranties. Each of the representations and warranties made by any Loan Party set forth in Article III hereof or in any other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects subject to such qualification) 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.

(d) Bankruptcy Matters. At the time of such Credit Extension, (i) if such Credit Extension is prior to the entry and effectiveness of the Final Order, the Interim Order shall not have terminated or expired, and the date of such Credit Extension shall not be more than thirty-five (35) days from the entry and effectiveness of the Interim Order or more than forty (40) days from the Petition Date, (ii) if such Credit Extension is after entry and effectiveness of the Final Order, the Final Order shall be effective, and shall not have terminated or expired, (iii) no Financing Order shall have been vacated, reversed, stayed, amended, supplemented or otherwise modified (without the consent of the Administrative Agent and the Required Lenders), (iv) no motion for reconsideration of any Financing Order shall be pending, and (v) no appeal of any Financing Order shall be pending and no Financing Order shall be the subject of a stay pending appeal or a motion for a stay pending appeal.

(e) Budget. At the time of such Credit Extension, the amount of such Credit Extension is consistent with the most recently delivered 13-Week Budget in effect at such time.

(f) Revolving Exposure. After giving effect to each Credit Extension, the Revolving Exposure shall not exceed the lesser of (i) the Revolving Commitment at such time less the Line Reserve at such time and (ii) the Borrowing Base at such time.

Each of the delivery of a Borrowing Request or notice requesting the issuance, amendment, extension or renewal of a Letter of Credit and the acceptance by the Borrower of the proceeds of such Credit Extension shall constitute a representation and warranty by Borrower and each other Loan Party that on the date of such Credit Extension (both immediately before and after giving effect to such Credit Extension and the application of the proceeds thereof) the

conditions contained in this Section 4.03 have been satisfied.

SECTION 4.04 Exit Credit Facility.

(a) Subject to the terms and conditions of the Summary of Preliminary Terms and Conditions of the $100,000,000 Exit Credit Facility, dated as of March 25, 2011, and attached hereto as Exhibit N (the "**Exit Term Sheet**"), each Lender hereby agrees, upon the effectiveness of a Reorganization Plan in the Chapter 11 Cases that is proposed by the Loan Parties and supported by the Lenders, to convert its Commitment under this Agreement into commitments under an exit credit facility (the "**Exit Credit Facility**") for the Borrower (as defined in the Exit Term Sheet) in the same amount of its Commitment hereunder (or as may be reduced pursuant to the terms and conditions of the Exit Term Sheet). The Exit Credit Facility shall be subject to the terms and conditions contained in the Exit Term Sheet and shall otherwise be on substantially similar terms as contained in the Pre-Petition Credit Agreement, as modified to take into account the current financial condition of the Borrowers and Guarantors (each as defined in the Exit Term Sheet), the exit from the Chapter 11 Cases, the longer term of the Exit Credit Facility and as otherwise may be agreed to by the parties.

(b) Each Lender's obligations under this Section 4.04 shall be subject to the negotiation, execution and delivery of definitive documentation relating to the Exit Credit Facility reasonably satisfactory to the Administrative Agent (as defined in the Exit Term Sheet) and such Lender, and satisfaction of the closing conditions for the Exit Credit Facility contained in Exhibit O. All obligations of the Lenders under this Section 4.04 shall automatically terminate without any further action if the closing of the Exit Credit Facility does not occur on or before the Final Maturity Date.

ARTICLE V.
AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired or been fully cash collateralized and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, each Loan Party will, and will cause each of its Subsidiaries to:

SECTION 5.01 Financial Statements, Reports, Etc. In the case of Holdings and Borrower, furnish to the Administrative Agent and each Lender:

(a) Annual Reports. Within 90 days after the end of each fiscal year, (i) the consolidated balance sheet of Holdings as of the end of such fiscal year and related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, and notes thereto (including a note with a consolidating balance sheet and statements of income and cash flows separating out the results of Borrower, each Subsidiary Guarantor and the aggregate results of all Subsidiaries), accompanied by an

opinion of PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing satisfactory to the Administrative Agent or one of the "Big 3" accounting firms (which opinion shall not be qualified as to scope or contain any going concern or other qualification), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations, cash flows and changes in stockholders' equity of the Consolidated Companies as of the end of and for such fiscal year in accordance with GAAP consistently applied, (ii) a management report in a form reasonably satisfactory to the Administrative Agent setting forth, on a consolidating basis, the financial condition, results of operations and cash flows of the Consolidated Companies (on a consolidated basis) as of the end of and for such fiscal year, as compared to the Consolidated Companies' financial condition, results of operations and cash flows as of the end of and for the previous fiscal year and its budgeted results of operations and cash flows, and (iii) a management's discussion and analysis of the financial condition and results of operations for such fiscal year, as compared to the previous fiscal year;

(b) Quarterly Reports. Within 45 days after the end of each of the first three fiscal quarters of each fiscal year, (i) the consolidated balance sheet of Holdings as of the end of such fiscal quarter and related consolidated statements of income and cash flows for such fiscal quarter and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year, and notes thereto, accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Consolidated Companies as of the date and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with audited financial statements referred to in paragraph (a) of this Section 5.01, subject to normal year-end audit adjustments, (ii) a management report in a form reasonably satisfactory to the Administrative Agent setting forth the financial condition, results of operations and cash flows of the Consolidated Companies (on a consolidated basis) as of the end of and for such fiscal quarter and for the then elapsed portion of the fiscal year, as compared to the Consolidated Companies' financial condition, results of operations and cash flows as of the end of such fiscal quarter and for the comparable periods in the previous fiscal year and its budgeted results of operations and cash flows, and (iii) a management's discussion and analysis of the financial condition and results of operations for such fiscal quarter and the then elapsed portion of the fiscal year, as compared to the comparable periods in the previous fiscal year;

(c) Monthly Reports. Within 30 days after the end of the first two months of each fiscal quarter, the consolidated statements of income and cash flows of Holdings for such month and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year, accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated results of operations and cash flows of the Consolidated Companies as of the date and for the periods specified in accordance with GAAP consistently applied, subject to normal year-end audit adjustments;

(d) Compliance Certificate. (i) Concurrently with any delivery of financial statements under paragraphs (a), (b) or (c) above, a Compliance Certificate of certifying that to such Financial Officer's knowledge after due inquiry no Default has occurred or, if such a Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto; (ii) concurrently with any delivery of financial statements under paragraph (c) above, a Compliance Certificate setting forth the calculation of Total Liquidity for the prior fiscal month; (iii) concurrently with any delivery of financial statements under paragraph (a) above, a Compliance Certificate setting forth the calculation of Capital Expenditures for the prior fiscal year; and (iv) in the case of paragraph (a) above, a report of the accounting firm opining on or certifying such financial statements stating that in the course of its regular audit of the financial statements of Holdings and its Subsidiaries, which audit was conducted in accordance with GAAP, such accounting firm obtained no knowledge that any Default has occurred or, if in the opinion of such accounting firm such a Default has occurred, specifying the nature and extent thereof (which report and the statements contained therein may be limited in form, scope and substance to the extent expressly required by accounting rules or guidelines of general application in effect from time to time and to the extent delivery of any such report is permitted pursuant to such rules or guidelines);

(e) Financial Officer's Certificate Regarding Collateral. Concurrently with any delivery of financial statements under paragraph (c) above, a certificate of a Financial Officer of the Borrower, (i) setting forth the information required pursuant to the schedules to the Security Agreement or confirming that there has been no change in such information since the date of the most recently delivered schedules to the Security Agreement and (ii) certifying that all UCC Financing Statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations, including all re-filings, re-recordings and re-registrations, containing a description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above to the extent necessary to protect and perfect the security interests and Liens under the Security Documents for a period of not less than 8 months after the date of such certificate (except as permitted hereby or otherwise noted therein with respect to any continuation statements to be filed within such period);

(f) Public Reports. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials (if any) filed by any Company with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed to holders of its Indebtedness pursuant to the terms of the documentation governing such Indebtedness (or any trustee, agent or other representative therefor), as the case may be;

(g) Management Letters. Promptly after the receipt thereof by any Company, a copy of any final "management letter" received by any such Person from its certified public accountants and the management's responses thereto;

(h) Budgets. Within forty-five (45) days after the first day of each fiscal year of Holdings, a budget in form reasonably satisfactory to the Administrative Agent (including budgeted statements of income by each of Holdings' business units and sources and uses of cash and balance sheets and Borrowing Base levels and credit utilization) prepared by Holdings for (i) each fiscal month of the current or subsequent, as applicable, fiscal year prepared in detail and (ii) each of the three years immediately following such current or subsequent, as applicable, fiscal year prepared in summary form, in each case, of Holdings and its Subsidiaries, with appropriate presentation and discussion of the principal assumptions upon which such budgets are based, accompanied by the statement of a Financial Officer of Holdings to the effect that the budget of Holdings is a reasonable estimate for the period covered thereby;

(i) Meetings with Lenders. On a monthly basis from January through August of each calendar year and on a bi-weekly basis from September through December of each calendar year (or, in each case, more frequently at the reasonable request of the Administrative Agent or Required Lenders), hold a meeting (at a mutually agreeable location and time or telephonically) with all Lenders and management of the Companies regarding the financial results and operations of the Company and monitoring any developments in the Chapter 11 Cases;

(j) Consolidated Fixed Charge Coverage Ratio. On or before January 25th of each year (the "**Initial Compliance Date**"), (A) a certificate of a Financial Officer of the Borrower setting forth the estimate (subject to completion of the Borrower's quarterly SAS 100 review) of Available Cash as of December 31st of the prior calendar year (the "**Available Cash Test Date**") and, (B) if the Available Cash as of the Available Cash Test Date is less than $50,000,000, a preliminary Compliance Certificate setting forth the estimated calculation (subject to completion of the Borrower's quarterly SAS 100 review) of the Consolidated Fixed Charge Coverage Ratio as of the end of the Test Period ending closest to the Available Cash Test Date, provided, however, that if a Compliance Certificate is required to be delivered pursuant to clause (B) above, the Borrower must furnish to the Administrative Agent, within 45 days after the end of the fiscal quarter of the Borrower ending closest to such Available Cash Test Date (the "**Final Compliance Date**"), a Compliance Certificate setting forth the final calculation of the Consolidated Fixed Charge Coverage Ratio. Notwithstanding the foregoing, if a Compliance Certificate is required to be delivered on the Initial Compliance Date pursuant to clause (B) above, the Borrower shall not be permitted to borrow Loans (or request the issuance of Letters of Credit) and the Lenders shall not make Loans to the Borrower (and the Issuing Bank shall not issue Letters of Credit) at any time from the Initial Compliance Date until the Final Compliance Date;

(k) Pear Yield Report. On December 1st and January 1st of each year, a certificate of a Financial Officer of the Borrower setting forth the yield of pears as well as the percentage of such yield constituting gift pears as of such date, in comparable form with the pear yield on the same date in the prior fiscal year;

(l) Organizational Documents. Upon the request of the Administrative Agent, promptly provide copies of any Organizational Documents that have been amended or modified, in any material respect, in accordance with the terms hereof;

(m) Documents filed with the Bankruptcy Court or Delivered to the U.S. Trustee or Committee. Promptly, upon their being filed with the Bankruptcy Court, copies of all monthly reports as well as all pleadings, motions, applications, judicial information or other information with respect to each Loan Party's financial condition filed by or on behalf of each Loan Party with the Bankruptcy Court or provided or served by a Loan Party to or upon the United States Trustee (or any monitor or interim receiver, if any, appointed in the Chapter 11 Cases) or any Committee, at the time such document is field with the Bankruptcy Court, or provided or served by a Loan Party to or upon the United States Trustee (or any monitor or interim receiver, if any, appointed in the Chapter 11 Cases) or any Committee, to the extent such document has not otherwise been provided pursuant to an order of the Bankruptcy Court establishing notice procedures in the Chapter 11 Cases or otherwise.

(n) Other Information. Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Company, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

SECTION 5.02 Litigation and Other Notices. Furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any overt threat or written notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity by or before any Governmental Authority, (i) against any Company or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document;

(c) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect;

(d) the occurrence of a Casualty Event with respect to any of the Collateral having a value in excess of $250,000 and will ensure that the Net Cash Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Security Documents;

(e) (i) the incurrence of any material Lien (other than Permitted Liens) on, or claim asserted against any of the Collateral or (ii) the occurrence of any other event which could materially adversely affect the value of a material portion of the Collateral;

(f) any threatened indictment by any Governmental Authority of any Loan Party, as to which any Loan Party receives knowledge or notice, under any criminal or civil proceedings against any Loan Party pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of (i) any of the Collateral having a value in excess of $250,000 or (ii) any other Property of any Loan Party which is necessary or material to the conduct of its business; and

(g) the attachment to any property of any Loan Party of any Lien pursuant to the FSA or similar state statute.

SECTION 5.03 Existence; Businesses and Properties.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05 or, in the case of any Subsidiary, where the failure to perform such obligations, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; maintain and operate such business as a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code and in substantially the manner in which it was conducted and operated prior to the Petition Date; comply with all applicable Requirements of Law (including any and all zoning, building, Environmental Law, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except in each case where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; pay and perform its obligations under all Leases and Transaction Documents except as would not reasonably be expected to have a Material Adverse Effect; and at all times maintain and preserve all Property material to the conduct of such business and keep such Property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times; provided that nothing in this Section 5.03(b) shall prevent (i) sales of assets, consolidations or mergers by or involving any Company in accordance with Section 6.05; (ii) the withdrawal by any Company of its qualification as a foreign corporation in any jurisdiction where such withdrawal, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment or other disposition by any Company of any rights, permits, franchises, authorizations, licenses, trademarks, tradenames, copyrights or patents that such Person reasonably determines are not useful in any material respect to its business.

SECTION 5.04 Insurance.

(a) Keep its insurable Property adequately insured at all times by financially sound and reputable insurers (provided that no Loan Party shall be deemed to breach this provision if, after its insurer becomes unsound or irreputable, such Loan Party promptly and diligently obtains adequate insurance from an alternative carrier); maintain such other insurance, to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or Property damage occurring upon, in, about or in connection with the use of any Property owned, occupied or controlled by it; and maintain such other insurance as may be required by law; and, with respect to the Collateral, otherwise maintain all insurance coverage required under each applicable Security Document, such policies to be in such form and amounts and having such coverage as may be reasonably satisfactory to the Administrative Agent and the Collateral Agent, it being agreed that the levels of insurance in place on the Closing Date, absent a material change in the Property of the Loan Parties, shall be satisfactory to the Administrative Agent and the Collateral Agent so long as appropriate steps are taken to assure that such insurance coverage is also obtained for any future Subsidiaries.

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Collateral Agent of written notice thereof, (ii) name the Collateral Agent as mortgagee (in the case of Property insurance) or additional insured (in the case of liability insurance) or loss payee (in the case of casualty insurance), as applicable, (iii) if reasonably requested by the Collateral Agent, include a breach of warranty clause and (iv) be reasonably satisfactory in all other respects to the Collateral Agent.

(c) Notify the Administrative Agent and the Collateral Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.04 is taken out by any Company; and promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies.

(d) With respect to each parcel of Real Property required to be mortgaged pursuant to Schedule 5.14, obtain flood insurance in such total amount as the Administrative Agent or the Required Lenders may from time to time reasonably require, if at any time the area in which any improvements located on any real Property covered by a Mortgage is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1975, as amended from time to time.

(e) Deliver to the Administrative Agent and the Collateral Agent and the Lenders a report of a reputable insurance broker with respect to such insurance and such supplemental reports with respect thereto as the Administrative Agent or the Collateral Agent may from time to time reasonably request.

SECTION 5.05 Obligations and Taxes.

(a) Subject to the approval of the Bankruptcy Court in the Chapter 11 Cases, pay its Indebtedness and other obligations promptly and in accordance with their terms and pay and discharge promptly when due all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its Property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien other than a Permitted Lien upon such properties or any part thereof; provided that such payment and discharge shall not be required with respect to any such Tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the applicable Company shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such contest operates to suspend collection of the contested obligation, Tax, assessment or charge and enforcement of a Lien other than a Permitted Lien and, in the case of Collateral, the applicable Company shall have otherwise complied with the Contested Collateral Lien Conditions.

(b) Timely and correctly file all material Tax Returns required to be filed by it.

SECTION 5.06 Employee Benefits. (a) With respect to each Plan maintained by a Company, comply in all material respects with the applicable provisions of ERISA and the Code and (b) furnish to the Administrative Agent (x) as soon as possible after, and in any event within 10 days after any Responsible Officer of the Companies or their ERISA Affiliates or any ERISA Affiliate knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of the Companies or their ERISA Affiliates in an aggregate amount exceeding $500,000 or the imposition of a Lien, a statement of a Financial Officer of Holdings setting forth details as to such ERISA Event and the action, if any, that the Companies propose to take with respect thereto, and (y) copies of: (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Company or any ERISA Affiliate with the Internal Revenue Service with respect to each Plan; (ii) the most recent actuarial valuation report for each Plan; (iii) all notices received by any Company or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan (or employee benefit plan sponsored or contributed to by any Company) as the Administrative Agent shall reasonably request.

SECTION 5.07 Maintaining Records; Access to Properties and Inspections. Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law are made of all dealings and transactions in relation to its business and activities. Keep proper records of intercompany accounts with full, true and correct entries reflecting all payments received and paid (including, without limitation, funds received by Borrower from swept deposit accounts of the other Companies). Each Company will permit any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the Property of such Company at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs,

finances and condition of any Company with the officers thereof and independent accountants therefor (in the presence of a Responsible Officer).

SECTION 5.08 Use of Proceeds. Use the proceeds of the Loans and request the issuance of Letters of Credit only for the purposes set forth in Section 3.11.

SECTION 5.09 Compliance with Environmental Laws; Environmental Reports.

(a) Comply, and cause all lessees and other Persons occupying Real Property owned, operated or leased by any Company to comply, in all material respects with all Environmental Laws and Environmental Permits applicable to its operations and Real Property; obtain and renew all material Environmental Permits applicable to its operations and Real Property; without limiting the foregoing, the Borrower shall, at its sole cost and expense, upon receipt of any notification or otherwise obtaining knowledge of a Release or other event that has a reasonable likelihood of the Borrower or the Companies incurring Environmental Liabilities in excess of $250,000 (i) conduct or pay for consultants to conduct tests or assessments of environmental conditions and take any Response required by any Governmental Authority or as is otherwise necessary to comply with any applicable Environmental Law or (ii) ensure that the appropriate responsible party takes the actions specified in clause (i) above.

(b) If a Default caused by reason of a breach of Section 3.17 or 5.09(a) shall have occurred and be continuing for more than 20 days without the Companies commencing activities reasonably likely to cure such Default, at the written request of the Required Lenders through the Administrative Agent, provide to the Lenders within 45 days after such request, at the expense of Borrower, an environmental assessment report regarding the matters which are the subject of such default, including where appropriate, any soil and/or groundwater sampling, prepared by an environmental consulting firm and in the form and substance reasonably acceptable to the Administrative Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or Response to address them.

SECTION 5.10 Reserved.

SECTION 5.11 Additional Collateral; Additional Guarantors.

(a) Subject to this Section 5.11, with respect to any Property acquired after the Closing Date by Borrower or any other Loan Party that is intended to be encumbered by the Lien created by any of the Security Documents but is not so subject (but, in any event, excluding any Property described in paragraph (b) of this subsection) promptly (and in any event within 30 days after the acquisition thereof): (i) execute and deliver to the Administrative Agent and the Collateral Agent such amendments or supplements to the relevant Security Documents or such other documents as the Administrative Agent or the Collateral Agent shall deem necessary or advisable to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such Property encumbered by no Liens other than Permitted Liens, and (ii) take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Document in

accordance with all applicable Requirements of Law, including, without limitation, the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent. Borrower shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall require to confirm the validity, perfection and priority of the Lien of the Security Documents against such after-acquired properties or assets.

(b) With respect to any Person that is or becomes a Wholly Owned Subsidiary (other than any Foreign Subsidiary) promptly (and in any event within 30 days after such Person becomes a Subsidiary) (i) deliver to the Collateral Agent the certificates, if any, representing the Equity Interests of such Subsidiary (provided that with respect to any Foreign Subsidiary of Borrower or a Subsidiary, in no event shall more than 65% of the Equity Interests of such Foreign Subsidiary be encumbered by any Lien or pledged under any Security Document; provided, further, with respect to any SPE License Sub, (x) no Equity Interests of such SPE License Sub shall be required to be encumbered by any Lien or pledged under any Security Document to the extent prohibited by applicable Requirements of Law and (y) in any event only the Equity Interests of such SPE License Sub owned by a Loan Party shall be required to be encumbered by any Lien or pledged under any Security Document), together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of such Subsidiary's parent, as the case may be, and all intercompany notes owing from such Subsidiary to any Loan Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Subsidiary, and (ii) cause such new Subsidiary (other than any Foreign Subsidiary) (A) to execute a Joinder Agreement or such comparable documentation and a joinder agreement to the Security Agreement in the form annexed thereto which is in form and substance reasonably satisfactory to the Administrative Agent, and (B) 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 Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including, without limitation, the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent; provided, however, that SPE License Subs shall only be required to comply with the foregoing requirements of this paragraph (b) to the extent such compliance (x) is not prohibited by applicable Requirements of Law and (y) is required by the Administrative Agent in its commercially reasonable discretion. The inclusion in the Borrowing Base of the assets of any domestic Wholly Owned Subsidiary shall also be subject to the Collateral Agent's receipt and approval, in its reasonable credit judgment, of (i) a collateral audit and Inventory Appraisal and (ii) all UCC search results necessary to confirm the Collateral Agent's Lien on all such Subsidiary Guarantor's personal Property, encumbered by no Liens other than Permitted Liens and having the priority required hereunder for Collateral of such type included in the Borrowing Base.

(c) Each Loan Party will grant to the Collateral Agent, within 60 days of the acquisition thereof, a security interest in and mortgage on each owned Real Property of such Loan Party as is acquired by such Loan Party after the Closing Date and that, together with any improvements thereon, individually has a fair market value of at least

$1,000,000, as additional security for the Obligations (unless the subject Property is already mortgaged to a third party to the extent permitted by Section 6.02). Such Mortgages shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and the Collateral Agent and shall constitute valid and enforceable perfected Liens subject only to Permitted Liens and such other Liens as are reasonably acceptable to the Collateral Agent. The Mortgages 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 the Liens in favor of the Collateral Agent required to be granted pursuant to the Mortgages and all taxes, fees and other charges payable in connection therewith shall be paid in full. Such Loan Party shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall reasonably require to confirm the validity, perfection and priority of the Lien of any new Mortgage against such after-acquired Real Property (including, without limitation, a policy of title insurance, a survey and local counsel opinion (in each case, as reasonably requested by the Administrative Agent or the Collateral Agent and in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent) in respect of such Mortgage).

SECTION 5.12 Security Interests; Further Assurances. Promptly, upon the reasonable request of the Administrative Agent, the Collateral Agent or any Lender, at Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary or desirable for the continued validity, perfection and priority of the Liens on the Collateral covered thereby superior to and prior to the rights of all third Persons other than the holders of Permitted Liens and encumbered by no other Liens except as permitted by the applicable Security Document. Deliver or cause to be delivered to the Administrative Agent and the Collateral Agent from time to time such other documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent as the Administrative Agent and the Collateral Agent shall reasonably deem necessary to perfect or maintain the Liens on the Collateral pursuant to the Security Documents. Upon the exercise by the Administrative Agent, the Collateral Agent or the Lenders of any power, right, privilege or remedy pursuant to any Loan Document which requires any consent, approval, registration, qualification or authorization of any Governmental Authority execute and deliver all applications, certifications, instruments and other documents and papers that the Administrative Agent, the Collateral Agent or the Lenders may be so required to obtain. If the Administrative Agent, the Collateral Agent or the Required Lenders determine that they are required by law or regulation to have appraisals prepared in respect of the Real Property of any Loan Party constituting Collateral, Borrower shall provide to the Administrative Agent and Collateral Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA and are otherwise in form and substance satisfactory to the Administrative Agent and the Collateral Agent.

SECTION 5.13 Information Regarding Collateral. Furnish to the Administrative Agent and the Collateral Agent 30 days prior written notice (in the form of an officer's certificate), clearly describing any changes (i) in any Loan Party's corporate name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (ii) in the location of any Loan Party's chief executive office, its principal place of business or any office in which it maintains books or records relating to Collateral owned by it (including the establishment of any such new office), (iii) in any Loan Party's identity or corporate structure, (iv) in any Loan Party's Federal Taxpayer Identification Number or (v) in any Loan Party's jurisdiction of organization. Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral. Borrower agrees to provide to the Collateral Agent such other information in connection with such changes as the Collateral Agent may reasonably request.

SECTION 5.14 Post-Closing Collateral Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 5.14[2], in each case within the time limits specified on such schedule as such time limits may be extended in the reasonable judgment of the Administrative Agent.

SECTION 5.15 Borrowing Base-Related Reports. The Borrower shall deliver or cause to be delivered (at the expense of the Borrower) to the Collateral Agent and the Administrative Agent the following:

(a) (i) during the months of January through and including September in each calendar year, in no event less frequently than 20 days after the end of each month for the month most recently ended, and (ii) at all other times, in no event less frequently than 3 days after the end of each week for the week most recently ended (with the end of the week being each Saturday), a Borrowing Base Certificate from the Borrower accompanied by such supporting detail and documentation as shall be requested by the Collateral Agent in its reasonable credit judgment, which Borrowing Base Certificate shall be accompanied by the Borrower's calculation of the marked-to-market exposure of Holdings and its Subsidiaries under any Hedging Agreements to which any of them is a party;

(b) upon request by the Collateral Agent, and in no event less frequently than 20 days after the end of (i) each month, a monthly trial balance showing future Accounts outstanding aged from due date as follows: 1 to 30 days, 31 to 60 days, 61 to 90 days and 91 days or more, accompanied by a comparison to the prior month's trial balance and such supporting detail and documentation as shall be requested by the Collateral Agent in its reasonable credit judgment and (ii) each month, a summary of Inventory by location and type accompanied by such supporting detail and documentation as shall be requested by the Collateral Agent in its reasonable credit judgment (in each case, together with a

[2] To include Mortgages, Control Agreements, Landlord Waiver Agreements and Credit Card Processor Agreements to the extent requested by the Administrative Agent and the Collateral Agent.

copy of all or any part of such delivery requested by any Lender in writing after the Closing Date);

(c) at the time of delivery of each of the financial statements delivered pursuant to Sections 5.01(b), a reconciliation of the Accounts trial balance and quarter-end Inventory reports of Borrower and each Subsidiary Guarantor to the general ledger of such Loan Party, in each case, accompanied by such supporting detail and documentation as shall be requested by the Collateral Agent in its reasonable credit judgment;

(d) at the time of delivery of the financial statements referred to in Section 5.01(a), an Inventory Appraisal to be conducted by an auditor, and in form, scope and substance, reasonably satisfactory to the Collateral Agent and Administrative Agent; and

(e) such other reports, statements and reconciliations with respect to the Borrowing Base or Collateral of any or all Loan Parties as the Collateral Agent shall from time to time request in its reasonable credit judgment.

The delivery of each certificate and report or any other information delivered pursuant to this Section 5.15 shall constitute a representation and warranty by the Borrower that the statements and information contained therein are true and correct in all material respects on and as of such date.

SECTION 5.16 Evidence of Water Availability. At such times as the Administrative Agent or the Collateral Agent may reasonably request, Borrower shall deliver to the Administrative Agent and the Collateral Agent an Officer's Certificate stating that Companies possess water rights that are expected to provide from verifiable surface and ground water sources sufficient water to conduct operations materially similar to prior years' operations.

SECTION 5.17 13-Week Budget Updates and Variance Reports.

(a) Commencing by 5:00 p.m. (Eastern Prevailing Time) on Friday, April 29, 2011 and continuing thereafter on each Friday immediately preceding the beginning of each fiscal month until the Final Maturity Date, the Borrower shall provide an updated 13-Week Budget (covering the period beginning on the Sunday immediately preceding the Friday that such 13-Week Budget is delivered), in form and substance acceptable to the Administrative Agent and the Required Lenders. It is hereby understood and agreed that such 13-Week Budget shall not become the applicable 13-Week Budget until the Administrative Agent shall have delivered a notice of approval of such 13-Week Budget to Borrower; provided, that if the Administrative Agent does not deliver a notice of approval to Borrower, the previously delivered 13-Week Budget shall continue to constitute the applicable 13-Week Budget until a 13-Week Budget is agreed to among Borrower and the Administrative Agent in accordance with this Section.

(b) Commencing by 5:00 p.m. (Eastern Prevailing Time) on Friday, April 15, 2011 and continuing on each Friday thereafter until the Final Maturity Date, the Borrower shall provide a variance report in the form of Exhibit M (the "**Variance Report**") setting forth actual cash receipts and disbursements of the Loan Parties for the

prior week and setting forth all the variances, on a line-item basis, from the amount set forth for such week as compared to (i) the DIP Budget on a weekly and cumulative basis and (ii) the 13-Week Budget then in effect on a weekly and cumulative basis; each such Variance Report to include explanations for all material variances and shall be certified by the Chief Financial Officer or Chief Restructuring Officer of Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein.

SECTION 5.18 Cooperation with Advisors. Each of the Loan Parties will provide full cooperation and assistance to Advisors, if any, hired by or on behalf of the Administrative Agent, Collateral Agent and the Lenders (or their counsel), to the extent requested by such Advisors, to enable such Advisors to perform the services for which they are engaged.

ARTICLE VI.
NEGATIVE COVENANTS

Each Loan Party covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been canceled or have expired or been fully cash collateralized and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, no Loan Party will, nor will they cause or permit any Subsidiaries to:

SECTION 6.01 Indebtedness. Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

(a) Indebtedness incurred pursuant to this Agreement and the other Loan Documents;

(b) Indebtedness actually outstanding on the Closing Date and listed on Schedule 6.01(b), including, without limitation, the (i) the Senior Notes and (ii) the Term B Note;

(c) Indebtedness under Interest Rate Protection Agreements; *provided* that (i) such Interest Rate Protection Agreements relate to payment obligations on Indebtedness otherwise permitted to be incurred by the Loan Documents and (ii) the notional principal amount set forth in such Interest Rate Protection Agreements at the time incurred does not exceed the principal amount of the Indebtedness to which such Interest Rate Protection Agreements relate;

(d) Indebtedness under Hedging Agreements (other than Interest Rate Protection Agreements) entered into from time to time by any Company in accordance with Section 6.04(c);

(e) to the extent recorded in the Companies' intercompany account ledgers, intercompany Indebtedness of the Companies outstanding to the extent permitted by Section 6.04(d);

(f) Indebtedness of the Borrower and its Subsidiaries organized in a State within the United States in respect of Purchase Money Obligations and Capital Lease Obligations and refinancings or renewals thereof (other than refinancings funded with intercompany advances), in an aggregate amount not to exceed $5.0 million at any time outstanding;

(g) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, surety appeal or similar bonds and completion guarantees provided by a Company in the ordinary course of its business;

(h) Contingent Obligations of any Loan Party in respect of Indebtedness of any other Loan Party otherwise permitted under Section 6.01;

(i) Indebtedness in respect of taxes, assessments or governmental charges and claims for labor, materials or supplies to the extent that payment thereof shall not at the time be required to be made in accordance with Section 5.05;

(j) Indebtedness in respect of netting services and overdraft protections or arising from the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in connection with deposit accounts, in each case in the ordinary course of business;

(k) Subordinated Debt owing by Holdings;

(l) [reserved];

(m) Indebtedness of the Borrower with respect to (i) documentary letters of credit outstanding on the Closing Date and listed on Schedule 6.01(m) and (ii) documentary letters of credit issued after the Closing Date in individual amounts not to exceed $75,000, and in the case of all such letters of credit described in this clause (m), not to exceed an outstanding face amount at any time in excess of $[**2.0 million**]; and

(n) other unsecured Indebtedness (not of the type covered in clauses (a) through (m) above) of any Company not to exceed $[**5.0 million**] in the aggregate principal amount at any time outstanding.

Notwithstanding the foregoing, and except for the Carve-Out Amount, no Indebtedness under subsections 6.01(b) through (n) shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or pari passu with the super priority administrative expense claims of the Administrative Agent and the Lenders (or the adequate protection claims, if any such claims, of the Prior Agents and Prior Lender) as set forth herein and in the Financing Orders.

SECTION 6.02 Liens. Create, incur, assume or permit to exist, directly or indirectly, any Lien on any Property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except (the "**Permitted Liens**"):

(a) (i) inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable or delinquent, (ii) Liens for taxes, assessments or governmental charges or levies, which (A) are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the Property or assets encumbered by any such Lien, or (B) in the case of any such charge or claim which has become a choate Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions or (iii) Liens for taxes, assessments or governmental charges or levies where nonpayment of the obligations secured thereby is permitted by the Bankruptcy Code;

(b) Liens in respect of Property of any Company imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, and (i) which do not in the aggregate materially detract from the value of the Property of the Companies, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Companies, taken as a whole, (ii) which do not pertain to Indebtedness that is due and payable or which pertain to Liens that are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the Property or assets encumbered by any such Lien or (iii) where non-payment of the obligations secured thereby is permitted by the Bankruptcy Code;

(c) Liens in existence on the Closing Date and set forth on Schedule 02(c); provided that (i) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase; and (ii) such Liens do not encumber any Property other than the Property subject thereto on the Closing Date including any proceeds thereof;

(d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness, (ii) individually or in the aggregate materially impairing the value or saleability of such Real Property and (iii) individually or in the aggregate materially interfering with the conduct of the business of the Companies at such Real Property;

(e) Liens arising out of judgments or awards not resulting in an Event of Default and in respect of which such Company shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings; provided that the aggregate

amount of all such judgments or awards (and any cash and the fair market value of any Property encumbered by such Liens) does not exceed $1.0 million at any time outstanding;

(f) Liens (other than any Lien imposed by ERISA) (i) imposed by law (other than any such Liens covered in other paragraphs of this Section 6.02) or deposits made in connection therewith in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security laws and regulations, (ii) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (iii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; provided that with respect to clauses (i), (ii) and (iii) hereof, such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings for orders entered in connection with such proceedings have the effect of preventing the forfeiture or sale of the Property or assets encumbered by any such Lien, (x) to the extent such Liens are not imposed by law, such Liens shall in no event encumber any Property other than cash and Cash Equivalents which have been deposited with such lienholder or has otherwise been subordinated to the Liens securing the Obligations hereunder pursuant to a Landlord Lien Waiver and Access Agreement, (y) in the case of any such Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions and (z) the aggregate amount of deposits at any time pursuant to clause (ii) and (iii) shall not exceed $500,000 in the aggregate;

(g) The Leases set forth on Schedule 6.02(g) (the "**Existing Leases**") and such other Leases or subleases with respect to the assets or properties of any Company, in each case entered into in the ordinary course of such Company's business so long as such Leases (other than Existing Leases) are subordinate in all respects to the Liens granted and evidenced by the Security Documents and do not, individually or in the aggregate, (i) interfere in any material respect with the ordinary conduct of the business of any Company or (ii) materially impair the use (for its intended purposes) or the value of the Property subject thereto;

(h) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Company in the ordinary course of business in accordance with the past practices of such Company;

(i) Liens arising pursuant to Purchase Money Obligations or Capital Lease Obligations incurred pursuant to Section 6.01(f); provided that (i) the Indebtedness secured by any such Lien (including refinancings thereof) does not exceed 100% of the purchase price and/or the cost of installation, construction or improvement of the Property being acquired or leased at the time of the incurrence of such Indebtedness and (ii) such Liens attach only to the Property being financed pursuant to such Purchase

Money Obligations or Capital Lease Obligations and the proceeds thereof and do not encumber any other Property of any Company;

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Company, in each case granted in the ordinary course of business in favor of the financial institution or institutions with which such accounts are maintained, securing amounts owing to such financial institution or institutions with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Liens on Property of a Person existing at the time such Person is acquired or merged with or into or consolidated with any Company (and not created in anticipation or contemplation thereof) so long as such merger or acquisition is permitted pursuant to Section 6.05; provided that such Liens do not extend to Property not encumbered by such Liens at the time of acquisition (other than improvements thereon and the proceeds thereof) and are no more favorable to the lienholders than the existing Lien;

(l) Liens granted pursuant to the Security Documents;

(m) licenses or sublicenses of Intellectual Property granted by any Company in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Company;

(n) Liens in favor of customs and revenues authorities which secure payment of customs duties in connection with the importation of goods to the extent required by law;

(o) Liens deemed to exist in connection with set-off rights in the ordinary course of Loan Parties' and their Subsidiaries' business;

(p) [reserved];

(q) the filing of financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(r) Liens granted pursuant to the Term B Note Documents;

(s) [reserved];

(t) Liens attaching solely to cash earnout money deposits in connection with any letter of intent or purchase agreement in connection with an acquisition permitted by Section 6.05;

(u) Liens on documents and the goods covered thereby, rights under any agreements with respect to such goods and other collateral customarily securing such letters of credit (and granted pursuant to standard form letter of credit applications) and

proceeds of the foregoing, in each case, relating to the letters of credit permitted under Section 6.01(m) and securing obligations with respect thereto;

(v) Liens and other exceptions to title set forth in the policies of title insurance delivered in connection with the Pre-Petition Credit Agreement with respect to any Mortgaged Real Property to the extent not otherwise permitted under this Section 6.02 and agreed upon by the Collateral Agent; and

(w) other Liens (not of a type set forth in clauses (a) through (v) above) incurred in the ordinary course of business of any Company with respect to obligations (other than Indebtedness) that do not in the aggregate exceed $[**1.0 million**] at any time outstanding;

provided, however, that no Liens shall be permitted to exist, directly or indirectly, on any Pledged Securities or Intercompany Notes (each as defined in the Security Agreement) except Liens described in paragraphs (a), (l) and (r) above. Notwithstanding the foregoing and other than with respect to the Term B Segregated Account, Liens permitted under subsections 6.02(a) through (k) and (m) through (w) shall at all times be junior and subordinate to the Liens under the Loan Documents and the Financing Orders (and the adequate protection Liens, if any, of the Prior Agent and the Prior Lenders), other than the Carve-Out Amount. The prohibition provided for in this Section 6.02 specifically includes, without limitation, the Borrower, any Loan Party, any Committee, or any other party-in-interest in the Chapter 11 Cases or any successor case to priming or creating pari passu to any claims, Liens or interests of the Collateral Agent and the Lenders (and the adequate protection claims and Liens, if any, of the Prior Agents and Prior Lenders) any Lien (other than for the Carve-Out Amount) irrespective of whether such claims, Liens or interests may be "adequately protected" (unless the Obligations and adequate protection claims will be paid in full in cash upon the granting of any such Lien and the Commitments terminated); provided that the prohibition shall expressly not include Liens of Term B Noteholders and the Term B Agent in respect of the Term B Segregated Account.

SECTION 6.03 Sale and Leaseback Transactions. Enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such Property or other Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

SECTION 6.04 Investment, Loan and Advances. Directly or indirectly, lend money or credit or make advances to 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 (all of the foregoing, collectively, "**Investments**"), except that the following shall be permitted:

(a) Investments outstanding on the Closing Date and identified on Schedule 6.04(a);

(b) the Companies may (i) acquire and hold accounts receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, (ii) acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments for collection in the ordinary course of business, (iv) make lease, utility and other similar deposits in the ordinary course of business; or (v) make prepayments and deposits to suppliers in the ordinary course of business;

(c) Borrower or Holdings (x) may enter into Interest Rate Protection Agreements to the extent permitted by Section 6.01(c) and (y) may enter into and perform its obligations under Hedging Agreements entered into in the ordinary course of business and so long as any such Hedging Agreement is not speculative in nature and is (i) (A) related to income derived from foreign operations of any Company or otherwise related to purchases permitted hereunder from foreign suppliers or (B) entered into to protect such Companies against fluctuations in the prices of raw materials used in their businesses and (ii) permitted by Section 6.01(d);

(d) any Loan Party may make intercompany loans and advances to any other Loan Party that is a Wholly Owned Subsidiary; provided that each such Loan Party is a party to the Intercompany Note, and such loan shall promptly be recorded on such Loan Party's ledgers as an intercompany loan and shall be pledged by such Loan Party that is the lender of such intercompany loan as Collateral pursuant to the Security Agreement, provided further that any Indebtedness of any Loan Party permitted pursuant to this paragraph (d) shall be subordinated to the Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness;

(e) Borrower and the Subsidiary Guarantors may make loans and advances (including payroll, travel and entertainment related advances) in the ordinary course of business to their respective employees so long as the aggregate principal amount thereof at any time outstanding (determined without regard to any write-downs or write-offs of such loans and advances) shall not exceed $250,000;

(f) Borrower and the Subsidiary Guarantors may sell or transfer amounts and acquire assets and otherwise make Investments to the extent permitted by Section 6.05;

(g) [Reserved];

(h) Investments (other than as described in Section 6.04(d)) (i) by Borrower in any Subsidiary Guarantor and (ii) by any Company in Borrower or any Subsidiary Guarantor;

(i) Investments in securities and instruments of trade creditors or customers in the ordinary course of business and consistent with such Company's past practices that are received in settlement of bona fide disputes or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(j) Investments made by Borrower or any Subsidiary as a result of consideration received in connection with an Asset Sale, or as a result of any acquisitions, each made in compliance with Section 6.05;

(k) Loan Parties may hold Investments to the extent such Investments reflect an increase in the value of Investments otherwise permitted under this Section 6.04 hereof;

(l) Investments in Deposit Accounts (as defined in the Security Agreement) opened in the ordinary course of business provided such Deposit Accounts (as defined in the Security Agreement) are subject to Deposit Account Control Agreements (as defined in the Security Agreement) if required hereunder;

(m) any Loan Party may capitalize or forgive any Indebtedness owed to it by other Loan Parties (except that Borrower shall not forgive intercompany loans made to any other Loan Party); and

(n) Investments in cash or Cash Equivalents in Securities Accounts (as defined in the Security Agreement) opened in the ordinary course of business provided such Securities Accounts are subject to Securities Account Control Agreements (as defined in the Security Agreement) if required hereunder.

Notwithstanding anything to the contrary set forth in this Section 6.04, to the extent that any SPE License Sub is not a Subsidiary Guarantor, the Loan Parties may only make a *de minimis* Investment in such SPE License Sub in connection with the formation and maintenance thereof.

SECTION 6.05 Mergers, Consolidations, Sales of Assets and Acquisitions. Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation, or convey, sell, lease or otherwise dispose of (or agree to do any of the foregoing at any future time) all or any part of its Property or assets, or purchase or otherwise acquire (in one or a series of related transactions) any part of the Property or assets of any Person (or agree to do any of the foregoing at any future time), except that:

(a) Capital Expenditures by Borrower and its Subsidiaries shall be permitted to the extent permitted by Section 6.08(d);

(b) (i) purchases or other acquisitions of inventory, materials, equipment, Real Property and intangible assets in the ordinary course of business (in each case, not constituting Capital Expenditures) shall be permitted, (ii) subject to Section 2.10(c), Asset Sales of used, worn out, obsolete or surplus Property by any Company in the ordinary course of business, the abandonment or other Asset Sale of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Companies taken as a whole, and dispositions of assets expressly excluded from the definition of "Asset Sales" shall be permitted, and (iii) subject to Section 2.10(c), the sale, lease or other disposal of any assets shall be permitted; provided that the aggregate consideration received in respect of

all Asset Sales pursuant to this clause (b)(iii) shall not exceed $5.0 million in any four consecutive fiscal quarters of Borrower;

(c) Investments in connection with any transaction covered by this Section 6.05 may be made to the extent permitted by Section 6.04;

(d) Borrower and its Subsidiaries may sell Cash Equivalents and use cash for purposes that are otherwise permitted by the terms of this Agreement in the ordinary course of business;

(e) Borrower and its Subsidiaries may lease (as lessee or lessor) real or personal Property and may guaranty such lease, in each case, in the ordinary course of business and in accordance with the applicable Security Documents;

(f) the Transactions shall be permitted as contemplated by the Transaction Documents;

(g) any Loan Party may transfer (as a result of a dissolution, liquidation or otherwise) or lease Property to or acquire or lease Property from any Loan Party or any Loan Party may be merged into Borrower or a Wholly Owned Subsidiary (including as a result of the dissolution or liquidation of such Loan Party), as long as Borrower or a Wholly Owned Subsidiary is the surviving corporation of such merger and, in the case of such Wholly Owned Subsidiary, it remains a Wholly Owned Subsidiary of Holdings; provided that the Lien on and security interest in such Property granted or to be granted in favor of the Collateral Agent under the Security Documents shall be maintained or created in accordance with the provisions of Section 5.11 or 5.12, as applicable;

(h) any Subsidiary (other than Borrower) that is not a Subsidiary Guarantor may dissolve, liquidate or wind up its affairs at any time; provided that such dissolution, liquidation or winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect; and

(i) Asset Sales by any Company to any other Company shall be permitted; provided that such Asset Sale involving a Subsidiary that it is not a Loan Party shall be otherwise in compliance with Section 6.07;

(j) discounts or forgiveness of account receivables in the ordinary course of business or in connection with collection or compromise thereof shall be permitted provided, the account debtor is not an Affiliate;

(k) Permitted Liens (to the extent constituting a conveyance of Property) shall be permitted;

(l) the sale of Inventory in the ordinary course of business shall be permitted;

(m) [reserved];

(n) subject to Section 2.10(f), any replacement of Property subject to a Casualty Event.

To the extent the Required Lenders waive the provisions of this Section 6.05 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.05, such Collateral (unless sold to a Company) shall be sold free and clear of the Liens created by the Security Documents, and the Agents shall take all actions deemed appropriate in order to effect the foregoing.

SECTION 6.06 Dividends. Authorize, declare or pay, directly or indirectly, any Dividends with respect to any Company.

SECTION 6.07 Transactions with Affiliates. Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of any Company (other than between or among Borrower and their Wholly Owned Subsidiaries), other than in the ordinary course of business and on terms and conditions substantially as favorable to such Company as would reasonably be obtained by such Company at that time in a comparable arm's-length transaction with a Person other than an Affiliate, except that:

(a) [reserved];

(b) loans may be made and repaid and other transactions may be entered into between and among any Company and its Affiliates to the extent permitted by Sections 6.01 and 6.04;

(c) customary fees may be paid to non-officer directors of any Company and customary indemnities may be provided to all directors of any Company;

(d) [reserved];

(e) [reserved];

(f) the Transactions may be effected.

SECTION 6.08 Financial Covenants.

(a) Minimum Fixed Charge Coverage Ratio. If Available Cash as of December 31st of any year is less than $50.0 million, permit the Consolidated Fixed Charge Coverage Ratio at the end of the Test Period ending closest to such December 31st, to be less than 1.0 to 1.0.

(b) Limitation on Capital Expenditures. Permit the aggregate amount of Capital Expenditures made in any fiscal year set forth in the table below to exceed the amount set forth opposite such fiscal year:

Fiscal Year	Amount
Fiscal year 2011	$15,000,000
Fiscal year 2012	$15,000,000

(c) Minimum Total Liquidity. Permit Total Liquidity measured as of the last Business Day of each fiscal month to be less than the amount that is equal to eighty percent (80%) of the sum of (i) the Cash Forecast for such fiscal month and (ii) the Availability Forecast for such fiscal month.

(d) Projections. Amend or modify the Projections in any way, except for amendments or modifications which have been previously approved by the Administrative Agent and the Collateral Agent

SECTION 6.09 Limitation on Modifications of Indebtedness; Modifications of Certificate of Incorporation, or Other Constitutive Documents, By-laws and Certain Other Agreements, Etc.

(a) Amend or modify, or permit the amendment or modification of, any provision of existing Indebtedness or of any agreement relating thereto (including any purchase agreement, indenture, loan agreement or security agreement), including, without limitation, any of the Senior Note Documents or any of the Term B Note Documents, other than any amendments or modifications to Indebtedness which do not in any way materially adversely affect the interests of the Lenders and are otherwise permitted under Section 6.01(b);

(b) other than the payment of aggregate Special Redemption Amount (under and as defined in the Term B Note Documents as in effect on the Closing Date) make (or give notice in respect of) any voluntary prepayment on, or voluntary redemption or acquisition for value of, any Indebtedness outstanding under the Senior Note Documents or the Term B Note Documents;

(c) amend or modify, or permit the amendment or modification of, any other Transaction Document except for amendments or modifications which are not in any way adverse in any material respect to the interests of the Lenders;

(d) amend, modify or change its articles of incorporation or other constitutive documents (including by the filing or modification of any certificate of designation) or by-laws, or any agreement entered into by it, with respect to its capital stock (including any shareholders' agreement), or enter into any new agreement with respect to its capital stock, other than any amendments, modifications, agreements or changes pursuant to this clause (d) or any such new agreements pursuant to this clause (d) which do not in any way materially adversely affect in any material respect the interests of the Lenders; and

provided that any Loan Party may issue such capital stock as is not prohibited by Section 6.11 or any other provision of this Agreement and may amend articles of incorporation or other constitutive documents to authorize any such capital stock;

(e) make any (or give notice in respect of) any voluntary prepayment on, or voluntary redemption or acquisition for value of, any Subordinated Debt;

(f) make any payments or transfer, or agree to any setoff or recoupment, with respect to any Pre-Petition claim, Pre-Petition Lien or Pre-Petition Indebtedness, except (i) as approved by order of the Bankruptcy Court and (ii) as expressly permitted by the terms of the Loan Documents and the 13-Week Budget; or

(g) amend or modify, or permit the amendment or modification of, any other Loan Document, the Financing Orders, the First Day Orders, in each case except for amendments or modifications which are not in any way adverse in any material respect to the interests of the Agents or Lenders in such capacities.

SECTION 6.10 Limitation on Certain Restrictions on Subsidiaries. Directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any 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 Borrower or any other Subsidiary, or pay any Indebtedness owed to Borrower or any other Subsidiary, (b) make loans or advances to Borrower or any Subsidiary of Borrower or (c) transfer any of its properties to Borrower or any Subsidiary of Borrower, except for such encumbrances or restrictions existing under or by reason of (i) applicable law; (ii) this Agreement and the other Loan Documents; (iii) the Senior Note Documents; (iv) the Term B Note Documents; (v) customary provisions restricting subletting or assignment of any Lease governing a leasehold interest of Borrower or any Subsidiary of Borrower; (vi) customary provisions restricting assignment of any agreement (including any Investment permitted hereunder) entered into by Borrower or any Subsidiary of Borrower in the ordinary course of business; (vii) the right of any holder of a Lien permitted by Section 6.02 to restrict the transfer of the asset or assets subject thereto; (viii) restrictions which are not more restrictive than those contained in this Agreement contained in any documents governing any Indebtedness incurred after the Closing Date in accordance with the provisions of this Agreement; (ix) customary restrictions and conditions contained in any agreement relating to the sale of any Property permitted under Section 6.05 pending the consummation of such sale; any agreement in effect at the time such Subsidiary becomes a Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary and such agreement does not affect any other Company; or (x) in the case of any joint venture which is not a Loan Party in respect of any matters referred to in clauses (b) and (c) above, restrictions in such Person's organizational or governing documents or pursuant to any joint venture agreement or stockholders agreements solely to the extent of the Equity Interests of or assets held in the subject joint venture or other entity.

SECTION 6.11 Limitation on Issuance of Capital Stock. Issue or permit any Subsidiary to issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest.

SECTION 6.12 Limitation on Creation of Subsidiaries. Establish, create or acquire any additional Subsidiaries without the prior written consent of the Administrative Agent.

SECTION 6.13 Business.

(a) With respect to Holdings, engage in any business activities or have any assets or liabilities, other than (i) its ownership of the Equity Interests of Borrower, (ii) rights and obligations under the Loan Documents, the Senior Note Documents and the other Transaction Documents and Tax Sharing Agreements and Indebtedness permitted under Section 6.01(k) and (iii) activities, obligations and assets incidental to the foregoing clauses (i) and (ii).

(b) With respect to Borrower and the Subsidiaries, engage (directly or indirectly) in any business other than those businesses in which Borrower and its Subsidiaries are engaged on the Closing Date and business ancillary thereto.

SECTION 6.14 Limitation on Accounting Changes. Make or permit, any change in accounting policies or reporting practices, without the consent of the Required Lenders, which consent shall not be unreasonably withheld, except changes that, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect or are required by GAAP.

SECTION 6.15 Fiscal Year. Change its fiscal year end to a date other than the last Saturday of each June (except that the Borrower may change its tax year end to correspond with its fiscal year end).

SECTION 6.16 No Negative Pledges. Directly or indirectly enter into or assume any agreement (other than this Agreement, the Senior Note Documents and the Term B Note Documents) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, except for Property subject to purchase money security interests, operating leases and capital leases and Property subject to Liens permitted by Sections 6.02(c) and 6.02(k), licenses with respect to intellectual property licensed from third parties in the ordinary course of business and Property of SPE License Subs to the extent required by applicable Requirements of Law.

SECTION 6.17 Lease Obligations. Create, incur, assume or suffer to exist any obligations as lessee for the rental or hire of real or personal Property of any kind under leases or agreements to lease having an original term of one year or more that would cause the direct and contingent liabilities of the Borrower and its Subsidiaries, on a consolidated basis, in respect of all such obligations (exclusive of such obligations constituting Capital Lease Obligations) to exceed $30.0 million payable in any period of 12 consecutive months.

SECTION 6.18 Intentionally Omitted.

SECTION 6.19 Anti-Terrorism Law; Anti-Money Laundering. Directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Section 3.25, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law,

or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Loan Parties shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Loan Parties' compliance with this Section 6.19). Cause or permit any of the funds of such Loan Party that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of law.

SECTION 6.20 Embargoed Person. Cause or permit (a) any of the funds or properties of the Loan Parties that are used to repay the Loans to constitute property of, or be beneficially owned directly or indirectly by, any person subject to sanctions or trade restrictions under United States law ("**Embargoed Person**" or "**Embargoed Persons**") that is identified on (1) the "List of Specially Designated Nationals and Blocked Persons" (the "**SDN List**") maintained by OFAC and/or on any other similar list ("**Other List**") maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or regulation promulgated thereunder, with the result that the investment in the Loan Parties (whether directly or indirectly) is prohibited by law, or the Loans made by the Lenders would be in violation of law, or (2) the Executive Order, any related enabling legislation or any other similar Executive Orders (collectively, "**Executive Orders**"), or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Loan Parties, with the result that the investment in the Loan Parties (whether directly or indirectly) is prohibited by law or the Loans are in violation of law.

SECTION 6.21 PACA License. Obtain or attempt to obtain a dealer license under PACA without obtaining Administrative Agent's prior written consent.

SECTION 6.22 Chapter 11 Claims. Except as otherwise allowed pursuant to the Financing Orders, incur, create, assume, suffer to exist or permit any Lien or other super priority administrative claim which is *pari passu* with or senior to the Liens or claims of the Administrative Agent and Lenders against the Loan Parties, or the adequate protection Liens or claims, if any, of the Prior Agents and Prior Lenders against the Loan Parties, in each case, subject to the Carve-Out and the Permitted Senior Liens.

SECTION 6.23 Critical Vendor and Other Payments. The Loan Parties shall not make (i) any pre-petition "critical vendor" payments or other payments on account of any creditor's pre-petition unsecured claims, (ii) payments on account of claims or expenses arising under Section 503(b)(9) of the Bankruptcy Code, or (iii) payments under any management incentive plan or on account of claims or expenses arising under Section 503(c) of the Bankruptcy Code, except in each case in amounts and on terms and conditions that (a) are approved by order of the Bankruptcy Court after notice and a hearing and (b) are expressly permitted by the terms of the Loan Documents and any approved 13-Week Budget.

SECTION 6.24 Pre-Petition Indebtedness. The Loan Parties shall not make any adequate protection payments on account of any Pre-Petition Indebtedness other than (a) any adequate protection payments made on account of insurance premium finance agreements or (b) any other adequate protection payments in an amount not to exceed $1,000,000 in the aggregate

so long as, in each case, such adequate protection payments are (y) approved by the Bankruptcy Court and the Required Lenders and (z) included in the 13 Week Budget.

SECTION 6.25 Term B Segregated Account. Borrower shall not deposit any amounts in the Term B Segregated Account other than the proceeds of the Term B Note and the proceeds of any investments held in or credited to such account (which investments shall be limited to cash and Cash Equivalents).

ARTICLE VII.
GUARANTEE

SECTION 7.01 The Guarantee. The Guarantors hereby jointly and severally guarantee as a primary obligor and not as a surety to each Secured Party and their respective successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code) on the Loans made by the Lenders to, and the Notes held by each Lender of, Borrower, and all other Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document or Interest Rate Protection Agreement relating to the Loans, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Guarantors hereby jointly and severally agree that if Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

SECTION 7.02 Obligations Unconditional. The obligations of the Guarantors under Section 7.01 shall constitute a guaranty of payment and are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(a) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Agreement, any other Loan Document or any other agreement, document or instrument to which Borrower is or may become a party;

(b) the absence of any action to enforce this Agreement or any other Loan Document or the waiver or consent by Administrative Agent and Lenders with respect to any of the provisions thereof;

(c) the existence, value or condition of, or failure to perfect its Lien against, any security for the Obligations or any action, or the absence of any action, by Administrative Agent and Lenders in respect thereof (including the release of any such security);

(d) the insolvency of Borrower or any Guarantor;

(e) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(f) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(g) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(h) any lien or security interest granted to, or in favor of, Issuing Bank or any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected;

(i) the release of Borrower or any Guarantor; or

(j) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor (other than payment in full in cash of all Obligations and the termination of all Commitments).

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee

of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against Borrower or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

SECTION 7.03 Reinstatement. The obligations of the Guarantors under this Article VII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise. The Guarantors jointly and severally agree that they will indemnify each Secured Party on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law, other than any costs or expenses resulting from the gross negligence, bad faith or willful misconduct of such Secured Party.

SECTION 7.04 Subrogation; Subordination. Each Guarantor hereby agrees that until the indefeasible payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall not exercise any right or remedy arising by reason of any performance by it of its guarantee in Section 7.01, whether by subrogation or otherwise, against Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. The payment of any amounts due with respect to any Indebtedness of Borrower or any other Guarantor now or hereafter owing to any Guarantor or Borrower by reason of any payment by such Guarantor under the Guarantee in this Article VII is hereby subordinated to the prior indefeasible payment in full in cash of the Guaranteed Obligations. In addition, any Indebtedness of the Guarantors now or hereafter held by any Guarantor is hereby subordinated in right of payment in full in cash to the Guaranteed Obligations. Each Guarantor agrees that it will not demand, sue for or otherwise attempt to collect any such Indebtedness of Borrower to such Guarantor until the Obligations shall have been indefeasibly paid in full in cash. If, notwithstanding the foregoing sentence, any Guarantor shall prior to the indefeasible payment in full in cash of the Guaranteed Obligations collect, enforce or receive any amounts in respect of such Indebtedness, such amounts shall be collected, enforced and received by such Guarantor as trustee for the Secured Parties and be paid over to Administrative Agent on account of the Guaranteed Obligations without affecting in any manner the liability of such Guarantor under the other provisions of the guaranty contained herein.

SECTION 7.05 Remedies. The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Article VIII (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article VIII) for purposes of Section 7.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 7.01.

SECTION 7.06 Instrument for the Payment of Money. Each Guarantor hereby acknowledges that the guarantee in this Article VII constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

SECTION 7.07 Continuing Guarantee. The guarantee in this Article VII is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

SECTION 7.08 General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 7.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

ARTICLE VIII.
EVENTS OF DEFAULT

Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion to, hearing before, or order the Bankruptcy Court or any notice to any Loan Party, upon the occurrence and during the continuance of the following events (each, an "**Event of Default**"):

(a) default shall be made in the payment of any principal of any Loan or the reimbursement with respect to any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(b) default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in clause (a) above) due under

any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings or issuances of Letters of Credit hereunder, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(d) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in Section 5.02, 5.03 or 5.08 or in Article VI;

(e) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (a), (b) or (d) above) and such default shall continue unremedied or shall not be waived for a period of 20 days after written notice thereof from the Administrative Agent or any Lender to Borrower;

(f) any Company shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Material Indebtedness (other than the Obligations), when and as the same shall become due and payable (after giving effect to any applicable grace period) or (ii) fail to observe or perform any term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in these clauses (i) and (ii) is to cause, or to permit the holder or holders of such Material Indebtedness or a trustee on its or their behalf to cause, such Material Indebtedness to become due prior to its stated maturity; provided that the failure to pay any principal or interest due in respect of the Senior Notes resulting from the filing of the Chapter 11 Cases shall not constitute an Event of Default;

(g) [Reserved];

(h) [Reserved];

(i) one or more judgments for the payment of money in an aggregate amount in excess of $1.0 million shall be rendered against any Company or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Company to enforce any such judgment;

(j) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other such ERISA Events, could reasonably be expected to result in liability of any Company and its ERISA Affiliates in an aggregate amount exceeding $1.0 million or the imposition of a Lien on any assets of a Company with respect to any such liability;

(k) any security interest and Lien purported to be created by any Security Document 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 and granted under such Security Documents (including a perfected first priority security interest in and Lien on, all of the Collateral thereunder (except as otherwise expressly provided in such Security Document)) in favor of the Collateral Agent, or shall be asserted by Borrower or any other Loan Party not to be, a valid, perfected (except as otherwise expressly provided in this Agreement or such Security Document), first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on the Collateral covered thereby;

(l) the Guarantees shall cease to be in full force and effect, unless in connection with the sale, merger or dissolution of a Guarantor to the extent permitted under Section 6.05 hereof;

(m) any Loan Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Loan Party or any other Person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Loan Party shall repudiate or deny that it has any liability or obligation for the payment of principal or interest or other obligations purported to be created under any Loan Document;

(n) there shall have occurred a Change in Control;

(o) any Loan Party shall be prohibited or otherwise restrained from conducting the business theretofore conducted by it in any manner that has or could reasonably be expected to result in a Material Adverse Effect by virtue of any determination, ruling, decision, decree or order of any court or Governmental Authority of competent jurisdiction;

(p) the indictment by any Governmental Authority of any Loan Party as to which any Loan Party or Administrative Agent receives notice as to which there is a reasonable possibility of an adverse determination, in the good faith determination of Administrative Agent, under any criminal statute, or commencement of criminal or civil proceedings (other than condemnation and eminent domain proceedings) against any Loan Party pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of (i) any of the Collateral having a value in excess of $1.5 million or (ii) any other Property of any Loan Party which is material to the conduct of its business; provided that any such proceedings relating to water rights shall not constitute an Event of Default if, assuming such water rights would be so forfeited (and after giving effect thereto) the representation set forth in Section 3.30 would be true and correct; or

(q) (i) failure by any holder of Subordinated Debt (or any such holder's representative or agent) to comply in any material respect with, or any breach in any material respect by any such Person of, any of the subordination terms or conditions with respect to such Subordinated Debt, or Holdings or any other Loan Party shall make any payment in violation of such subordination terms or (ii) failure by any Loan Party or

Wasserstein & Co., LP to comply in any material respect with, or any breach in any material respect by any such Person of, any terms or conditions of the Management Fee Subordination Agreement;

(r) there shall have occurred an event of default under the Term B Note Documents; provided, however that if the Revolving Exposure (provided that for this purpose Revolving Exposure in respect of the Outstanding Letters of Credit shall be disregarded) is $0 and such event of default has been waived in accordance with the terms of the Term B Note Documents, then such event of default shall not constitute an Event of Default under this Agreement;

(s) there shall be an assignment for the benefit of creditors or any marshalling of assets and liabilities of any Loan Party;

(t) the Chief Restructuring Officer shall cease to be employed by Borrower unless replaced by an individual acceptable to the Required Lenders within ten (10) days after such cessation or the Chief Restructuring Officer shall be hindered at any time in any material respect from performing his or her duties by any Loan Party or Affiliate thereof;

(u) the occurrence of any of the following in the Chapter 11 Cases:

(i) the bringing of a motion by any Loan Party, or the entry of an order or ruling (which has not been withdrawn, dismissed or reversed); (w) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement (unless such financing is proposed to refinance and pay in full the Obligations due under this Agreement and the Pre-Petition Credit Agreement with the termination of all related lending commitments thereunder); (x) to grant any Lien other than Permitted Liens and the Carve-Out Amount upon or affecting any Collateral without the prior written consent of the Administrative Agent and the Required Lenders (unless the granting of such Lien is simultaneous with a refinancing to pay in full in cash all Obligations due under this Agreement and the Pre-Petition Credit Agreement); (y) except as provided in the Financing Orders, to use cash collateral of the Administrative Agent or the Prior Agents under Section 363(c) of the Bankruptcy Code without the prior written consent of the Administrative Agent and the Required Lenders; or (z) any other action or actions adverse to the Administrative Agent, the Lenders, Prior Agents or Prior Lenders or their rights and remedies hereunder or their interests in the Collateral or under the Pre-Petition Loan Documents;

(ii) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by any Loan Party (a) which plan does not propose to provide for either (i) the payment in full in cash of all Obligations under this Agreement or (ii) the conversion of the Commitments and Obligations under this Agreement into the Exit Credit Facility in accordance with Section 4.04 on the effective date

thereof or (b) if such plan does not propose either (i) payment in full in cash of all Obligations under this Agreement or (ii) the conversion of the Commitments and Obligations under this Agreement into the Exit Credit Facility in accordance with Section 4.04 on the effective date thereof, to which the Administrative Agent and the Required Lenders do not consent or otherwise agree to the treatment of their claims;

(iii) the entry of an order in the Chapter 11 Cases confirming a plan or plans of reorganization that does not contain a provision for termination of the Commitment and repayment in full in cash of all the Obligations under this Agreement on or before the effective date of such plan or plans;

(iv) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents, the Interim Order or the Final Order without the written consent of the Administrative Agent and the Required Lenders or the filing of a motion for reconsideration with respect to the Interim Order or the Final Order;

(v) the Final Order is not entered on or before a date that is forty (40) days after the Petition Date, or prior to or immediately following the expiration of the Interim Order;

(vi) the payment by a Loan Party of, or application by any Loan Party for authority to pay, any Pre-Petition claim without the Administrative Agent's and the Required Lenders' prior written consent unless such payment is otherwise permitted under this Agreement or provided pursuant to the First Day Orders;

(vii) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against any Agent, the Issuing Bank, any Lender or any of the Collateral or against the Prior Agents, any Prior Lender or any Collateral (as defined in the Pre-Petition Credit Agreement);

(viii) the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of a receiver or an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, the reorganization of such Loan Party (or any Loan Party seeks or acquiesces in such relief);

(ix) the sale without the Administrative Agent's and the Required Lenders' consent, of all or substantially all of the assets of the Loan Parties through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise that does not provide for payment in full in cash of the Obligations and termination of Lenders' Commitment (or any Loan Party seeks or acquiesces in such relief);

(x) the dismissal of the Chapter 11 Cases, or the conversion of the Chapter 11 Cases from cases under Chapter 11 to cases under Chapter 7 of the Bankruptcy Code (except as consented to by the Administrative Agent and the

Required Lenders) or any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code, conversion of the Chapter 11 Cases or otherwise;

(xi) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any Collateral having a value in excess of $250,000, or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a Material Adverse Effect;

(xii) [reserved];

(xiii) the entry of an order in the Chapter 11 Cases avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;

(xiv) the failure of any Loan Party to perform any of its material obligations under the Interim Order or the Final Order, which adversely affects the interests of any of the Administrative Agent, the Issuing Lender and the Lenders, as reasonably determined by the Administrative Agent, the Issuing Lender and the Required Lenders, as the case may be;

(xv) except as otherwise provided by the Financing Orders, the entry of an order in the Chapter 11 Cases granting any other super priority administrative claim or Lien equal or superior to that granted to Administrative Agent, on behalf of itself and/or the Secured Parties;

(xvi) termination of the exclusive period for the Loan Parties to file a plan of reorganization in the Chapter 11 Cases; or

(xvii) any of the Loan Parties' return of goods constituting Collateral pursuant to Section 546(g) of the Bankruptcy Code other than in accordance with any such program (a) approved pursuant to a First Day Order, or (b) otherwise approved by the Bankruptcy Court and consented to by the Required Lenders in writing.

THEN, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, or hearing before, or order from the Bankruptcy Court (but subject to any applicable provisions of the Financing Orders) by notice to Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment,

demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding, (iii) direct any or all of the Loan Parties to sell or otherwise dispose of any or all of the Collateral on terms and conditions reasonably acceptable to the Agents and the Required Lenders pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct any Loan Party to assume and assign any lease or executory contract included in the Collateral to Administrative Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code, (iv) enter onto the premises of any Loan Party in connection with an orderly liquidation of the Collateral, and/or (v) exercise any rights and remedies provided to such Agent under the Loan Documents or at law or equity, including all remedies provided for under the Code and, pursuant to the Interim Order and the Final Order, the automatic stay of Section 362 of the Bankruptcy Code shall be modified and vacated to permit the Agents and Lenders to exercise their remedies under this Agreement and the Loan Documents, without further notice, application or motion to, or hearing before, or order from, the Bankruptcy Court; provided, however, notwithstanding anything to the contrary herein, the Administrative Agent shall be permitted to exercise any remedy in the nature of a liquidation of, or foreclosure on, any interest of any Loan Party in the Collateral only upon three (3) Business Days' prior written notice of such Loan Party and counsel approved by the Bankruptcy Court for the Committee.

ARTICLE IX.
COLLATERAL ACCOUNT; APPLICATION OF COLLATERAL PROCEEDS

SECTION 9.01 Accounts and Account Collections.

(a) Borrower and each Subsidiary Guarantor shall notify Collateral Agent promptly of: (i) any material delay in the performance by Borrower or any Subsidiary Guarantor of any of its material obligations to any material Account Debtor or the assertion of any material claims, offsets, defenses or counterclaims by any material Account Debtor, or any material disputes with material Account Debtors, or any settlement, adjustment or compromise thereof, (ii) all material adverse information known to any Loan Party relating to the financial condition of any material Account Debtor and (iii) any event or circumstance which, to any Loan Party's knowledge, would result in any Account in excess of $250,000 no longer constituting an Eligible Account. Borrower and each Subsidiary Guarantor hereby agree not to grant to any Account Debtor any credit, discount, allowance or extension, or to enter into any agreement for any of the foregoing, without Collateral Agent's consent, except in the ordinary course of business in accordance with practices and policies previously disclosed in writing to the Collateral Agent. So long as no Event of Default has occurred and is continuing, Borrower and each Subsidiary Guarantor may settle, adjust or compromise any claim, offset, counterclaim or dispute with any Account Debtor. At any time that an Event of Default has occurred and is continuing, the Collateral Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with Account Debtors of any Loan Party or grant any credits, discounts or allowances.

(b) With respect to each Account: (i) the amounts shown on any invoice delivered to Collateral Agent or schedule thereof delivered to Collateral Agent shall be

true and complete in all material respects and (ii) none of the transactions giving rise thereto will violate any applicable laws or regulations, all documentation relating thereto will be legally sufficient under such laws and regulations and all such documentation will be legally enforceable in accordance with its terms.

(c) Collateral Agent shall have the right at any time or times, in Collateral Agent's name or in the name of a nominee of Collateral Agent, to verify the validity, amount or any other matter relating to any Account or other Collateral, by mail, telephone, e-mail, fax transmission or otherwise. To facilitate the exercise of the right described in the immediately preceding sentence, Borrower hereby agrees to provide Collateral Agent upon request the name and address of each Account Debtor of Borrower or any Subsidiary Guarantor.

(d) Borrower shall establish and maintain, at its sole expense, and shall cause each Subsidiary Guarantor to establish and maintain, at its sole expense blocked accounts or lockboxes and related deposit accounts, which, on the Closing Date, shall consist of accounts set forth on Schedule 9.01(d) (in each case, "**Blocked Accounts**"), as Collateral Agent may specify, with such banks as are acceptable to Collateral Agent into which Borrower and Subsidiary Guarantors shall promptly deposit and direct their respective Account Debtors to directly remit all payments on Accounts and all payments constituting proceeds of Inventory or other Collateral (other than proceeds of a Casualty Event or Asset Sales that do not require a repayment under Loan Documents) in the identical form in which such payments are made, whether by cash, check or other manner and shall be identified and segregated from all other funds of the Loan Parties. Borrower and Guarantors shall deliver, or cause to be delivered, to Collateral Agent a Deposit Account Control Agreement (as defined in the Security Agreement) duly authorized, executed and delivered by each bank where a Blocked Account for the benefit of Borrower or any Guarantor is maintained, and by each bank where any other deposit account is from time to time maintained. Borrower shall further execute and deliver, and shall cause each Guarantor to execute and deliver, such agreements and documents as Collateral Agent may require in connection with such Blocked Accounts and such Deposit Account Control Agreements. Except as permitted by Section 9.01(e)(iii), no Borrower or Guarantor shall establish any deposit accounts after the Closing Date, unless Borrower or Guarantor (as applicable) have complied in full with the provisions of this Section 9.01 with respect to such deposit accounts; provided that for the avoidance of doubt the Term B Segregated Account shall be exempt from any such provisions. Borrower agrees that, at all times when cash is being swept in accordance with clause (e) below, all payments made to such Blocked Accounts or other funds received and collected by Collateral Agent or any Lender, whether in respect of the Accounts, as proceeds of Inventory or other Collateral or otherwise shall be treated as payments to Collateral Agent and Lenders in respect of the Obligations and therefore shall constitute the property of Collateral Agent and Lenders to the extent of the then outstanding Obligations.

(e) Borrower and each Guarantor shall maintain a cash management system which is acceptable to the Administrative Agent and the Collateral Agent (the "**Cash**

Management System"). The Cash Management System shall contain, among other things, the following:

(i) With respect to the Blocked Accounts of Borrower and such Guarantor as the Collateral Agent shall determine in its sole discretion, the applicable bank maintaining such Blocked Accounts shall agree from and after the receipt of a notice (an "**Activation Notice**") from the Collateral Agent (which Activation Notice, as well as any similar notice provided pursuant to a Credit Card Receivables Control Agreement, may be given at any time a Cash Dominion Trigger Event shall have occurred and be continuing), pursuant to the applicable Deposit Account Control Agreement, to forward daily all amounts in each Blocked Account to one Blocked Account designated as concentration account in the name of Borrower (the "**Concentration Account**") at the bank that shall be designated as the Concentration Account bank for Borrower (the "**Concentration Account Bank**") by notice to the Administrative Agent and the Collateral Agent. The Concentration Account Bank shall agree, pursuant to the applicable Deposit Account Control Agreement, to forward daily all amounts in the Concentration Account to the account designated as collection account (the "**Collection Account**") which shall be under the exclusive dominion and control of the Collateral Agent;

(ii) With respect to the Blocked Accounts of such Guarantors as the Collateral Agent shall determine in its sole discretion, the applicable bank maintaining such Blocked Accounts shall agree, from and after the receipt of an Activation Notice from the Collateral Agent (which Activation Notice may be given by Collateral Agent at any time after the occurrence of a Cash Dominion Trigger Event), to forward all amounts in each Blocked Account to the applicable Concentration Account and Collection Account and to commence the process of daily sweeps from such Blocked Account into the Concentration Account and Collection Account;

(iii) Any provision of this Section 9.01 to the contrary notwithstanding, (A) Loan Parties may maintain payroll accounts and trust accounts that are not a part of the Cash Management System; provided that no Loan Party shall accumulate or maintain cash in such accounts as of any date of determination in excess of checks outstanding against such accounts as of that date and amounts necessary to meet minimum balance requirements and (B) Loan Parties may maintain local cash accounts that are not a part of the Cash Management System which individually do not at any time contain available funds in excess of $10,000 and, together with all other such local cash accounts, do not exceed $100,000.

(f) The Collateral Agent shall apply all funds received in the Concentration Account on a daily basis to the repayment (by transferring same to the account of or pursuant to direction of Administrative Agent) of (i) first, to reimbursable expenses of Agents then due and payable pursuant to the Loan Documents and Fees due and payable to the Agents and Lenders pursuant to the Loan Documents; (ii) second, to interest then due and payable on all Loans, (iii) third, Overadvances, (iv) fourth, to the principal

balance of the Swingline Loan until the same has been repaid in full, (v) fifth, to the outstanding principal balance of Revolving Loans until the same has been paid in full, including accompanying accrued interest and charges under Sections 2.12, 2.13 and 2.15 (Borrower may elect which of any Eurodollar Borrowings is to be prepaid), (vi) sixth, to cash collateralize all LC Exposures plus any accrued and unpaid Fees with respect thereto (to be held and applied in accordance with Section 2.18(i) hereof), and (vii) last, to all other Obligations *pro rata* in accordance with the amounts that such Lender certifies is outstanding in each case without a reduction in the Commitments; all further funds received in the Collection Account shall, unless an Event of Default has occurred and is continuing, be transferred or applied by the Collateral Agent in accordance with the directions of Borrower or the respective other Loan Party. If an Event of Default has occurred and is continuing, the Collateral Agent shall not transfer or apply any such funds from the Collection Account in accordance with such directions unless the Administrative Agent and the Collateral Agent determine to release such funds to Borrower. Absent any such determination by the Administrative Agent and the Collateral Agent, all such funds in the Collection Account shall be transferred to the Cash Collateral Account to be applied to the Eurodollar Loans on the last day of the relevant Interest Period of such Eurodollar Loan or to the Obligations as they come due (whether at stated maturity, by acceleration or otherwise). If consented to by the Administrative Agent, the Collateral Agent and the Required Lenders, such funds in the Cash Collateral Account may be released to Borrower. So long as no Event of Default shall have occurred and be continuing, the Borrower may direct that prepayments of Revolving Loans required pursuant to this Section 9.01(f) with respect to any Eurodollar Borrowing be deposited into a Breakage Prepayment Account and applied to repay such Eurodollar Borrowing at the end of the applicable Interest Periods related thereto.

(g) Borrower and its directors, employees, agents and other Affiliates and Subsidiary Guarantors shall, acting as trustee for Collateral Agent, receive, as the property of Collateral Agent, any monies, checks, notes, drafts or any other payment relating to and/or proceeds of Accounts, Inventory or other Collateral which come into their possession or under their control and immediately upon receipt thereof, shall deposit or cause the same to be deposited in the Blocked Accounts, or remit the same or cause the same to be remitted, in kind, to Collateral Agent. In no event shall the same be commingled with Borrower's own funds which are not subject to a Lien in favor of the Collateral Agent. Borrower agrees to reimburse Collateral Agent on demand for any amounts owed or paid to any bank at which a Blocked Account is established or any other bank or Person involved in the transfer of funds to or from the Blocked Accounts arising out of Collateral Agent's payments to or indemnification of such bank or Person.

SECTION 9.02 Inventory. With respect to the Inventory: (a) Borrower and each Subsidiary Guarantor shall at all times maintain records of Inventory reasonably satisfactory to Collateral Agent, keeping correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, the cost therefor and daily withdrawals therefrom and additions thereto; (b) any of the Administrative Agent's and Collateral Agent's officers, employees or agents shall have the right, at any time or times (but not more frequently than once per year at the expense of Borrower unless an Event of Default has occurred and is continuing), in the name of the Administrative Agent or Collateral Agent, as applicable, any designee of the

Administrative Agent, Collateral Agent or Borrower, to verify the validity, amount or any other matter relating to Accounts or Inventory by mail, telephone, electronic communication, personal inspection or otherwise and to conduct field audits of the financial affairs and Collateral of the Loan Parties, and Borrower shall cooperate fully with the Administrative Agent and Collateral Agent in an effort to facilitate and promptly conclude any such verification process; (c) the Loan Parties shall cooperate fully with the Collateral Agent and its agents during all Collateral field audits and Inventory Appraisals which shall be at the expense of Borrower and shall be conducted annually, or, following the occurrence and during the continuation of an Event of Default, more frequently at Collateral Agent's reasonable request; (d) neither Borrower nor any Subsidiary Guarantor shall sell Inventory to any customer on approval, or any other basis which entitles the customer to return (except for the right of customers for Inventory which is defective or non-conforming) or may obligate any Loan Party to repurchase such Inventory; and (e) Borrower and each Subsidiary Guarantor shall keep the Inventory in good and marketable condition.

SECTION 9.03 Equipment, Real Property and Appraisals.

With respect to the Equipment and owned Real Property of any Loan Party: (a) upon the Collateral Agent's reasonable request, Borrower shall, at its expense, no more than one (1) time in any twelve (12) month period commencing with the Closing Date, but at any time or times as the Collateral Agent may request following the occurrence and during the continuance of an Event of Default, deliver or cause to be delivered to the Collateral Agent written appraisals as to the Equipment and/or the owned Real Property of any Loan Party by an independent appraiser designated by the Collateral Agent and reasonably acceptable to Borrower, (b) Borrower and each Subsidiary Guarantor shall notify Collateral Agent promptly of any event or circumstance which, to any Loan Party's knowledge, would result in any Equipment of any Loan Party no longer constituting Eligible Equipment and (c) Borrower and each Subsidiary Guarantor shall notify Collateral Agent promptly of any event or circumstance which, to any Loan Party's knowledge, would result in any Real Property of any Loan Party no longer constituting Eligible Real Property.

SECTION 9.04 Cash Collateral Account.

(a) The Collateral Agent is hereby authorized to establish and maintain at its office at 1290 Avenue of the Americas, 3rd Floor, New York, NY 10104, in the name of the Collateral Agent and pursuant to a dominion and control agreement, one or more restricted deposit accounts designated as a "**Cash Collateral Account**" bearing the name of the owners of the funds contained therein (*e.g.*, Harry and David Debtor-In-Possession Cash Collateral Account). Each Loan Party shall deposit into its respective Cash Collateral Account from time to time the cash collateral required to be deposited under Section 2.18(j) or Section 9.01(f) hereof.

(b) The balance from time to time in such Cash 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 Cash Collateral Accounts shall constitute collateral security (i) 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, and (ii) if held in a Cash Collateral Account pursuant to Section 9.01(f), then for the Obligations as provided therein.

SECTION 9.05 Application of Proceeds. The proceeds received by the Administrative Agent or the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Administrative Agent or the Collateral Agent, as applicable, of its remedies shall be applied, together with any other sums then held by the Administrative Agent pursuant to this Agreement, promptly by the Administrative Agent or the Collateral Agent as follows:

(a) First, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Administrative Agent or the Collateral Agent and their agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent or the Collateral Agent in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) Second, to the payment of all other reasonable costs and 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, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) Third, without duplication of amounts applied pursuant to paragraphs (a) and (b) above, to the indefeasible payment in full in cash, of each Lender's Default Allocation Percentage of interest, principal and other amounts constituting Obligations, equally and ratably in accordance with each Lender's Default Allocation Percentage of such amounts; and

(d) Fourth, the balance, if any, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (d) of this Section 9.05, the Loan Parties shall remain liable for any deficiency.

ARTICLE X.
THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

SECTION 10.01 Appointment.

(a) Each Lender hereby irrevocably designates and appoints UBS as the Administrative Agent under this Agreement and the other Loan Documents, and each Lender irrevocably authorizes UBS, in its capacity as the Administrative Agent, in such

capacity, to take such actions on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each Lender hereby authorizes the Administrative Agent to consent, on behalf of each Lender, to the Interim Order and the Final Order.

(b) Each Lender hereby irrevocably designates and appoints Ally Commercial Finance LLC as the Collateral Agent and UBS AG, Stamford Branch as the Administrative Collateral Agent under this Agreement and the other Loan Documents, and each Lender irrevocably authorizes Ally Commercial Finance LLC in its capacity as the Collateral Agent and UBS AG, Stamford Branch, as the Administrative Collateral Agent, respectively, in such capacity, to take such actions on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers as are expressly delegated to the Collateral Agent and the Administrative Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. Except as otherwise provided herein, Collateral Agent shall hold all Collateral and all payments of principal, interest, fees, charges and expenses received pursuant to this Agreement or any of the Loan Documents for the benefit of Secured Parties and shall enforce the rights in the Collateral on behalf of the Secured Parties.

SECTION 10.02 Administrative Agent, Collateral Agent and Administrative Collateral Agent in Their Individual Capacities; Conflicts Among Agents. Any Person serving as the Administrative Agent, the Administrative Collateral Agent or the Collateral 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, the Administrative Collateral Agent or the Collateral Agent, as applicable, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent, the Administrative Collateral Agent or the Collateral Agent hereunder, as applicable. In the event that any action under this Agreement shall require the consent of both (i) the Collateral Agent and (ii) the Administrative Agent and/or the Administrative Collateral Agent and such parties cannot, after good faith negotiations, agree on the appropriate action to be taken, the Collateral Agent shall have the right to take such action as it shall determine to be appropriate under the circumstances.

SECTION 10.03 Exculpatory Provisions. None of the Administrative Agent, the Administrative Collateral Agent or the Collateral Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent, the Administrative Collateral Agent and the Collateral Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent, the Administrative Collateral Agent and the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent, the Administrative

Collateral Agent or the Collateral Agent, as applicable, is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent, the Administrative Collateral Agent and the Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent, the Administrative Collateral Agent or the Collateral Agent, as applicable, or any of its respective Affiliates in any capacity. None of the Administrative Agent, the Administrative Collateral Agent or the Collateral Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent, the Administrative Collateral Agent and the Collateral Agent shall not be deemed to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent, the Administrative Collateral Agent and the Collateral Agent by Borrower, any other Loan Party or a Lender, and the Administrative Agent, the Administrative Collateral Agent and the Collateral 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 any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, the Administrative Collateral Agent or the Collateral Agent, as applicable.

SECTION 10.04 Reliance by Agents. The Agents 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 believed by it to be genuine and to have been signed or sent by the proper Person. The Agents also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Agents may consult with legal counsel (who may be counsel for 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 10.05 Delegation of Duties. Each of the Administrative Agent, the Administrative Collateral Agent and the Collateral Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent, the Administrative Collateral Agent or the Collateral Agent, as applicable. The Administrative Agent, the Administrative Collateral Agent and the Collateral Agent and any such respective sub-agent may perform any and all of its respective duties and exercise its respective rights and powers through its respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Affiliates of each of the Administrative Agent, the Administrative Collateral Agent and the Collateral 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 of the Administrative Agent, the Administrative Collateral Agent and the Collateral Agent.

SECTION 10.06 Successor Administrative Agent, Collateral Agent and Administrative Collateral Agent. The Administrative Agent, the Administrative Collateral Agent and/or the Collateral Agent may resign as such at any time upon at least 30 days' prior notice to the Lenders and Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with Borrower, to appoint a successor from among the Lenders. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable, gives notice of its resignation, then the retiring Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable may, on behalf of the Lenders, appoint a successor Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable, which successor shall be a commercial banking institution organized under the laws of the United States (or any state thereof) or a United States branch or agency of a commercial banking institution, and having combined capital and surplus of at least $250.0 million; provided, however, that if such retiring Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth above, the retiring Administrative Agent's, Administrative Collateral Agent's and/or Collateral Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent, the Administrative Collateral Agent and/or the Collateral Agent, as applicable hereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable.

Upon the acceptance of its appointment as Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable, hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable, and the retiring Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable, shall be discharged from its duties and obligations hereunder. The fees payable by Borrower to a successor Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the Administrative Agent's, Administrative Collateral Agent's and/or Collateral Agent's resignation hereunder, the provisions of this Article X and Section 11.03 shall continue in effect for the benefit of such retiring Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable, its respective sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent, Administrative Collateral Agent and/or Collateral Agent, as applicable.

SECTION 10.07 Non-Reliance on Agents and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender 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 Agents or any other Lender 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 Loan Document or related agreement or any document furnished hereunder or thereunder.

SECTION 10.08 No Other Administrative Agent, Collateral Agent or Administrative Collateral Agent. The Administrative Agent shall have the authority to appoint from time to time a syndication agent and a documentation agent with respect to this Agreement. Such appointment shall be made by the Administrative Agent with notice thereof to the Borrower. Lenders identified in this Agreement, and any such syndication agent or documentation agent appointed pursuant to the terms hereof shall not have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders. Without limiting the foregoing, no syndication agent nor any documentation agent shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to any syndication agent or documentation agent as it makes with respect to the Administrative Agent, the Administrative Collateral Agent or the Collateral Agent or any other Lender in this Article X. Notwithstanding the foregoing, the parties hereto acknowledge that any such documentation agent and syndication agent hold such titles in name only, and that such titles confer no additional rights or obligations relative to those conferred on any Lender hereunder.

SECTION 10.09 Indemnification. The Lenders severally agree to indemnify each Agent in its capacity as such (to the extent not reimbursed by the Borrower or the Guarantors and without limiting the obligation of the Borrower or the Guarantors to do so), ratably according to their respective outstanding Loans and Commitments in effect on the date on which indemnification is sought under this Section 10.09 (or, if indemnification is sought after the date upon which all Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such outstanding Loans and Commitments as in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section 10.09 shall survive the payment of the Loans and all other amounts payable hereunder.

SECTION 10.10 Overadvances. Administrative Agent shall not make (and shall prohibit the Issuing Bank and Swingline Lender, as applicable, from making) any Revolving Loans or provide any Letters of Credit to Borrower on behalf of Lenders intentionally and with actual knowledge that such Revolving Loans, Swingline Loans, or Letters of Credit would cause the aggregate amount of the Revolving Exposure to exceed the Borrowing Base, without the prior consent of all Lenders, except, that, Administrative Agent may make (or cause to be made) such additional Revolving Loans or Swingline Loans or provide such additional Letters of Credit

on behalf of Lenders (each an "**Overadvance**" and collectively, the "**Overadvances**"), intentionally and with actual knowledge that such Loans or Letters of Credit will cause the total outstanding Revolving Exposure to exceed the Borrowing Base, as Administrative Agent may deem necessary or advisable in its discretion, provided that: (a) the total principal amount of the Overadvances to Borrower which Administrative Agent may make or provide (or cause to be made or provided) after obtaining such actual knowledge that the Revolving Exposure equals or exceeds the Borrowing Base shall not exceed the amount equal to $7.5 million outstanding at any time less the then outstanding amount of any Special Agent Advances and shall not cause the Revolving Exposure to exceed the Revolving Commitments of all of the Lenders or the Revolving Exposure of a Lender to exceed such Lender's Revolving Commitment, (b) without the consent of all Lenders, (i) no Overadvance shall be outstanding for more than sixty (60) days and (ii) after all Overadvances have been repaid, Administrative Agent shall not make any additional Overadvance unless sixty (60) days or more have elapsed since the last date on which any Overadvance was outstanding, (c) Administrative Agent shall be entitled to recover such funds, on demand from Borrower together with interest thereon for each day from the date such payment was due until the date such amount is paid to Administrative Agent at the interest rate provided for in Section 2.06(c) and (d) no such Overadvance shall be made after the Administrative Agent shall have received written notice from the Required Lenders directing it not to make any, or any additional, Overadvances. Each Lender shall be obligated to pay Administrative Agent the amount of its Pro Rata Percentage of any such Overadvance; provided that Administrative Agent is acting in accordance with the terms of this Section 10.10. All Overadvances shall be secured by Collateral.

SECTION 10.11 Collateral Matters. Administrative Agent may, at its option, from time to time, at any time on or after an Event of Default and for so long as the same is continuing or upon any other failure of a condition precedent to the making of Loans hereunder, make such disbursements and advances ("**Special Agent Advances**") which Administrative Agent, in its sole discretion, deems necessary or desirable either (i) to preserve or protect the Collateral or any portion thereof or (ii) to pay any other amount chargeable to Borrower pursuant to the terms of this Agreement or any of the other Loan Documents consisting of costs, fees and expenses and payments to any Issuing Bank (provided that in no event shall (i) Special Agent Advances for such purpose exceed the amount equal to $7.5 million in the aggregate outstanding at any time less the then outstanding Overadvances under Section 10.10 hereof and (ii) Special Agent Advances plus the Revolving Exposure exceed the Lenders' Commitment at the time of such Event of Default or cause any Lender's Revolving Exposure to exceed such Lender's Revolving Loan Commitment at the time of such Event of Default). Special Agent Advances shall be repayable on demand and be secured by the Collateral. Special Agent Advances shall not constitute Loans but shall otherwise constitute Obligations hereunder. Administrative Agent shall notify each Lender and Borrower in writing of each such Special Agent Advance, which notice shall include a description of the purpose of such Special Agent Advance. Each Lender agrees that it shall make available to Administrative Agent, upon Administrative Agent's demand, in immediately available funds, the amount equal to such Lender's Pro Rata Percentage of each such Special Agent Advance. If such funds are not made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such funds, on demand from such Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to Administrative Agent at the Federal Funds Rate for each day during such period (as published by the Federal Reserve Bank of New York or at

Administrative Agent's option based on the arithmetic mean determined by Administrative Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that day by each of the three leading brokers of Federal funds transactions in New York City selected by Administrative Agent) and if such amounts are not paid within three (3) days of Administrative Agent's demand, at the highest interest rate provided for in Section 2.06(a).

SECTION 10.12 Administrative Collateral Agent. The Administrative Collateral Agent shall have no obligations or duties under this Agreement or any other Loan Documents other than the selection of the auditors and appraisers in connection with audit of, or appraisal of, any of the Collateral.

SECTION 10.13 Actions in Concert. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement (including exercising any rights of setoff) without first obtaining the prior written consent of the Administrative Agent or the Collateral Agent, as applicable, and the Required Lenders, it being the intent of the Lenders that any such action to protect or enforce rights under this Agreement shall be taken in concert and at the direction or with the consent of the Administrative Agent or the Collateral Agent, as applicable, or the Required Lenders and as provided in Section 8.01.

SECTION 10.14 Enforcement. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the Loan Documents against the Loan 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 or Collateral Agent, as applicable, or as the Required Lenders may require or otherwise direct the Administrative Agent or the Collateral Agent, as applicable, for the benefit of all Lenders and the Issuing Lender; *provided*, *however*, that the foregoing shall not prohibit (a) the Administrative Agent or the Collateral Agent, as applicable, from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent or Collateral Agent, as applicable) hereunder and under the other Loan Documents, (b) the Issuing Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Lender), (c) any Lender from exercising setoff rights in accordance with, and subject to, the terms of this Agreement, or (d) 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 Loan Party under any bankruptcy or insolvency law.

ARTICLE XI.
MISCELLANEOUS

SECTION 11.01 Notices. 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 fax, as follows:

(a) if to any Loan Party, to Borrower at:

Harry and David
c/o Alvarez & Marsal North America, LLC
100 Pine Street, 9th Floor
San Francisco, CA 74111
Attention: Kay Hong
Fax No.: (541) 864-2189

with a copy to:

Jones Day
77 West Wacker
Chicago, Illinois 60601-1692
Attention: Brad Erens
Fax No.: (312) 782-8585

(b) if to the Administrative Agent or the Administrative Collateral Agent, to it at:

UBS AG, Stamford Branch
677 Washington Boulevard
Stamford, Connecticut 06901
Attention: [**Vladimira Holeckova**]
Fax No.: [**(203) 719-3888**]

with a copy to the Collateral Agent as set forth in Section 11.01(c) below and, except with respect to communications under Sections 5.01 and 5.15, to:

Paul, Hastings, Janofsky & Walker, LLP
600 Peachtree Street, N.E., Suite 2400
Atlanta, Georgia 30308
Attention: Jesse H. Austin, III
Fax No.: (404) 815-2424

(c) if to the Collateral Agent, to it at:

Ally Commercial Finance LLC
1290 Avenue of the Americas
3rd Floor
New York, NY 10104
Attention: SFG Portfolio Manager
Fax No.: (212) 884-7693

with a copy to the Administrative Agent as set forth in Section 11.01(b) above and, except with respect to communications under Sections 5.01 and 5.15, to:

Paul, Hastings, Janofsky & Walker, LLP
600 Peachtree Street, N.E., Suite 2400
Atlanta, Georgia 30308
Attention: Jesse H. Austin, III
Fax No.: (404) 815-2424

(d) if to a Lender, to it at its address (or fax number) set forth on the applicable Administrative Questionnaire or in the Assignment and Acceptance pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or by certified or registered mail, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 11.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 11.01 and failure to deliver courtesy copies of notices and other communications shall in no event affect the validity or effectiveness of such notices and other communications.

(e) Electronic Communications. Notices, reports (including, without limitation, financial reports, budgets, and collateral reports) and other communications and required or requested deliveries to the Administrative Agent, Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites such as Intralinks) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Section 2.03 or 2.18 as, applicable, if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

SECTION 11.02 Waivers; Amendment.

(a) No failure or delay by the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 11.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent or Collateral Agent, as applicable, and the Loan Party or Loan Parties that are parties thereto, in each case with the written consent of the Required Lenders; provided that no such agreement shall (i) increase the Dollar amount of the Commitment of any Lender without the written consent of such Lender or increase the Commitments of all Lenders without the consent of each Lender, (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon (other than to waive default interest under Section 2.06(c) to the extent a waiver of the underlying default giving rise to such default interest does not require a vote of all Lenders), or reduce or forgive any Fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the maturity of any Loan, or the required date of reimbursement of any LC Disbursement, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment or postpone the scheduled date of expiration of any Letter of Credit beyond the Final Maturity Date, without the written consent of each Lender affected thereby, (iv) change Section 2.14(b) or (c) in a manner that would alter the *pro rata* sharing of payments or set-offs required thereby, without the written consent of each Lender, (v) change the percentage set forth in the definition of "Required Lenders," "Supermajority Lenders," or any other provision of any Loan Document (including this Section 11.02) specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (vi) release Holdings or any Subsidiary Guarantor from its Guarantee (except as expressly provided in Article VII), or limit its liability in respect of such Guarantee, without the written consent of each Lender, (vii) release all or substantially all of the Collateral from the Liens of the

Security Documents or alter the relative priorities of the Obligations entitled to the Liens of the Security Documents (except in connection with securing additional Obligations equally and ratably with the other Obligations and upon payment in full of the Obligations), in each case without the written consent of each Lender, or (viii) change any provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Class differently than those holding Loans of any other Class, without the written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each affected Class; provided, further, that (1) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Collateral Agent, the Administrative Collateral Agent, the Issuing Bank or the Swingline Lender without the prior written consent of the Administrative Agent, the Collateral Agent, the Administrative Collateral Agent, the Issuing Bank or the Swingline Lender, as the case may be, (2) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of the Revolving Lenders may be effected by an agreement or agreements in writing entered into by Borrower and requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 11.02(b) if such Class of Lenders were the only Class of Lenders hereunder at the time and (3) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except to the extent the consent of all Lenders would otherwise be required under this Section 11.02(b). Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by Borrower, the Required Lenders and the Administrative Agent (and, if their rights or obligations are affected thereby, the Issuing Bank, the Collateral Agent, the Administrative Collateral Agent and the Swingline Lender) if (x) by the terms of such agreement the Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment and (y) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of its Loans, accrued interest thereon, accrued fees and all other amounts owing to it or accrued for its account under this Agreement (including, without limitation, all amounts Section 2.12, 2.13 and 2.15). In addition to the foregoing, in no event shall the percentage advance rates set forth in the definitions of "Borrowing Base", "Fixed Asset Loan Value", "Inventory Eligibility Factor" or "Net Orderly Liquidation Value" be increased above the original stated percentages set forth in such definitions without the consent of the Supermajority Lenders.

(c) If, in connection with any proposed change, waiver, discharge or termination of the provisions of this Agreement that requires unanimous approval of all Lenders as contemplated by Section 11.02(b) (other than clause (iii) of such Section), the consent of the Supermajority Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then Borrower shall have the right to replace all, but not less than all, of such non-consenting Lender or Lenders (so long as all non-consenting Lenders are so replaced) with one or more Persons pursuant to Section 2.16 so long as at the time of such replacement each such new Lender consents to the proposed change, waiver, discharge or termination; provided, however, that Borrower shall not have the right to replace a Lender solely as a result of the exercise of such

Lender's rights (and the withholding of any required consent by such Lender) pursuant to paragraph (iii) of Section 11.02(b); provided further that each replaced Lender receives payment in full of the principal of and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement. Each Lender agrees that, if Borrower elects to replace such Lender in accordance with this Section, it shall promptly execute and deliver to the Administrative Agent an Assignment and Acceptance to evidence such sale and purchase and shall deliver to the Administrative Agent any Note (if Notes have been issued in respect of such Lender's Loans) subject to such Assignment and Acceptance; *provided* that the failure of any such non-consenting Lender to execute an Assignment and Acceptance shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register.

SECTION 11.03 Expenses; Indemnity.

(a) Borrower and Holdings agree, jointly and severally, to pay all reasonable out-of-pocket expenses (including but not limited to expenses incurred in connection with due diligence and travel, courier, reproduction, printing and delivery expenses) incurred by the Agents, the Swingline Lender and the Issuing Bank in connection with the syndication of the credit facilities provided for herein and the preparation, execution and delivery, and administration of this Agreement and the other Loan Documents, including any Inventory Appraisal, or in connection with any amendment, amendment and restatement, modification, enforcement costs, work-out costs, documentary taxes or waiver of the provisions hereof or thereof (whether or not the transactions hereby or thereby contemplated shall be consummated) or incurred by the Agents or any Lender in connection with the work-out enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Loans made or Letters of Credit issued hereunder, including the reasonable fees, charges and disbursements of Latham & Watkins LLP, counsel for the Administrative Agent and the Collateral Agent, and, in connection with any such enforcement or protection, or work-out, the fees, charges and disbursements of any other counsel for the Agents or any Lender; provided that in the case of reimbursement of counsel for Agents, such reimbursement shall be limited to one counsel selected by the Administrative Agent for all such Agents.

(b) The Loan Parties agree, jointly and severally, to indemnify the Agents, each Lender, the Issuing Bank and the Swingline Lender, each Affiliate of any of the foregoing Persons and each of their respective directors, officers, trustees, employees and agents (each such Person being called an "**Indemnitee**") against, and to hold each Indemnitee harmless from, all reasonable out-of-pocket costs and any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges, expenses and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof, (ii) the Transactions, (iii) any actual or proposed use of the proceeds of the Loans or issuance of Letters of Credit, (iv) any claim, litigation, investigation or proceeding relating to any of

the foregoing, whether or not any Indemnitee is a party thereto, or (v) any actual or alleged presence or Release or threatened Release of Hazardous Materials, on, under or from any Property owned, leased or operated by any Company, or any Environmental Claim related in any way to any Company; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) The provisions of this Section 11.03 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Agents, the Issuing Bank or any Lender. All amounts due under this Section 11.03 shall be payable within ten (10) Business Days after written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(d) To the extent that Borrower fails to pay any amount required to be paid by it to the Agents, the Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section 11.03, each Lender severally agrees to pay to the Agents, the Issuing Bank or the Swingline Lender, 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) of such unpaid amount; provided that (i) the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against any of the Agents, the Issuing Bank or the Swingline Lender in its capacity as such and (ii) such indemnity for the Swingline Lender or the Issuing Bank shall not include losses incurred by the Swingline Lender or the Issuing Bank due to one or more Lenders defaulting in their obligations to purchase participations of Swingline Exposure under Section 2.17(d) or LC Exposure under Section 2.18(d) or to make Revolving Loans under Section 2.18(e) (it being understood that this proviso shall not affect the Swingline Lender's or the Issuing Bank's rights against any Defaulting Lender). For purposes hereof, a Lender's "*pro rata* share" shall be determined based upon its share of the sum of the total Revolving Exposure and unused Commitments at the time.

SECTION 11.04 Successors and Assigns.

(a) 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 (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that no Company may assign or otherwise transfer any of its rights or obligations hereunder (except as permitted by Section 6.05(o)) without the prior written consent of each Lender (and any attempted assignment or transfer by Borrower without such consent 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 (including any Affiliate of the Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, the Affiliates of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more banks, insurance companies, investment companies or funds or other institutions (other than Borrower, Holdings or any Affiliate or Subsidiary thereof) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (i) except in the case of an assignment to a Lender, an Affiliate of a Lender or a Lender Affiliate, Borrower (except (i) after the occurrence and during the continuation of a Default or Event of Default or (ii) prior to the completion of the primary syndication (as determined by Arranger) of the Commitments and the Loans by the Arranger) and the Administrative Agent (and, in the case of an assignment of all or a portion of a Revolving Commitment or any Lender's obligations in respect of its LC Exposure or Swingline Exposure, the Issuing Bank and the Swingline Lender) must give its prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed), (ii) except in the case of an assignment to a Lender, an Affiliate of a Lender or a Lender Affiliate, any assignment made in connection with the primary syndication of the Commitment and Loans by the Arranger or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5.0 million unless each of Borrower and the Administrative Agent otherwise consent, (iii) 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, except that this clause (iii) shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans, (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500, and (v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and provided, further that any consent of Borrower otherwise required under this paragraph shall not be required if a Default or an Event of Default has occurred and is continuing. Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section 11.04, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement (provided that any liability of Borrower to, or in respect of, such assignee under Section 2.12, 2.13 or 2.15 shall be limited to the amount, if any, that would have been payable thereunder by Borrower in the absence of such assignment, except to the extent any such amounts are attributable to a Change in Law occurring after the date of such assignment), and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's

rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.15 and 11.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph 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 paragraph (e) of this Section 11.04.

(c) The Administrative Agent, acting for this purpose as an agent of Borrower, shall maintain at one of its offices in The City of New York a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive in the absence of manifest error, and Borrower, the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower, the Issuing Bank, the Collateral Agent, the Swingline Lender and any Lender (with respect to its own interest only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 11.04 and any written consent to such assignment required by paragraph (b) of this Section 11.04, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Any Lender may, without the consent of Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and 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) Borrower, the Administrative Agent, the Collateral Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.02(b) that affects such Participant. Subject to paragraph (f) of this

Section 11.04, Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.15 to the same extent as if it were a Lender (subject to the requirements of such sections) and had acquired its interest by assignment pursuant to paragraph (b) of this Section 11.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.14(e) as though it were a Lender. Each Lender shall, acting for this purpose as an agent of the Borrower, maintain at one of its offices a register for the recordation of the names and addresses of its Participants, and the amount and terms of its participations, provided that no Lender shall be required to disclose or share the information contained in such register with the Borrower or any other party, except as required by applicable law. Notwithstanding anything in this paragraph to the contrary, any bank that is a member of the Farm Credit System that (i) has purchased a participation in the minimum amount of $1.0 million on or after the Closing Date, (ii) is, by written notice to the Borrower and the Administrative Agent ("**Voting Participant Notification**"), designated by the selling Lender as being entitled to be accorded the rights of a Voting Participant hereunder (any bank that is a member of the Farm Credit System so designated being called a "**Voting Participant**") and (iii) receives the prior written consent of the Borrower and the Administrative Agent to become a Voting Participant, shall be entitled to vote (and the voting rights of the selling Lender shall be correspondingly reduced), on a dollar for dollar basis, as if such participant were a Lender, on any matter requiring or allowing a Lender to provide or withhold its consent, or to otherwise vote on any proposed action. To be effective, each Voting Participant Notification shall, with respect to any Voting Participant, (x) contain the information required in an Administrative Questionnaire and (y) state the dollar amount of the participation purchased. The Borrower and the Administrative Agent shall be entitled to conclusively rely on information contained in notices delivered pursuant to this paragraph.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.12, 2.13 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the prior written consent of Borrower (which consent shall not be unreasonably withheld or delayed). A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.15 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with all of the requirements of Sections 2.15 and 2.16 as though it were a Foreign Lender.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 11.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. In the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of Borrower or the Administrative Agent, collaterally assign or pledge all or any portion of its rights under this Agreement,

including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities; provided that the documentation governing or evidencing such collateral assignment or pledge shall provide that any foreclosure or similar action by such trustee or representative shall be subject to the provisions of this Section 11.04 concerning assignments and shall not be effective to transfer any rights under this Agreement or in any Loan, Note or other instrument evidencing its rights as a Lender under this Agreement unless the requirements of Section 11.04 concerning assignments are fully satisfied.

(h) Notwithstanding any provision to the contrary, any Lender (an "**Assigning Lender**") may assign to one or more of its Affiliates that is a special purpose funding vehicle (each, an "**SPV**") all or any portion of its funded Loans (without the corresponding Commitment), without the consent of any Person or the payment of a fee, by execution of a written assignment agreement in a form agreed to by such Assigning Lender and such SPV, and may grant any such SPV the option, in such SPV's sole discretion, to provide the Borrower all or any part of any Loans that such Assigning Lender would otherwise be obligated to make pursuant to this Agreement. After notice to the Administrative Agent of such assignment as set forth below, such SPVs shall have all the rights which a Lender making or holding such Loans would have under this Agreement, but no obligations. The Assigning Lender shall remain liable for all its original obligations under this Agreement, including its Commitment (although such Commitment shall be reduced by the principal amount of any Loans held by an SPV). Notwithstanding such assignment, the Administrative Agent and Borrower may deliver notices to the Assigning Lender (as agent for the SPV) and not separately to the SPV unless the Administrative Agent and Borrower are requested in writing by the SPV (or its agent) to deliver such notices separately to it. The Borrower shall, at the request of any Assigning Lender, execute and deliver to such Person as such Assigning Lender may designate, a Note in the amount of such Assigning Lender's original Note to evidence the Loans of such Assigning Lender and related SPV. The Assigning Lender shall provide the Administrative Agent with written notice of any such assignment promptly after the occurrence thereof.

SECTION 11.05 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.12, 2.13, 2.15 and 11.03 and Article X shall survive and remain in full force and effect regardless of the consummation of the

transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 11.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and the Fee Letter constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by fax shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 11.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates are hereby authorized (notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion to, hearing before, or order from, the Bankruptcy Court), but subject in all cases to the provisions of the Financing Orders) at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, but excluding trust accounts) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of Borrower against any of and all the obligations of Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. Notwithstanding the foregoing, no Lender shall exercise any right of set-off, banker's lien, or the like against any deposit account or property of the Borrower held or maintained by such Lender without the prior written unanimous consent of the Lenders.

SECTION 11.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its Property, to the exclusive jurisdiction of the Bankruptcy Court; provided, that each party hereto acknowledges that any appeals from the Bankruptcy Court may have to be heard by a court other than the Bankruptcy Court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section 11.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 11.10 Waiver of Jury Trial. Each party hereto hereby 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, any other Loan Document or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party 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 by, among other things, the mutual waivers and certifications in this Section 11.10.

SECTION 11.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 11.12 Confidentiality. Each of the Administrative Agent, the Collateral Agent, the Administrative Collateral Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates or its Lender Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential pursuant to the terms hereof), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this

Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 11.12, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and their obligations, (g) with the consent of Borrower or (h) to the extent such Information (i) is publicly available at the time of disclosure or becomes publicly available other than as a result of a breach of this Section 11.12 or (ii) becomes available to the Administrative Agent, the Collateral Agent, the Administrative Collateral Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than Borrower or any Subsidiary. For the purposes of this Section 11.12, "Information" means all information received from Borrower or any Subsidiary relating to Borrower or any Subsidiary or its business, other than any such information that is available to the Administrative Agent, the Collateral Agent, the Administrative Collateral Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by Borrower or any Subsidiary; provided that, in the case of information received from Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 11.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. The confidentiality provisions contained in this Agreement shall not prohibit disclosures to any trustee, administrator, collateral manager, servicer, backup servicer, lender, rating agency or secured party of any SPV in connection with the evaluation, administration, servicing of, or the reporting on, the assets or securitization activities of such SPV (it being understood, however, that any such Persons to whom such disclosure is made will be informed of the confidential nature of any Information so disclosed and instructed to keep such Information confidential pursuant to the terms hereof).

SECTION 11.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively, the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 11.13 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 11.14 USA Patriot Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**"), it is required to obtain, verify

and record information that identifies Borrower, which information includes the name, address and tax identification number of Borrower and other information regarding Borrower that will allow such Lender or the Administrative Agent, as applicable, to identify Borrower in accordance with the Act. This notice is given in accordance with the requirements of the Act and is effective as to the Lenders and the Administrative Agent.

SECTION 11.15 Parties including the Trustees; Bankruptcy Court Proceedings. This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Loan Party, the bankruptcy estate of each Loan Party, and any trustee, other bankruptcy estate representative or any successor-in-interest of any Loan Party in the Chapter 11 Cases or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of Agents and Lenders and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Cases or any other bankruptcy case of any Loan Party to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Cases or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Administrative Agent file financing statements or otherwise perfect its Liens under applicable law. No Loan Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of Agents and Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Loan Party without the prior express written consent of Agents and Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Loan Party, Agents and Lenders with respect to the transactions contemplated hereby and no person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

[Signature Pages Follow]

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

HARRY AND DAVID

By:_____
Name:
Title:

HARRY & DAVID OPERATIONS, INC.

By:_____
Name:
Title:

BEAR CREEK ORCHARDS, INC.

By:_____
Name:
Title:

HARRY & DAVID HOLDINGS, INC.

By:_____
Name:
Title:

UBS AG, STAMFORD BRANCH, as a Lender, Issuing Bank, Administrative Agent and Administrative Collateral Agent

By:_____
Name:
Title:

By:_____
Name:
Title:

UBS LOAN FINANCE LLC, as Swingline Lender

By:_____
Name:
Title:

By:_____
Name:
Title:

ALLY COMMERCIAL FINANCE LLC, as a Lender and Collateral Agent

By:_____

Name:

Title:

EXHIBIT B

DIP INTERCREDITOR AGREEMENT

INTERCREDITOR AND SUBORDINATION AGREEMENT

This **INTERCREDITOR AND SUBORDINATION AGREEMENT** is dated as of March ___, 2011, and entered into by and between **UBS AG, STAMFORD BRANCH** ("**UBS AG**"), in its capacity as administrative collateral agent and as administrative agent under the First Lien Loan Documents (as defined below) (including its successors and assigns in such capacity from time to time, "**First Lien Administrative Agent**"), **ALLY COMMERCIAL FINANCE LLC** ("**Ally**"), in its capacity as collateral agent under the First Lien Loan Documents (including its successors and assigns in such capacity from time to time, "**First Lien Collateral Agent**"; and together with the First Lien Administrative Agent, individually and collectively, the "**First Lien Agents**"), and **WILMINGTON TRUST FSB**, in its capacity as administrative agent under the Second Lien Note Documents (as defined herein) (including its successors and assigns in such capacity from time to time, "**Second Lien Agent**").

RECITALS

HARRY & DAVID HOLDINGS, INC., a Delaware corporation and a debtor-in-possession ("**Parent**"), **HARRY AND DAVID**, an Oregon corporation and a debtor-in-possession ("**Borrower**"), the other Guarantors (as defined below) party thereto, the lenders party thereto, **UBS SECURITIES LLC**, as lead arranger, **UBS LOAN FINANCE LLC**, as a lender and as swingline lender, UBS AG, as issuing bank, Ally, as documentation agent, and the First Lien Agents have entered into that certain Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of the date hereof providing for a revolving credit facility (the "**First Lien Credit Agreement**");

Borrower, the Guarantors party thereto, the note purchasers party thereto (the "**Second Lien Purchasers**"), and Second Lien Agent, have entered into that certain Junior Secured, Super-Priority Debtor-In-Possession Note Purchase Agreement, dated as of the date hereof providing the issuance of floating rate term notes (the "**Second Lien Note Purchase Agreement**");

Pursuant to (i) the terms of the First Lien Credit Agreement, Parent and certain of Borrower's Subsidiaries (Parent and such Subsidiaries, each, a "**Guarantor**" and collectively, jointly and severally, "**Guarantors**") have guaranteed the Obligations (as defined in the First Lien Credit Agreement); and (ii) the terms of the First Lien Note Purchase Agreement, Guarantors have guaranteed the Obligations (as defined in the Second Lien Note Purchase Agreement);

The obligations of Borrower and Guarantors under the First Lien Credit Agreement are to be secured on a first priority basis by liens on substantially all the assets of Borrower and Guarantors;

The obligations of Borrower and Guarantors under the Second Lien Note Purchase Agreement are to be secured on a second priority basis by liens on substantially all the assets of Borrower and Guarantors;

The First Lien Loan Documents and the Second Lien Note Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral and certain other matters; and

One of the conditions precedent to the initial extension of credit under the First Lien Credit Agreement is that (1) the First Lien Obligations (as defined herein) be senior and prior in right of payment to the Second Lien Obligations (as defined herein) as set forth in this Agreement, and (2) the priority of the First Lien Claimholders' security interests in and liens on the Collateral (as defined herein) be senior and prior to the Second Lien Claimholders' security interests in and liens on the Collateral as set forth in this Agreement; and

The Second Agent and the other Second Lien Claimholders have agreed to (1) the subordination of the Second Lien Obligations (as defined herein) to the First Lien Obligations (as defined herein) upon the terms and subject to the conditions set forth in this Agreement, and (2) the subordination of their Liens to the Liens of each of the First Lien Claimholders upon the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. Definitions.

1.1 Defined Terms. As used in the Agreement, the following terms shall have the following meanings:

"**Agreement**" means this Intercreditor and Subordination Agreement.

"**Ally**" has the meaning set forth in the preamble to this Agreement.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware.

"**Bankruptcy Law**" means the Bankruptcy Code and any other federal, state, or foreign law for the relief of debtors.

"**Blockage Period**" means a Non-Payment Blockage Period or a Payment Blockage Period.

"**Borrower**" has the meaning set forth in the recitals to this Agreement.

"**Business Day**" means any day other than a Saturday, Sunday, or day on which banks in New York City are authorized or required by law to close.

"**Chapter 11 Cases**" means, individually and collectively, Chapter 11 Case Nos. 11-[____] through 11-[____] as administratively consolidated at Chapter 11 Case No. 11-[____], commenced by Parent, Borrower and some or all of the other Guarantors by filing separate petitions for reorganization under Bankruptcy Code with the Bankruptcy Court.

"Claim Standstill Notice" means a written notice from Second Lien Agent to First Lien Administrative Agent pursuant to which First Lien Administrative Agent is notified that an Event of Default has occurred and is continuing under the Second Lien Note Documents and specifically designating such notice as a "Claim Standstill Notice".

"Claim Standstill Period" means the period from and including the date of receipt by First Lien Administrative Agent of a Claim Standstill Notice until the earliest to occur of (a) the 90th day after receipt by Second Lien Agent of such Claim Standstill Notice, (b) the date on which the Event of Default under the Second Lien Loan Documents that gave rise to such Claim Standstill Period shall have been cured or waived in writing by the requisite Second Lien Claimholders, (c) the date of acceleration of the First Lien Obligations, (d) the date that there shall exist no First Lien Credit Exposure, and (e) the Discharge of First Lien Obligations.

"Claimholders" means First Lien Claimholders and Second Lien Claimholders.

"**Collateral**" means all of the assets and property of any Obligor, whether real, personal or mixed, constituting First Lien Collateral or Second Lien Collateral. For the avoidance of doubt, the Second Lien Funding Account shall not constitute Collateral for purposes of this Agreement.

"**Collection Action**" means (a) to ask for in writing, demand in writing, or sue for any payment or Distribution in respect of the Second Lien Obligations or (b) the exercise of any other remedy in respect of the Second Lien Obligations.

"**Control Collateral**" means any Collateral consisting of a certificated security (as defined in the UCC), investment property (as defined in the UCC), a deposit account (as defined in the UCC), and any other Collateral as to which a Lien may be perfected through physical possession or control by the secured party, or any agent therefor.

"**Discharge of First Lien Obligations**" means, except to the extent otherwise expressly provided in Section 5.5:

(a) payment in full in cash of the First Lien Obligations (other than (i) unasserted contingent indemnification Obligations for which no claim is known or determinable and (ii) outstanding Letters of Credit);

(b) termination or expiration of all commitments, if any, to extend credit that would constitute First Lien Obligations; and

(c) termination or cash collateralization (in an amount and in a manner reasonably satisfactory to First Lien Administrative Agent, but in no event greater than 105% of the aggregate undrawn face amount thereof) of all outstanding Letters of Credit.

"**Disposition**" or "**Dispose**" means, with respect to any asset, the sale, assignment, transfer, license, lease (as lessor), or other disposition (including any sale and leaseback transaction) of such asset by any Person (or the granting of any option or other right to do any of the foregoing).

"**Distribution**" means any payment or distribution by any Person of assets of any kind or character (whether in cash, securities, assets, by set-off, recoupment, or otherwise and including by purchase redemption or other acquisition).

"**Equity Interest**" means, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on the date hereof or issued thereafter, but excluding debt securities convertible or exchangeable into such equity.

"**Exercise any Secured Creditor Remedies**" or "**Exercise of Secured Creditor Remedies"** means:

(a) the taking of any action to enforce or realize upon any Lien in respect of the Collateral, including the institution of any foreclosure proceedings, the noticing of any public or private sale or other disposition pursuant to Article 9 of the UCC, or any attempt to vacate or obtain relief from a stay or other injunction restricting any other action described in this definition;

(b) the exercise of any right or remedy in respect of Collateral provided to a secured creditor under the First Lien Loan Documents or the Second Lien Note Documents (including, in either case, any delivery of any notice to otherwise seek to obtain payment directly from any account debtor of any Obligor or the taking of any action or the exercise of any right or remedy in respect of the setoff or recoupment against the Collateral or proceeds of Collateral), under applicable law, at equity, in an Insolvency Proceeding or otherwise, including the acceptance of Collateral in full or partial satisfaction of a Lien;

(c) the sale, assignment, transfer, lease, license, or other Disposition of all or any portion of the Collateral, by private or public sale or any other means;

(d) the solicitation of bids from third parties to conduct the liquidation of all or a material portion of Collateral;

(e) the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third parties for the purposes of valuing, marketing, or Disposing of, all or a material portion of the Collateral;

(f) the exercise of any other enforcement right relating to the Collateral (including the exercise of any voting rights relating to any capital stock composing a portion of the Collateral) whether under the First Lien Loan Documents, the Second Lien Note Documents, under applicable law of any jurisdiction, in equity, in an Insolvency Proceeding, or otherwise; or

(h) the pursuit of First Lien Default Dispositions.

"**First Lien Administrative Agent**" has the meaning set forth in the preamble to this Agreement.

"**First Lien Agents**" has the meaning set forth in the preamble to this Agreement.

"**First Lien Cap Amount**" means $100,000,000.

"**First Lien Collateral Agent**" has the meaning set forth in the preamble to this Agreement.

"**First Lien Claimholders**" means, at any relevant time, the holders of First Lien Obligations at that time, including First Lien Lenders, First Lien Agents and the other First Lien Secured Parties.

"**First Lien Collateral**" means all of the assets and property of any Obligor, whether real, personal or mixed, whether now owned or hereafter acquired, with respect to which a Lien is granted or purported to be granted as security for any First Lien Obligation, whether pursuant to the First Lien Loan Documents or pursuant to an order of the Bankruptcy Court entered in the Chapter 11 Cases, and shall in any event (a) include the First Lien Mortgaged Real Property and (b) not include the Second Lien Funding Account.

"**First Lien Collateral Documents**" means the Security Agreement (as defined in the First Lien Credit Agreement) and any other agreement, document, or instrument pursuant to which a Lien is granted or purported to be granted securing any First Lien Obligation or under which rights or remedies with respect to such Liens are governed.

"**First Lien Credit Agreement**" has the meaning set forth in the recitals to this Agreement.

"**First Lien Credit Exposure**" shall exist at any time that there are any loans outstanding under the First Lien Loan Documents or any outstanding Letters of Credit, provided that any outstanding undrawn Letters of Credit which have been fully cash collateralized (in an amount reasonably satisfactory to First Lien Administrative Agent, but in no event greater than 105% of the aggregate undrawn amount thereof) shall not constitute outstanding Letters of Credit for purposes of determining whether there shall exist any First Lien Credit Exposure.

"**First Lien Default**" means any "Event of Default", as such term is defined in any First Lien Loan Document.

"**First Lien Default Disposition**" has the meaning set forth in Section 5.1(d).

"**First Lien Lenders**" means the "Lenders" as defined in the First Lien Credit Agreement.

"**First Lien Loan Documents**" means the First Lien Collateral Documents, the First Lien Credit Agreement, and each of the other Loan Documents (as defined in the First Lien Credit Agreement).

"**First Lien Mortgaged Real Property**" means the "Mortgaged Real Property" as defined in the First Lien Credit Agreement.

"**First Lien Obligations**" means all "Obligations" as defined in the First Lien Credit Agreement and all other present and future obligations (contingent or otherwise) and all amounts owing, due, or secured under the terms of the First Lien Credit Agreement or any other First Lien Loan Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys fees, costs, charges, expenses, reimbursement obligations, obligations to post cash collateral in respect of Letters of Credit or indemnities in respect thereof, any other indemnities or guarantees, and all other amounts payable under or secured by any First Lien Loan Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Obligor, or that would have accrued or become due under the terms of the First Lien Loan Documents but for the effect of the Insolvency Proceeding and irrespective of whether a claim for all or any portion of such amounts is allowable or allowed in such Insolvency Proceeding), and any and all claims of either First Lien Agent or any First Lien Claimholder arising under or granted by any order entered in the Chapter 11 Cases authorizing any of the Obligors to obtain financing under the First Lien Credit Agreement (the "**First Lien Financing Orders**"), including, without limitation, any superpriority administrative claims granted to either First Lien Agent, on behalf of the First Lien Claimholders Lenders, pursuant to such First Lien Financing Orders, on the terms of this Agreement and whether or not such claims are deemed allowed or recoverable in any Insolvency Proceeding, and payment of or for adequate protection pursuant to any Insolvency Proceeding). The foregoing to the contrary notwithstanding, if the sum of: (i) the principal amount of loans outstanding under the First Lien Credit Agreement; plus (ii) the undrawn amount of all outstanding Letters of Credit is in excess of the First Lien Cap Amount, then that portion of the principal amount of loans and undrawn amount of outstanding Letters of Credit in excess of the First Lien Cap Amount, plus the portion of interest and fees that accrue on account of such portion of the loans and Letters of Credit, shall be excluded from the First Lien Obligations.

"**First Lien Secured Parties**" means the "Secured Parties" as defined in the First Lien Credit Agreement.

"**GAAP**" means generally accepted accounting principles in the United States applied on a consistent basis.

"**Governmental Authority**" means any federal, state, local or foreign court, central bank or governmental agency, authority, instrumentality or regulatory body.

"**Guarantor**" and "**Guarantors**" have the respective meanings set forth in the recitals to this Agreement.

"Insolvency Proceeding" means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Obligor;

(b) any other voluntary or involuntary insolvency or bankruptcy case or proceeding, or any receivership, liquidation or other similar case or proceeding with respect to any Obligor or with respect to a material portion of its assets;

(c) any liquidation, dissolution, reorganization, or winding up of any Obligor whether voluntary or involuntary, whether or not under a court's jurisdiction or supervision and whether or not involving insolvency or bankruptcy; or

(d) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Obligor.

"Letter of Credit" means a "Letter of Credit," as that term is defined in the First Lien Credit Agreement.

"**Lien**" means, with respect to any Property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind, any other type of preferential arrangement having the practical effect of any of the foregoing in respect of such Property or any filing of any financing statement under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law (including, without limitation, by an order of the Bankruptcy Court), and any agreement to give any of the foregoing; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such Property; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Non-Payment Blockage Period**" means the period from and including the date of receipt by Second Lien Agent of a Non-Payment Default Notice until the earliest to occur of (a) the 90th day after receipt by Second Lien Agent of such Non-Payment Default Notice, (b) the date on which such Non-Payment Default Event is no longer continuing or has been waived in writing by the requisite First Lien Claimholders in accordance with the terms of the First Lien Loan Documents, (c) the date that there shall exist no First Lien Credit Exposure, or (d) the Discharge of First Lien Obligations.

"**Non-Payment Default Event**" has the meaning specified in Section 2.1.

"**Non-Payment Default Notice**" means a written notice from First Lien Administrative Agent to Second Lien Agent pursuant to which Second Lien Agent is notified that a Non-Payment Event of Default has occurred and is continuing under the First Lien Loan Documents and specifically designating such notice as a "Non-Payment Default Notice."

"**Obligors**" means Borrower and Guarantors, and each other Person that may from time to time execute and deliver a First Lien Loan Document or a Second Lien Note Document as a "debtor", "borrower", "guarantor", "obligor", "grantor", or "pledgor" (or the equivalent of any thereof), and "**Obligor**" means any one of them.

"Parent" has the meaning set forth in the recitals to this Agreement.

"**Payment Blockage Period**" means, with respect to any Payment Default Event, the period from and including the date of the occurrence of the Payment Default Event until the earlier of (a) the date on which such Payment Default Event is no longer continuing or has been waived in writing by the requisite First Lien Claimholders in accordance with the terms of the First Lien Loan Documents, (b) the date that there shall exist no First Lien Credit Exposure, or (c) the Discharge of First Lien Obligations.

"**Payment Default Event**" has the meaning specified in Section 2.1.

"**Permitted Second Lien Expense Reimbursement**" means the reimbursement of fees, costs and expenses due and owing to counsel, financial advisors and other professionals engaged by the Second Lien Claimholders in accordance with the terms of the Second Lien Note Documents (as in effect on the date hereof) and materially consistent with the 13-Week Budget (as defined in the First Lien Credit Agreement as in effect on the date hereof).

"**Permitted Second Lien Payments**" means (a) regularly scheduled payments of cash interest due on the Second Lien Obligations pursuant to the Second Lien Note Documents, (b) any payment in kind of interest on the Second Lien Obligations by the issuance of additional Second Lien Obligations in the amount of any accrued but unpaid interest, (c) reimbursement of out-of-pocket costs and expenses due and owing to any Second Lien Claimholder in accordance with the terms of the Second Lien Note Documents, and (d) payment when due of administration fees or closing fees payable to any Second Lien Claimholder pursuant to the terms of the Second Lien Note Documents (as in effect on the date hereof); provided, in the case of each of clauses (a), (b), (c) and (d), (i) only if such payments are payments made in accordance with the terms of the Second Lien Note Documents and (ii) only if such payments (to the extent made prior to the Discharge of First Lien Obligations) are not made from Proceeds of any Collateral arising from the Exercise of Secured Creditor Remedies or otherwise in violation of the terms of this Agreement.

"**person**" and "**Person**" shall mean any natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority, or other entity.

"**Plan Support Agreement**" means that certain Support Agreement, dated as of March [27], 2011, among Parent and its subsidiaries, and each of the Principal Holders (as

defined therein) party thereto, a copy of which has been delivered to First Lien Agents prior to the date hereof.

"**Property**" means any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any Person and whether now in existence or owned or hereafter entered into or acquired, including, without limitation, all Real Property

"**Purchase Notice**" has the meaning set forth in [Section 5.6(a).]

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

"**Recovery**" has the meaning set forth in Section 6.8.

"**Refinance**" means, in respect of any indebtedness, to refinance, extend, renew, defease, supplement, restructure, replace, refund or repay, or to issue other indebtedness in exchange or replacement for such indebtedness, in whole or in part, whether with the same or different lenders, arrangers and/or agents. "**Refinanced**" and "**Refinancing**" shall have correlative meanings.

"**Reorganization Securities**" means any equity securities of any Obligor or any other Person, which securities are provided for by a plan of reorganization of such Obligor, which plan has been adopted pursuant to a proceeding under the Bankruptcy Code and confirmed or approved by the Bankruptcy Court, provided that such equity securities shall not provide for mandatory redemption or mandatory dividend payments on or prior to the Discharge of First Lien Obligations.

"**Second Lien Agent**" has the meaning set forth in the preamble to this Agreement.

"**Second Lien Claimholders**" means, at any relevant time, the holders of Second Lien Obligations at that time, including Second Lien Lenders and Second Lien Agent.

"**Second Lien Collateral**" means all of the assets and property of any Obligor, whether real, personal, or mixed, whether now owned or hereafter acquired, with respect to which a Lien is granted or purported to be granted as security for any Second Lien Obligations, whether pursuant to the Second Lien Note Documents or pursuant to an order of the Bankruptcy Court entered in the Chapter 11 Cases.

"**Second Lien Collateral Documents**" means the Second Lien Note Purchase Agreement and any other agreement, document, or instrument pursuant to which a Lien is

granted securing any Second Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"**Second Lien Default**" means any "Event of Default" as such term is defined in any Second Lien Note Document.

"**Second Lien Funding Account**" means that certain deposit account of Borrower maintained at KeyBank National Association having account number 379681065148, which contains proceeds of the notes issued pursuant to the Second Lien Note Purchase Agreement.

"**Second Lien Note Documents**" means the Second Lien Collateral Documents, the Second Lien Note Purchase Agreement, and each of the other Note Documents (as defined in the Second Lien Note Purchase Agreement).

"**Second Lien Note Purchase Agreement**" has the meaning set forth in the recitals to this Agreement.

"**Second Lien Obligations**" means all "Obligations" as defined in the Second Lien Note Purchase Agreement and all present and future obligations (contingent or otherwise) and all amounts owing, due, or secured under the terms of the Second Lien Note Purchase Agreement or any other Second Lien Note Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys fees, costs, charges, expenses, reimbursement obligations, indemnities, guarantees, and all other amounts payable under or secured by any Second Lien Note Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Obligor, or that would have accrued or become due under the terms of the Second Lien Note Documents but for the effect of the Insolvency Proceeding and irrespective of whether a claim for all or any portion of such amounts is allowable or allowed in such Insolvency Proceeding).

"**Second Lien Purchasers**" has the meaning set forth in the preamble to this Agreement.

"**Standstill Notice**" means a written notice from Second Lien Agent to First Lien Administrative Agent stating that a Second Lien Default has occurred and is continuing and, as a result thereof, Second Lien Agent has accelerated the payment of the Second Lien Obligations.

"**Standstill Period**" means the period from and including the date of receipt by First Lien Administrative Agent of the applicable Standstill Notice until the earliest to occur of (a) the 90th day after receipt by First Lien Administrative Agent of such Standstill Notice, (b) the date that there shall exist no First Lien Credit Exposure, and (c) the Discharge of First Lien Obligations.

"**Subsidiary**" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other

entity of which securities or other ownership interests representing more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

"**Triggering Event**" means (i) the acceleration of any First Lien Obligations, (ii) delivery of notice by First Lien Administrative Agent to any Obligor regarding a proposed Exercise of Secured Creditor Remedies with respect to all or any portion of the Collateral (other than Collateral having *de minimis* value), (iii) the occurrence of a Second Lien Default under the terms of the Second Lien Note Documents, or (iv) the occurrence of a Payment Default Event.

"**UBS AG**" has the meaning set forth in the preamble to this Agreement.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

1.2 Construction. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." The term "or" shall be construed to have, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." Any initially capitalized term used in this Agreement and not defined in this Agreement shall have the meaning set forth in the First Lien Credit Agreement. Unless the context requires otherwise:

(a) except as otherwise provided herein, any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(b) any reference to any agreement, instrument, or other document herein "as in effect on the date hereof" shall be construed as referring to such agreement, instrument, or other document without giving effect to any amendment, restatement, supplement, modification, or Refinance after the date hereof;

(c) any definition of or reference to First Lien Obligations or the Second Lien Obligations herein shall be construed as referring to the First Lien Obligations or the Second Lien Obligations (as applicable) as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced, in each case, in accordance with the terms of this Agreement;

(d) any reference herein to any person shall be construed to include such person's successors and assigns;

(e) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(f) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(g) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

SECTION 2. Payment Subordination; Lien Priorities.

2.1 Payment Subordination.

(a) Subordination. All Second Lien Obligations shall be subordinated and junior in right of payment, priority, collection, and in all other respects to all of the First Lien Obligations, to the extent and in the manner set forth in this Agreement. Unless and until the Discharge of First Lien Obligations has occurred, no Second Lien Claimholder shall accept, demand (including by any means of legal action), take, or receive, directly or indirectly, any Distribution (whether in cash, securities, assets, by set-off, recoupment, or otherwise and including by purchase, redemption or other acquisition) from any Obligor or any other Person on account of all or any part of the Second Lien Obligations, except as set forth in Section 2.1(b).

(b) Permitted Payments. Borrower may pay, and the Second Lien Claimholders may accept and receive, on account of the Second Lien Obligations, (i) payments due in respect of any Special Redemption Amount (as defined in the Second Lien Note Purchase Agreement as in effect on the date hereof) required to be paid in accordance with the terms of the Second Lien Note Documents to the extent such payments are funded solely from the proceeds of the issuance of additional floating rate term notes under the Second Lien Note Purchase Agreement on the Final Issuance Date (as defined in the Second Lien Note Purchase Agreement as in effect on the date hereof), and (ii) Permitted Second Lien Payments (A) at any time that there shall exist no First Lien Credit Exposure and (B) at any other time so long as no Blockage Period is then in effect.

(c) Blockage Period.

(i) Payment Default Event. If any Obligor shall default in the payment of any First Lien Obligations when the same becomes due and payable which default constitutes an Event of Default under the First Lien Loan Documents, whether at maturity or at a date fixed for scheduled payment or by declaration or acceleration or otherwise (a "Payment Default Event"), then no Obligor shall make, and no Second Lien Claimholder shall accept, take or receive by payment or prepayment, directly or indirectly from any Obligor or any other Person any Distribution on account of any of the Second Lien Obligations during the Payment Blockage Period applicable to such Payment Default Event.

(ii) Non-Payment Default Event. If (i) an Event of Default (other than a Payment Default Event) shall have occurred and be continuing under any of the First Lien Loan Documents (a "Non-Payment Default Event"), and (ii) Second Lien Agent shall have received a Non-Payment Default Notice, then no Obligor shall make, and no Second Lien Claimholder shall accept, take or receive, by payment or prepayment, directly or indirectly from any Obligor or any other Person any Distribution on account of any of the Second Lien Obligations (other than any Permitted Second Lien Expense Reimbursement) during the Non-Payment Blockage Period applicable to such Non-Payment Default Event.

(iii) Limitation on Non-Payment Default Blockage Periods. The foregoing provisions of Section 2(c)(ii) to the contrary notwithstanding, (A) in no event shall a Non-Payment Blockage Period be in effect for more than 180 days in any 365 consecutive day period and (B) in no event may there be more than 2 Non-Payment Blockage Periods in any 365 consecutive day period. No Non-Payment Default Event that was the basis for any Non-Payment Blockage Period shall be, or be made, the basis for the commencement of a second Non-Payment Blockage Period unless such Non-Payment Default Event shall have been cured or waived for a period of not less than 60 consecutive days (it being acknowledged that any subsequent action or any breach of any financial covenants for a period ending after the commencement of such Non-Payment Blockage Period that, in either case, would give rise to a Non-Payment Default Event pursuant to any provisions under which a Non-Payment Default Event previously existed or was continuing shall constitute a new Non-Payment Default Event for this purpose).

(iv) Notwithstanding anything in this Section 2.1 or otherwise in this Agreement to the contrary, interest shall continue to accrue on the Second Lien Obligations pursuant to the Second Lien Note Documents notwithstanding the existence of a Blockage Period.

(d) Reorganization Securities. Notwithstanding anything to the contrary contained in this Section 2.1, no Obligor shall be prohibited from issuing, and no Second Lien Claimholder shall be prohibited from receiving, any Reorganization Securities.

2.2 Relative Priorities. Notwithstanding the date, time, method, manner, or order of grant, attachment, or perfection of any Liens securing the Second Lien Obligations granted or purported to be granted with respect to the Collateral or of any Liens securing the First Lien Obligations granted or purported to be granted with respect to the Collateral and notwithstanding any contrary provision of the UCC or any other applicable law or the Second Lien Note Documents or any defect or deficiencies in, the Liens securing the First Lien Obligations, or any other circumstance whatsoever:

(a) any Lien with respect to the Collateral securing any First Lien Obligations now or hereafter held by or on behalf of, or created for the benefit of, any First Lien Agent or any First Lien Claimholders or any agent or trustee therefore shall be senior in all respects and prior to any Lien with respect to the Collateral securing any Second Lien Obligations; and

(b) any Lien with respect to the Collateral securing any Second Lien Obligations now or hereafter held by or on behalf of, or created for the benefit of, Second Lien Agent, any Second Lien Claimholders or any agent or trustee therefor shall be junior and subordinate in all respects to all Liens with respect to the Collateral securing any First Lien Obligations.

Notwithstanding any failure by any First Lien Claimholder to perfect its security interests in the Collateral (to the extent any action is required for purposes of perfection) or any avoidance, invalidation or subordination by any third party or court of competent jurisdiction of the security interests in the Collateral granted to the First Lien Claimholders, the priority and rights as between the First Lien Claimholders and the Second Lien Claimholders with respect to the Collateral shall be as set forth herein.

2.3 Prohibition on Contesting Liens. Second Lien Agent, for itself and on behalf of each Second Lien Claimholder, and each First Lien Agent, for itself and on behalf of each First Lien Claimholder, agrees that it will not (and hereby waives any right to), directly or indirectly, contest, or support any other person in contesting, in any proceeding (including any Insolvency Proceeding), (a) the attachment, perfection, priority, validity, or enforceability of a Lien held by or on behalf of any First Lien Claimholders in the First Lien Collateral or by or on behalf of any Second Lien Claimholders in the Second Lien Collateral, as the case may be, (b) the priority, validity or enforceability of the First Lien Obligations or the Second Lien Obligations, including the allowability or priority of the First Lien Obligations or the Second Lien Obligations, as applicable, in any Insolvency Proceeding, or (c) the validity or enforceability of the provisions of this Agreement; provided, however that nothing in this Agreement shall be construed to prevent or impair the rights of either First Lien Agent, any First Lien Claimholder, Second Lien Agent, or any Second Lien Claimholder to enforce the terms of this Agreement, including the provisions of this Agreement relating to the priority of the Liens on the Collateral.

2.4 New Liens. So long as the Discharge of First Lien Obligations has not occurred, and whether or not any Insolvency Proceeding has been commenced by or against any Obligor, the parties hereto agree, subject to Section 6, that no Obligor shall:

(a) grant or permit any additional Liens on any asset or Property (other than the Second Lien Funding Account) to secure any Second Lien Obligation unless such Obligor has granted or concurrently grants a Lien on such asset or Property to secure the First Lien Obligations; or

(b) grant or permit any additional Liens on any asset or Property to secure any First Lien Obligation unless such Obligor has granted or concurrently grants a Lien on such asset or Property to secure the Second Lien Obligations.

To the extent any additional Liens are granted on any asset or Property pursuant to this Section 2.4, the priority of such additional Liens shall be determined in accordance with Section 2.2. In addition, to the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to either First Lien Agent or any First Lien Claimholder, Second Lien Agent, on behalf itself and the Second Lien Claimholders, agrees

that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.4 shall be subject to Section 4.2.

2.5 Similar Liens and Agreements. The parties hereto agree that it is their intention that the First Lien Collateral and the Second Lien Collateral (other than the Second Lien Funding Account) be identical. In furtherance of the foregoing and of Section 9.8, the parties hereto agree, subject to the other provisions of this Agreement, upon request by First Lien Administrative Agent or Second Lien Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the First Lien Collateral and the Second Lien Collateral (other than the Second Lien Funding Account) and the steps taken or to be taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the First Lien Loan Documents and the Second Lien Note Documents.

SECTION 3. Exercise of Remedies.

3.1 Claim Standstill. Until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Obligor, no Second Lien Claimholder shall take any Collection Action with respect to any of the Second Lien Obligations, except as expressly permitted in this Section 3.1 or in Section 3.4 and, in each such case, subject to Section 3.2. No Second Lien Claimholder may take any Collection Action with respect to any of the Second Lien Obligations unless Second Lien Agent has provided First Lien Administrative Agent with not less than 5 Business Days prior written notice of such Second Lien Claimholder's intent to take such Collection Action (which notice may be given prior to the expiration of a Claim Standstill Period). Second Lien Agent shall supply information and detail regarding such Collection Action upon the reasonable request of First Lien Administrative Agent. Notwithstanding the foregoing, at any time that there shall exist any First Lien Credit Exposure, (i) no Second Lien Claimholder may take any Collection Action with respect to any of the Second Lien Obligations prior to delivery of a Claim Standstill Notice, and (ii) no Second Lien Claimholder may take any Collection Action with respect to any of the Second Lien Obligations during any Claim Standstill Period, but may take any Collection Action upon the expiration of such Claim Standstill Period.

3.2 Collateral Standstill. Until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Obligor, no Second Lien Claimholder will:

(a) exercise or seek to exercise any rights or remedies with respect to any Collateral (including any Exercise of Secured Creditor Remedies); provided, however, that if a Second Lien Default has occurred and is continuing, Second Lien Agent may Exercise any Secured Creditor Remedies after the passage of the applicable Standstill Period (it being understood that if at any time after the delivery of a Standstill Notice that commences a Standstill Period, no Second Lien Default is continuing, Second Lien Agent may not Exercise any Secured Creditor Remedies until the passage of a new Standstill Period commenced by a new Standstill Notice relative to the occurrence of a new Second Lien Default that had not occurred as of the date of the delivery of the earlier Standstill Notice; provided further, however, that in no event

shall Second Lien Agent or any Second Lien Claimholder exercise any rights or remedies with respect to the Collateral if, notwithstanding the expiration of the Standstill Period, either First Lien Agent or any First Lien Claimholders shall have commenced, prior to the expiration of the Standstill Period (or thereafter but prior to the commencement of any Exercise of Secured Creditor Remedies by Second Lien Agent with respect to all or any material portion of the Collateral), and be diligently pursuing in good faith the Exercise of Secured Creditor Remedies with respect to all or any material portion of the Collateral;

(b) contest, protest, or object to any Exercise of Secured Creditor Remedies by either First Lien Agent or any First Lien Claimholder and has no right to direct either First Lien Agent to Exercise any Secured Creditor Remedies or take any other action under the First Lien Loan Documents; and

(c) object to (and waive any and all claims with respect to) the forbearance by either First Lien Agent or the First Lien Claimholders from Exercising any Secured Creditor Remedies.

3.3 Exclusive Enforcement Rights. At any time that there shall exist any First Lien Credit Exposure, until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Obligor, but subject to the first proviso to Section 3.2(a), First Lien Agents and First Lien Claimholders shall have the exclusive right to Exercise any Secured Creditor Remedies with respect to the Collateral without any consultation with or the consent of Second Lien Agent or any Second Lien Claimholder. In connection with any Exercise of Secured Creditor Remedies, First Lien Agents and First Lien Claimholders may enforce the provisions of the First Lien Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral, to incur expenses in connection with such Disposition, and to exercise all the rights and remedies of a secured creditor under applicable law.

3.4 Second Lien Permitted Actions. Anything to the contrary in this Section 3 notwithstanding, Second Lien Agent and any Second Lien Claimholder may:

(a) if an Insolvency Proceeding has been commenced by or against any Obligor, file a claim or statement of interest with respect to the Second Lien Obligations;

(b) take any action (not adverse to the priority status of the Liens on the Collateral securing the First Lien Obligations, or the rights of either First Lien Agent or any First Lien Claimholders to Exercise any Secured Creditor Remedies) in order to create, perfect, preserve or protect its Lien in and to the Collateral;

(c) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding, or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of Second Lien Claimholders, including any claims secured by the Collateral, if any;

(d) subject to Section 6.9 hereof, vote on any plan of reorganization, make any filings and make any arguments and motions that are, in each case, in accordance with, the terms of this Agreement, with respect to the Second Lien Obligations and the Collateral;

(e) file, prosecute, negotiate, support, and seek confirmation and consummation of a plan of reorganization on the terms set forth in the Plan Support Agreement in accordance with the terms of this Agreement;

(f) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the Collateral initiated by either First Lien Agent to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with the Exercise of Secured Creditor Remedies by either First Lien Agent (it being understood that neither Second Lien Agent nor any Second Lien Claimholder shall be entitled to receive any proceeds thereof unless otherwise expressly permitted herein);

(g) Exercise any Secured Creditor Remedies (i) at any time that there shall not exist any First Lien Credit Exposure, or (ii) at any other time, after the termination of the Standstill Period if and to the extent specifically permitted by Section 3.2(a);

(h) credit bid for, bid for, or purchase Collateral for cash at any public foreclosure or through any proceeding of the Bankruptcy Court initiated by any Person other than Second Lien Agent or any other Second Lien Claimholder; and

(i) exercise any remedies that would be available to an unsecured creditor (to the extent not prohibited by the provisions of this Agreement and in accordance with applicable law).

3.5 Non-Interference. Subject to Sections 3.1 and 3.2, Second Lien Agent, on behalf of itself and each Second Lien Claimholder, hereby:

(i) agrees that Second Lien Agent and Second Lien Claimholders will not take any action that would restrain, hinder, limit, delay, or otherwise interfere with any Exercise of Secured Creditor Remedies by either First Lien Agent or any First Lien Claimholder, or that is otherwise prohibited hereunder, including any Disposition of the Collateral, whether by foreclosure or otherwise;

(ii) subject to Section 3.7, waives any and all rights it or Second Lien Claimholders may have as a junior lien creditor or otherwise to object to the manner in which either First Lien Agent or any First Lien Claimholders seek to enforce or collect the First Lien Obligations or the Liens securing the First Lien Obligations granted in any of the First Lien Collateral, regardless of whether any action or failure to act by or on behalf of First Lien Agent or First Lien Claimholders is adverse to the interest of Second Lien Claimholders; and

(iii) acknowledges and agrees that no covenant, agreement or restriction contained in the Second Lien Collateral Documents or any other Second Lien

Note Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of either First Lien Agent or any First Lien Claimholders with respect to the Collateral as set forth in this Agreement and the First Lien Credit Documents.

3.6 Judgment Liens. In the event that any Second Lien Claimholder becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Second Lien Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Liens securing the First Lien Obligations) as the other Liens securing the Second Lien Obligations are subject to this Agreement.

3.7 Collateral or Proceeds Received from the Exercise of Secured Creditor Remedies. Second Lien Agent, on behalf of itself and each Second Lien Claimholders agrees that until the Discharge of First Lien Obligations has occurred, any Collateral or proceeds thereof will be subject to Section 4.

SECTION 4. Proceeds.

4.1 Application of Proceeds. Whether or not any Insolvency Proceeding has been commenced by or against any Obligor, any Collateral or proceeds thereof received in connection with any Exercise of Secured Creditor Remedies or other Disposition of Collateral shall (at such time as such Collateral or proceeds has been monetized) be applied: (a) first, to the payment in full in cash of costs and expenses of First Lien Agent in connection with such Exercise of Secured Creditor Remedies or such other Disposition, (b) second, to the payment in full in cash or cash collateralization of the First Lien Obligations in accordance with the First Lien Loan Documents, and in the case of payment or prepayment of any revolving loans, together with the concurrent permanent reduction of any revolving loan commitment thereunder in an amount equal to the amount of such payment, (c) third, to the payment in full in cash of costs and expenses of Second Lien Agent in connection with such Exercise of Secured Creditor Remedies or such other Disposition (to the extent Second Lien Agent's Exercise of Secured Creditor Remedies or Disposition was permitted hereunder), and (d) fourth, to the payment in full in cash of the Second Lien Obligations in accordance with the Second Lien Note Documents. If any Exercise of Secured Creditor Remedies or other Disposition with respect to the Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by the Agent that conducted the Exercise of Secured Creditor Remedies or such other Disposition as additional Collateral and, at such time as such non-cash proceeds are monetized, shall be applied as set forth above.

4.2 Turnover. Unless and until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Obligor, any Collateral or proceeds thereof (including assets or proceeds subject to Liens referred to in Section 3.6) received by Second Lien Agent or any Second Lien Claimholder (a) in connection with the Exercise of Secured Creditor Remedies with respect to the Collateral by Second Lien Agent or any Second Lien Claimholder, or (b) as a result of Second Lien Agent's or any Second Lien Claimholder's collusion with any Obligor in violating the rights of First Lien Agent or any First Lien Claimholder (within the meaning of Section 9-332 of the UCC), shall be segregated

and held in trust and forthwith paid over to First Lien Administrative Agent for the benefit of First Lien Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. First Lien Administrative Agent is hereby authorized to make any such endorsements as agent for Second Lien Agent or any such Second Lien Claimholders. This authorization is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

4.3 Payments Held in Trust/Turnover. In the event that any Second Lien Claimholder receives any Distribution prohibited by this Agreement, such Distribution shall be held in trust for the benefit of and shall be paid over to or delivered to (as applicable) First Lien Administrative Agent, for the benefit of the First Lien Claimholders in the same form received.

4.4 Revolving Nature of First Lien Obligations. The Second Lien Agent, on behalf of itself and the Second Lien Claimholders, acknowledges and agrees that the First Lien Credit Agreement includes a revolving commitment and that the amount of the First Lien Obligations that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed.

SECTION 5. Releases; Dispositions; Other Agreements.

5.1 Releases.

(a) Exclusive Right of First Lien Agents. At any time that there shall exist any First Lien Credit Exposure, and prior to the expiration of any applicable Standstill Period, First Lien Agents shall have the exclusive right to make determinations regarding the release or Disposition of any Collateral pursuant to the terms of the First Lien Loan Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of, or notice (except to the extent required under this Agreement) to Second Lien Agent or any Second Lien Claimholder.

(b) Lien Release Upon Disposition of Collateral in Exercise of Secured Creditor Remedies. If, at any time that there shall exist any First Lien Credit Exposure, in connection with the Exercise of Secured Creditor Remedies by First Lien Agents (with the proceeds thereof being applied as set forth in Section 4.1), either First Lien Agent releases any of its Liens on any part of the Collateral or releases any Obligor from its obligations in respect of the First Lien Obligations, then the Liens of Second Lien Agent on such Collateral, and the obligations of such Obligor in respect of the Second Lien Obligations, shall be automatically, unconditionally, and simultaneously released. Second Lien Agent, for itself or on behalf of any such Second Lien Claimholders, promptly shall execute and deliver to First Lien Agent such termination or amendment statements, releases, and other documents as First Lien Agent may reasonably request to effectively confirm such release.

(c) Lien Release Upon Disposition of Collateral Permitted by First Lien Loan Documents. If, at any time there shall exist any First Lien Credit Exposure, in connection with (i) any Disposition of any Collateral permitted under the terms of the First Lien Loan Documents and not expressly prohibited under the terms of the Second Lien Note Doccuments, or (ii) any

Disposition of any Collateral (in each case, with the proceeds thereof being applied to the First Lien Obligations in accordance with Section 4.1) consented to by either First Lien Agent, on behalf of the requisite First Lien Claimholders, either First Lien Agent, for itself or on behalf of any First Lien Claimholders, releases any of its Liens on the portion of the Collateral that is the subject of such Disposition, or releases any Obligor from its obligations in respect of the First Lien Obligations (if such Obligor is the subject of such Disposition), in each case other than (i) in connection with the Discharge of First Lien Obligations, (ii) the Disposition of all or substantially all of the Collateral, or (iii) the Exercise of Secured Creditor Remedies by either First Lien Agent (which is addressed in Section 5.1(b)), then the Liens of Second Lien Agent on such Collateral, and the obligations of such Obligor in respect of the Second Lien Obligations (if such Obligor is the subject of such Disposition), shall be automatically, unconditionally, and simultaneously released. Second Lien Agent, for itself or on behalf of any such Second Lien Claimholders, promptly shall execute and deliver to First Lien Administrative Agent such termination or amendment statements, releases, and other documents as First Lien Administrative Agent may reasonably request to effectively confirm such release.

(d) [Reserved]

(e) Power of Attorney. Until the Discharge of First Lien Obligations occurs, Second Lien Agent, for itself and on behalf of Second Lien Claimholders, hereby irrevocably constitutes and appoints First Lien Administrative Agent and any officer or agent of First Lien Administrative Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Second Lien Agent or such holder or in First Lien Administrative Agent's own name, from time to time in First Lien Administrative Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release.

(f) Reinstatement. Until the Discharge of First Lien Obligations occurs, to the extent that either First Lien Agent or any First Lien Claimholders (i) have released any Lien on Collateral or any Obligor with respect to the First Lien Obligations, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Obligor or obtain a guaranty from any Obligor of the First Lien Obligations, then Second Lien Agent, for itself and for Second Lien Claimholders, shall be entitled to obtain a Lien on any such Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Obligor, subject to the terms (including the payment subordination provisions) of this Agreement, as the case may be.

5.2 Insurance. Unless and until the Discharge of First Lien Obligations has occurred, at any time that there shall exist any First Lien Credit Exposure, First Lien Agents and First Lien Claimholders shall have the sole and exclusive right, subject to the rights of Obligors under the First Lien Loan Documents, to adjust and settle any claim under any insurance policy covering the Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral.

5.3 Amendments; Refinancings; Legend; Notice of Event of Default.

(a) The First Lien Loan Documents may be amended, supplemented, or otherwise modified in accordance with their terms and to the extent permitted by order entered by the Bankruptcy Court following notice and a hearing, and the First Lien Obligations may be Refinanced, in each case without notice to, or the consent of, Second Lien Agent or Second Lien Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided, however, that, in the case of a Refinancing, the holders of such Refinancing debt bind themselves (in a writing addressed to Second Lien Agent for the benefit of itself and the Second Lien Claimholders) to the terms of this Agreement; provided further, however, that any such amendment, supplement, modification, or Refinancing shall not, without the prior written consent of Second Lien Agent (which it shall be authorized to consent to based upon an affirmative vote of Second Lien Claimholders holding a majority of the debt under the Second Lien Note Purchase Agreement):

(i) contravene the provisions of this Agreement;

(ii) increase the then outstanding aggregate principal amount of the loans plus the aggregate amount of outstanding undrawn Letters of Credit to an amount that would exceed the First Lien Cap;

(iii) increase the "Applicable Margin" or similar component of the interest rate by more than 0.50 percentage points per annum (excluding increases resulting from the accrual of interest at the default rate);

(iv) shorten the scheduled final maturity of the First Lien Credit Agreement or any Refinancing thereof beyond the scheduled maturity of the Second Lien Note Purchase Agreement; or

(v) modify (or have the effect of a modification of) the mandatory prepayment provisions of the First Lien Credit Agreement or any First Lien Loan Document in a manner that makes them more restrictive to Obligors.

(b) The Second Lien Note Documents may be amended, supplemented, or otherwise modified in accordance with their terms and to the extent permitted by and to the extent permitted by order entered by the Bankruptcy Court following notice and a hearing, without notice to, or the consent of, either First Lien Agent or any First Lien Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided, however, that any such amendment, supplement or modification shall not, without the prior written consent of First Lien Administrative Agent (which it shall be authorized to consent to based upon an affirmative vote of First Lien Claimholders holding a majority of the debt under the First Lien Credit Agreement):

(i) contravene the provisions of this Agreement;

(ii) increase the outstanding principal amount of the loans;

(iii) increase the "Applicable Margin" or similar component of the interest rate by more than 0.50 percentage points per annum (excluding increases resulting from the accrual of interest at the default rate);

(iv) change to earlier dates any dates upon which payments of principal or interest are due thereon;

(v) change or amend any term of any Second Lien Note Document if such change or amendment would result in an "Event of Default" under any of the First Lien Loan Documents;

(vi) change any default or Second Lien Default thereunder in a manner adverse to the interests of the First Lien Claimholders (it being understood that any waiver of any such default or Second Lien Default, in and of itself, shall not be deemed to be adverse to the interests of the First Lien Claimholders);

(vii) change the redemption, mandatory prepayment, or defeasance provisions thereof; or

(viii) increase the non-monetary obligations of Obligors thereunder or confer any additional rights on Second Lien Claimholders that would be adverse to First Lien Claimholders.

(c) Borrower agrees that any promissory note evidencing the Second Lien Obligations shall at all times include the following language (or language to similar effect approved by First Lien Administrative Agent):

> "Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this promissory note, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor and Subordination Agreement dated as of March __, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"), by and among UBS AG, Stamford Branch, as First Lien Administrative Agent, Ally Commercial Finance LLC, as First Lien Collateral Agent, and Wilmington Trust FSB, in its capacity as Second Lien Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this promissory note, the terms of the Intercreditor Agreement shall govern and control."

(d) Notice of Event of Default. Second Lien Agent shall give First Lien Administrative Agent prompt written notice of the occurrence of any Event of Default under any Second Lien Note Document upon the earlier to occur of (i) the date of receipt by Second Lien Agent of notice of such Event of Default from any Obligor or any other Person and (ii) the date on which Second Lien Agent obtains knowledge of the existence of such Event of Default..

5.4 Agent for Perfection. First Lien Agents and Second Lien Agent each agree to hold (or cause to be held) all Control Collateral in their respective possession, custody, or

control, including "control" within the meaning of 9-104 of the UCC (or in the possession, custody, or control of agents, bailees, or other similar third parties) as bailee and as non-fiduciary agent for the other solely for the purpose of perfecting the security interest granted to each in such Control Collateral subject to the terms and conditions of this Agreement (such bailment and agency being intended, among other things, to satisfy the requirements of Section 8-301(a)(2), 9-313(c), 9-104, 9-105, 9-106, and 9-107 of the UCC). None of the First Lien Claimholders or the Second Lien Claimholders, as applicable, shall have any obligation whatsoever to the others to assure that the Control Collateral is genuine or owned by any Obligor or any other Person or to preserve their respective rights or benefits or those of any other Person. The duties or responsibilities of First Lien Agents and Second Lien Agent under this Section 5.4 are and shall be limited solely to holding or maintaining control of the Control Collateral as bailee and as non-fiduciary agent for the other for purposes of perfecting the Lien held by First Lien Agents or Second Lien Agent, as applicable. Neither First Lien Agent is, nor shall either First Lien Agent be deemed to be, a fiduciary of any kind for Second Lien Agent or any other Person.

5.5 When Discharge of First Lien Obligations Deemed to Not Have Occurred. If Borrower enters into any Refinancing of the First Lien Obligations, then a Discharge of First Lien Obligations shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such First Lien Obligations shall be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and each First Lien Agent under the First Lien Loan Documents effecting such Refinancing shall be a First Lien Agent for all purposes of this Agreement. Each First Lien Agent under such First Lien Loan Documents shall agree (in a writing addressed to Second Lien Agent for the benefit of itself and the Second Lien Claimholders) to be bound by the terms of this Agreement.

5.6 Purchase Option.

(a) Without prejudice to the enforcement of the remedies of First Lien Agents and the other First Lien Claimholders, at any time during the 30 day period following the occurrence of a Triggering Event, then, in any such case, any one or more of Second Lien Claimholders (acting in their individual capacity or through one or more affiliates) shall have the right, but not the obligation (each Second Lien Claimholder having a ratable right to make the purchase, with each Second Lien Claimholder's right to purchase being automatically proportionately increased by the amount not purchased by another Second Lien Claimholder), upon 5 Business Days advance written notice from Second Lien Agent on behalf of the Second Lien Claimholders that are exercising their purchase right (a "**Purchase Notice**") to First Lien Administrative Agent, for the benefit of First Lien Claimholders, to acquire from First Lien Claimholders all (but not less than all) of the right, title, and interest of First Lien Claimholders in and to the First Lien Obligations and the First Lien Loan Documents. The Purchase Notice, if given, shall be irrevocable.

(b) On the date specified by Second Lien Agent, on behalf of the Second Lien Claimholders that are exercising their purchase right, in the Purchase Notice (which shall not be more than 5 Business Days after the receipt by First Lien Administrative Agent of the Purchase Notice), First Lien Claimholders shall sell to the purchasing Second Lien Claimholders and

purchasing Second Lien Claimholders shall purchase from First Lien Claimholders, the First Lien Obligations, subject to documentation reasonably satisfactory to First Lien Claimholders and the purchasing Second Lien Claimholders.

(c) On the date of such purchase and sale, purchasing Second Lien Claimholders shall (i) pay to First Lien Administrative Agent, for the benefit of First Lien Claimholders, as the purchase price therefor the full amount of all the First Lien Obligations (at par value) (other than First Lien Obligations cash collateralized in accordance with clause (c)(ii) below, but including the reimbursement of all expenses of First Lien Agents and First Lien Claimholders to the extent earned or due and payable in accordance with the First Lien Loan Documents) then outstanding and unpaid, and (ii) furnish cash collateral to First Lien Administrative Agent in such amounts as First Lien Administrative Agent determines is reasonably necessary to secure First Lien Agents and First Lien Claimholders in connection with any issued and outstanding Letters of Credit (but not in any event in an amount greater than 105% of the aggregate undrawn amount of such Letters of Credit)). Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of First Lien Administrative Agent as First Lien Administrative Agent may designate in writing to Second Lien Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by purchasing Second Lien Claimholders to the bank account designated by First Lien Administrative Agent are received in such bank account prior to 3:00 p.m., New York City time, and interest shall be calculated to and including such Business Day if the amounts so paid by purchasing Second Lien Claimholders to the bank account designated by First Lien Administrative Agent are received in such bank account later than 3:00 p.m., New York City time.

(d) Such purchase shall be expressly made without representation or warranty of any kind by First Lien Agents and First Lien Claimholders as to the First Lien Obligations so purchased or otherwise and without recourse to either First Lien Agent or any First Lien Claimholder, except that each First Lien Claimholder shall represent and warrant: (i) that the amount quoted by such First Lien Claimholder as its portion of the purchase price represents the amount shown as owing with respect to the claims transferred as reflected on its books and records, (ii) it owns, or has the right to transfer to purchasing Second Lien Claimholders, the rights being transferred, and (iii) such transfer will be free and clear of Liens.

(e) If the Second Lien Claimholders fail to exercise their purchase right under this Section 5.6 within the 10 day period described above in Section 5.6(a), or fail to close the purchase within the required time period described above in Section 5.6(a), First Lien Agents and the First Lien Claimholders shall have no further obligations to the Second Lien Claimholders under this Section 5.6.

(f) In the event that any one or more of Second Lien Claimholders exercises and consummates the purchase option set forth in this Section 5.6, (i) each First Lien Agent shall have the right, but not the obligation, to immediately resign under the First Lien Credit Agreement, and (ii) purchasing Second Lien Claimholders shall have the right, but not the obligation, to require either First Lien Agent to immediately resign under the First Lien Credit Agreement.

5.7 Injunctive Relief. Should any Second Lien Claimholder in any way take, attempt to, or threaten to take any action contrary to terms of this Agreement, or fail to take any action required by this Agreement, each First Lien Agent or any First Lien Claimholder may obtain relief against such Second Lien Claimholder by injunction, specific performance, or other appropriate equitable relief, it being understood and agreed by Second Lien Agent that (a) First Lien Claimholders' damages from such actions may at that time be difficult to ascertain and may be irreparable, and (b) each Second Lien Claimholder waives any defense that such Obligor and/or First Lien Claimholders cannot demonstrate damage and/or be made whole by the awarding of damages. Second Lien Agent hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by either First Lien Agent or any First Lien Claimholders. Should any First Lien Claimholder in any way take, attempt to, or threaten to take any action contrary to terms of this Agreement, or fail to take any action required by this Agreement, Second Lien Agent or any Second Lien Claimholder may obtain relief against such First Lien Claimholder by injunction, specific performance, or other appropriate equitable relief, it being understood and agreed by each First Lien Agent that (a) Second Lien Claimholders' damages from such actions may at that time be difficult to ascertain and may be irreparable, and (b) each First Lien Claimholder waives any defense that such Obligor and/or Second Lien Claimholders cannot demonstrate damage and/or be made whole by the awarding of damages. Each First Lien Agent hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by Second Lien Agent or any Second Lien Claimholders.

5.8 Cash Collateral. First Lien Agents agree, on behalf of the First Lien Claimholders, to accept cash collateral with respect to any of the outstanding Letters of Credit provided by Borrower or any other Person and to treat such cash collateral for all purposes under the First Lien Loan Documents in a manner consistent with Section 2.18(j) of the First Lien Credit Agreement as if such cash collateral had been provided pursuant to the requirements of such Section.

SECTION 6. Insolvency Proceedings.

6.1 Enforceability and Continuing Priority. The relative rights of Claimholders in or to any Distributions or in respect of any Collateral or proceeds of Collateral, shall continue after the commencement of the Chapter 11 Cases and any other Insolvency Proceeding. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the Bankruptcy Code.

6.2 [Reserved]

6.3 Sales. Second Lien Agent agrees that it will consent, and will not object or oppose a motion to Dispose of any Collateral free and clear of the Liens or other claims in favor of Second Lien Agent under Section 363 of the Bankruptcy Code if the requisite First Lien Claimholders under the First Lien Credit Agreement have consented to such Disposition of such assets, and such motion does not impair, subject to the priorities set forth in this Agreement, the rights of Second Lien Claimholders under Section 363(k) of the Bankruptcy Code (so long as the

right of the Second Lien Claimholders to offset its claim against the purchase price is only after the First Lien Obligations have been paid in full in cash). The foregoing to the contrary notwithstanding, Second Lien Claimholders may raise any objections to such Disposition of the Collateral that could be raised by a creditor of Obligors whose claims are not secured by Liens on such Collateral, provided such objections are not inconsistent with any other term or provision of this Agreement and are not based on their status as secured creditors (without limiting the foregoing, Second Lien Creditors may not raise any objections based on rights afforded by Sections 363(e) and (f) of the Bankruptcy Code to secured creditors (or any comparable provision of any other Bankruptcy Law) with respect to the Liens granted to Second Lien Agent in respect of such assets).

6.4 [Reserved]

6.5 [Reserved]

6.6 Section 1111(b) of the Bankruptcy Code. Second Lien Agent, for itself and on behalf of Second Lien Claimholders, shall not object to, oppose, support any objection, or take any other action to impede, the right of any First Lien Claimholder to make an election under Section 1111(b)(2) of the Bankruptcy Code. Second Lien Agent, for itself and on behalf of Second Lien Claimholders, waives any claim it may hereafter have against any First Lien Claimholder arising out of the election by any First Lien Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code.

6.7 No Waiver. Nothing contained herein shall prohibit or in any way limit First Lien Agent or any First Lien Claimholder from objecting in the Chapter 11 Cases to any action taken by Second Lien Agent or any Second Lien Claimholder which is inconsistent with the terms of this Agreement, including the assertion by Second Lien Agent or any Second Lien Claimholders of any of its rights and remedies under the Second Lien Note Documents.

6.8 Avoidance Issues. If any First Lien Claimholder is required in the Chapter 11 Cases or otherwise to turn over, disgorge or otherwise pay to the estate of any Obligor any amount paid in respect of First Lien Obligations (a "**Recovery**"), then such First Lien Claimholders shall be entitled to a reinstatement of First Lien Obligations with respect to all such recovered amounts, and all rights, interests, priorities and privileges recognized in this Agreement shall apply with respect to any such Recovery. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the parties hereto from such date of reinstatement.

6.9 Plan of Reorganization. Second Lien Claimholders shall not propose or support any plan of reorganization that is inconsistent with the priorities or other provisions of this Agreement; provided that a plan of reorganization on the terms set forth in the Plan Support Agreement shall be deemed to be not inconsistent with the priorities or other provisions of this Agreement.

SECTION 7. Reliance; Waivers; Etc.

7.1 Reliance. All First Lien Obligations at any time incurred by any Obligor shall be deemed to have been incurred, and all First Lien Obligations held by any First Lien Claimholder shall be deemed to have been extended, acquired or obtained, as applicable, in reliance upon this Agreement, and Second Lien Agent, on behalf of itself and each Second Lien Claimholder, hereby waives (a) notice of acceptance, or proof of reliance, by any of the First Lien Claimholders of this Agreement, and (b) except as required under this Agreement, notice of the existence, renewal, extension, accrual, creation, or non-payment of all or any part of the First Lien Obligations. Nothing contained in this Agreement shall preclude any of the First Lien Claimholders from discontinuing the extension of credit to any Obligor (whether under the First Lien Loan Documents or otherwise) or from taking (without notice to any First Lien Claimholder, any Obligor, or any other Person) any other action in respect of the First Lien Obligations or the Collateral which such First Lien Claimholder is otherwise entitled to take with respect to the First Lien Obligations or the Collateral.

7.2 No Liability. None of the First Lien Claimholders or any of their respective affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds or for any delay in doing so or shall be under any obligation to sell or otherwise Dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof. Each First Lien Agent and each other First Lien Claimholder will be entitled to manage and supervise its loans and extensions of credit under the First Lien Loan Documents as such First Lien Agent or such First Lien Claimholder, as the case may be, may, in its sole discretion, deem appropriate, and each First Lien Agent and each other First Lien Claimholder may manage its loans and extensions of credit without regard to any rights or interests that any Second Lien Claimholder may have in the Collateral or otherwise except as otherwise expressly set forth in this Agreement. Second Lien Agent, on behalf of itself and each Second Lien Claimholder, agrees that neither First Lien Agent nor any other First Lien Claimholder shall incur any liability as a result of a sale, lease, license, application or other Disposition of all or any portion of the Collateral or any part or Proceeds thereof, in each case, in accordance with the terms of this Agreement. Either First Lien Agent and each First Lien Claimholder may, from time to time, enter into agreements and settlements with Obligors as it may determine in its sole discretion without impairing any of the subordinations, priorities, rights or obligations of the parties under this Agreement, including, without limitation, substituting Collateral, releasing any Lien and releasing any Obligor. Each Second Lien Claimholder waives any and all rights it may have to require either First Lien Agent or any other First Lien Claimholder to marshal assets, to exercise rights or remedies in a particular manner, or to forbear from exercising such rights and remedies in any particular manner or order, except as set forth in this Agreement.

7.3 Notice of Acceptance and Other Waivers. To the fullest extent permitted by applicable law, Second Lien Agent, on behalf of itself and each Second Lien Claimholder, hereby waives: (i) notice of acceptance hereof; (ii) notice of any loans or other financial accommodations made or extended under any of the First Lien Loan Documents, or the creation or existence of any First Lien Obligations; (iii) notice of the amount of the First Lien Obligations; (iv) notice of presentment for payment, demand, protest, and notice thereof as to

any instrument among the First Lien Loan Documents; (v) notice of any Default or Event of Default under the First Lien Loan Documents or otherwise relating to the First Lien Obligations; and (vi) all other notices (except if such notice is specifically required to be given to Second Lien Agent under this Agreement) and demands to which Second Lien Agent or any other Second Lien Claimholder might otherwise be entitled.

7.4 Lawsuits; Defenses; Setoff. To the fullest extent permitted by applicable law, Second Lien Agent, on behalf of itself and each Second Lien Claimholder, (i) waives the right by statute or otherwise to require either First Lien Agent or any other First Lien Claimholder to institute suit against any Obligor or to exhaust any rights and remedies which either First Lien Agent or any First Lien Claimholder has or may have against any Obligor; (ii) waives any defense arising by reason of any disability or other defense (other than the defense that the Discharge of First Lien Obligations has occurred (subject to the provisions of Section 6.8)) of any Obligor or by reason of the cessation from any cause whatsoever of the liability of such Obligor in respect thereof, (iii) waives any rights to assert against either First Lien Agent or any other First Lien Claimholder any defense (legal or equitable), set-off, counterclaim, or claim which Second Lien Agent or any Second Lien Claimholder may now or at any time hereafter have against any Obligor or any other party liable to either First Lien Agent, any other First Lien Claimholder, Second Lien Agent or any other Second Lien Claimholder, (iv) waives any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of any First Lien Obligations, any Second Lien Obligations or any security for either; (v) waives any defense arising by reason of any claim or defense based upon an election of remedies by either First Lien Agent or any other First Lien Claimholder; and (vi) waives the benefit of any statute of limitations affecting Second Lien Agent's or any other Second Lien Claimholder's obligations hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the First Lien Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to Second Lien Agent's or such Second Lien Claimholder's obligations hereunder.

7.5 Subrogation. Solely after the Discharge of First Lien Obligations shall have occurred, Second Lien Agent and the other Second Lien Claimholders shall be subrogated to the rights of First Lien Agents and the other First Lien Claimholders to the extent that Distributions otherwise payable to the Second Lien Claimholders have been applied to the payment of the First Lien Obligations in accordance with the provisions of this Agreement. Each of the parties hereto acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by Second Lien Agent or any Second Lien Claimholder that are paid over to First Lien Claimholders pursuant to this Agreement shall not reduce any of the Second Lien Obligations. First Lien Agents and the other First Lien Claimholders shall have no obligation or duty to protect any Second Lien Claimholder's rights of subrogation arising pursuant to this Agreement or under any applicable law, nor shall either First Lien Agent or any other First Lien Claimholder be liable for any loss to, or impairment of, any subrogation rights held by any Second Lien Claimholder.

7.6 ELECTION OF REMEDIES. WITHOUT LIMITING THE GENERALITY OF ANY OTHER WAIVER OR OTHER PROVISION SET FORTH IN THIS AGREEMENT,

SECOND LIEN AGENT, ON BEHALF OF ITSELF AND EACH SECOND LIEN CLAIMHOLDER, WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS AND DEFENSES ARISING OUT OF AN ELECTION OF REMEDIES BY FIRST LIEN AGENTS AND THE OTHER FIRST LIEN CLAIMHOLDERS, EVEN THOUGH THAT ELECTION OF REMEDIES HAS DESTROYED THE RIGHTS OF SUBROGATION OF SECOND LIEN AGENT AND THE OTHER SECOND LIEN CLAIMHOLDERS AND REIMBURSEMENT AGAINST ANY OBLIGOR BY THE OPERATION OF ANY APPLICABLE LAW.

7.7 Information Concerning Financial Condition.

(a) Each First Lien Agent, for itself and on behalf of the other First Lien Claimholders, hereby assumes responsibility for keeping itself informed of the financial condition of the Obligors and of all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations and agrees that Second Lien Agent has and shall have no duty to advise either First Lien Agent or any other First Lien Claimholder of information known to Second Lien Agent or any other Second Lien Claimholder regarding such condition or any such circumstances. In the event that Second Lien Agent, in its sole discretion, undertakes, at any time or from time to time, to provide any such information to either First Lien Agent or any other First Lien Claimholder, then Second Lien Agent shall not be under any obligation (i) to provide any such information to either First Lien Agent or any other First Lien Claimholder on any subsequent occasion, (ii) to undertake any investigation, or (iii) to disclose any information which, pursuant to its commercial finance practices, Second Lien Agent wishes to maintain confidential. Each First Lien Agent, for itself and the other First Lien Claimholders, acknowledges and agrees that neither Second Lien Agent nor any other Second Lien Claimholder has made any express or implied warranties or representations with respect to the legality, validity, completeness, enforceability, collectibility or perfection of the Second Lien Obligations, the Second Lien Note Documents or any liens or security interests held in connection therewith.

(b) Second Lien Agent, on behalf of itself and each Second Lien Claimholder, hereby assumes responsibility for keeping itself informed of the financial condition of the Obligors and of all other circumstances bearing upon the risk of nonpayment of the Second Lien Obligations, and agrees that neither First Lien Agent has and shall have any duty to advise Second Lien Agent or any other Second Lien Claimholder of information known to such First Lien Agent or any other First Lien Claimholder regarding such condition or any such circumstances. In the event that either First Lien Agent, in its sole discretion, undertakes, at any time or from time to time, to provide any such information to Second Lien Agent or any Second Lien Claimholder, then neither First Lien Agent shall be under any obligation (i) to provide any such information to Second Lien Agent or any other Second Lien Claimholder on any subsequent occasion, (ii) to undertake any investigation, or (iii) to disclose any information which, pursuant to its commercial finance practices, such First Lien Agent wishes to maintain confidential. Each Second Lien Claimholder acknowledges and agrees that neither First Lien Agent nor any other First Lien Claimholders has made any express or implied warranties or representations with respect to the legality, validity, completeness, enforceability, collectibility

or perfection of the First Lien Obligations, the First Lien Loan Documents or any liens or security interests held in connection therewith.

SECTION 8. Miscellaneous.

8.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of any of the First Lien Loan Documents or any of the Second Lien Note Documents, the provisions of this Agreement shall govern and control.

8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and First Lien Claimholders may continue, at any time and without notice to Second Lien Agent or any Second Lien Claimholder, to extend credit and other financial accommodations to or for the benefit of any Obligor constituting First Lien Obligations in reliance hereof. Second Lien Agent hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency Proceeding. Any provision of this Agreement that is prohibited or unenforceable shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Obligor shall include such Obligor as debtor and debtor-in-possession and any receiver or trustee for the such Obligor in any Insolvency Proceeding. This Agreement shall terminate and be of no further force and effect:

(a) with respect to First Lien Agents, First Lien Claimholders, and the First Lien Obligations, on the date that the First Lien Obligations are paid in full; and

(b) with respect to Second Lien Agent, Second Lien Claimholders, and the Second Lien Obligations, on the date that the Second Lien Obligations are paid in full.

8.3 Amendments; Waivers. No amendment, modification, or waiver of any of the provisions of this Agreement shall be effective unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time.

8.4 **JURISDICTION; CONSENT TO SERVICE OF PROCESS.**

(a) Each First Lien Agent, for itself and on behalf of the First Lien Claimholders, and Second Lien Agent, for itself and on behalf of the Second Lien Claimholders, each hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court; provided, that each party hereto acknowledges that any appeals from the Bankruptcy Court may have to be heard by a court other than the Bankruptcy Court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section shall affect any right that the First Lien Agents, First

Lien Claimholders, Second Lien Agent or Second Lien Claimholders may otherwise have to bring any action or proceeding relating to the First Lien Loan Documents or the Second Lien Note Documents, as applicable, against any Obligor or its properties in the courts of any jurisdiction, otherwise subject to the provisions of this Agreement.

(b) Each First Lien Agent, for itself and on behalf of the First Lien Claimholders, and Second Lien Agent, for itself and on behalf of the Second Lien Claimholders, each hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section 8.4. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.6. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

8.5 Waiver of Jury Trial. Each party hereto hereby 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 (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party 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 by, among other things, the mutual waivers and certifications in this Section 8.5.

8.6 Notices. Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to either First Lien Agent or Second Lien Agent, as the case may be, they shall be sent to the respective address set forth below:

If to First Lien Administrative Agent:	UBS AG, STAMFORD BRANCH 677 Washington Boulevard Stamford, Connecticut 06901 Attention: [Vladimira Holeckova] Fax No.: [(203) 719-3888]
If to First Lien Collateral Agent:	ALLY COMMERCIAL FINANCE LLC

	1290 Avenue of the Americas 3rd Floor New York, NY 10104 Attention: SFG Portfolio Manager Fax No.: (212) 884-7693
in each case, with a copy to:	PAUL, HASTINGS, JANOFSKY & WALKER LLP 600 Peachtree Street, N.E., Suite 2400 Atlanta, GA 30308 Attn: Jesse H. Austin, III, Esq. Fax No.: (404) 815-2424
If to Second Lien Agent:	WILMINGTON TRUST FSB 50 South Sixth Street, Suite 1290 Minneapolis, MN 55402 Attn: Josh James Fax No.: (612) 217-5651
with a copy to:	ROPES & GRAY LLP 1211 Avenue of the Americas New York, NY 10036 Attn: Mark R. Sommerstein Fax No.: (646)728-1663
and	STROOCK & STROOCK & LAVAN LLP 180 Maiden Lane New York, NY 10038-4982 Attn: Scott Welkis, Esq. Fax No.: (212) 806-2582

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other. All notices or demands sent in accordance with this section, other than notices sent in accordance with Section 9-611, 9-612, 9-613, 9-620, 9-621 or any other applicable provision of the UCC shall be deemed received on the earlier of the date of actual receipt or 3 days after deposit thereof in the mail. Notices sent in connection with Section 9-611, 9-612, 9-613, 9-620, 9-621 or any other applicable provision of the UCC shall be deemed sent when deposited in the mail or personally delivered, or , where permitted by law, transmitted by telefacsimile or other similar method set forth above.

8.7 Further Assurances. First Lien Agents and Second Lien Agent each agree to take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as either First Lien Agent or Second Lien Agent may reasonably

request to effectuate the terms of and the Lien priorities contemplated by this Agreement, all at the expense of Borrower.

8.8 **APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

8.9 Binding on Successors and Assigns. This Agreement shall be binding upon First Lien Agents, First Lien Claimholders, Second Lien Agent, Second Lien Claimholders, and their respective successors and assigns.

8.10 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

8.11 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy, facsimile or electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

8.12 No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of and bind each of First Lien Claimholders and Second Lien Claimholders. In no event shall any Obligor be a third party beneficiary of this Agreement.

8.13 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of First Lien Agents and First Lien Claimholders on the one hand and Second Lien Agent and Second Lien Claimholders on the other hand. No Obligor or any other creditor thereof shall have any rights hereunder and no Obligor may rely on the terms hereof.

8.14 Costs and Attorneys Fees. In the event it becomes necessary for either First Lien Agent, any First Lien Claimholder, Second Lien Agent, or any Second Lien Claimholder to commence or become a party to any proceeding or action to enforce the provisions of this Agreement, the court or body before which the same shall be tried shall award to the prevailing party all costs and expenses thereof, including reasonable attorneys fees, the usual and customary and lawfully recoverable court costs, and all other expenses in connection therewith.

[signature pages follow]

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

UBS AG, STAMFORD BRANCH,
as First Lien Administrative Agent and as
a First Lien Agent

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ALLY COMMERCIAL FINANCE LLC,
as First Lien Collateral Agent and as
a First Lien Agent

By: _____
Name: _____
Title: _____

WILMINGTON TRUST FSB,
as Second Lien Agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

Parent, Borrower and each of Borrower's undersigned Subsidiaries each hereby acknowledge that they have received a copy of the foregoing Intercreditor and Subordination Agreement and consent thereto, agree to recognize all rights granted thereby to First Lien Agents, First Lien Claimholders, Second Lien Agent, and Second Lien Claimholders, and will not do any act or perform any obligation which is not in accordance with the agreements set forth therein. Parent, Borrower and each of Borrower's undersigned Subsidiaries each further acknowledge and agree that they are not an intended beneficiary or third party beneficiary under the foregoing Intercreditor and Subordination Agreement.

ACKNOWLEDGED AS OF THE DATE FIRST WRITTEN ABOVE:

HARRY AND DAVID

By: _____
Name:
Title:

HARRY & DAVID OPERATIONS, INC.

By: _____
Name:
Title:

BEAR CREEK ORCHARDS, INC.

By: _____
Name:
Title:

HARRY & DAVID HOLDINGS, INC.

By: _____
Name:
Title:

EXHIBIT C

DIP NOTE PURCHASE AGREEMENT

JUNIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION NOTE PURCHASE AGREEMENT

Dated as of March [__], 2011

among

Harry and David,
as Debtor and Debtor-in-Possession,

as Issuer,

Harry & David Holdings, Inc.,
as Parent Guarantor and as Debtor and Debtor-in-Possession,

The Subsidiaries of the Parent Guarantor as Subsidiary Guarantors,
as Debtors and Debtors-in-Possession,

The Note Purchasers from Time to Time Party Hereto,

and

Wilmington Trust FSB,

as Administrative Agent

* * *

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"*HOLDING COMPANY*," AS EACH SUCH TERM IS DEFINED AND USED IN THE PUHCA. 55

SECTION 4.12 **USE OF PROCEEDS**. THE PROCEEDS OF THE ISSUANCE AND SALE OF THE NOTES ARE BEING USED BY THE ISSUER (AND, TO THE EXTENT PROVIDED TO THEM BY THE ISSUER, EACH OTHER ISSUER RELATED PARTY) SOLELY AS FOLLOWS: TO THE EXTENT SET FORTH IN THE BUDGET AND IN ACCORDANCE WITH THE TERMS OF THE ORDERS, FOR WORKING CAPITAL AND OTHER APPROVED CORPORATE PURPOSES, OF THE ISSUER RELATED PARTIES, IN EACH CASE IN THE ORDINARY COURSE OF BUSINESS, AND NOT IN CONTRAVENTION OF ANY REQUIREMENT OF LAW OR THE NOTE DOCUMENTS, AND TO MAKE A PENSION CONTRIBUTION (WHICH IS NOT REFLECTED IN THE BUDGET) IN AN AMOUNT NOT TO EXCEED $704,000. NO PROCEEDS OF THE FACILITY, THE NOTES, THE REVOLVING DIP LOANS, THE ADEQUATE PROTECTION, IF ANY, THE COLLATERAL, CASH COLLATERAL, ANY PORTION OF THE CARVE-OUT OR ANY OTHER AMOUNTS MAY BE USED BY ANY OF THE DEBTORS, ANY COMMITTEE, AND ANY TRUSTEE OR OTHER ESTATE REPRESENTATIVE APPOINTED IN THE CASE OR ANY SUCCESSOR CASE, OR ANY OTHER PERSON, PARTY OR ENTITY TO (OR TO PAY ANY PROFESSIONAL FEES AND DISBURSEMENTS INCURRED IN CONNECTION THEREWITH) (I) IN CONNECTION WITH REQUESTING AUTHORIZATION TO OBTAIN POSTPETITION LOANS OR OTHER FINANCIAL ACCOMMODATION, OTHER THAN THE REVOLVING DIP LOAN, PURSUANT TO SECTION 364(C) OR (D) OF THE BANKRUPTCY CODE OR OTHERWISE, ON A PARI PASSU OR SENIOR BASIS TO THE FACILITY OR (II) IN CONNECTION WITH INVESTIGATING (INCLUDING DISCOVERY PROCEEDINGS), INITIATING, ASSERTING, JOINING, COMMENCING, SUPPORTING OR PROSECUTING ANY CLAIMS, CAUSES OF ACTION, ADVERSARY PROCEEDINGS OR OTHER LITIGATION AGAINST THE COMMITMENT PARTIES, THE NOTE PURCHASERS, THE ADMINISTRATIVE AGENT, THE PREPETITION SENIOR NOTEHOLDERS OR THE PREPETITION SENIOR INDENTURE TRUSTEE, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, AFFILIATES, ASSIGNS, OR SUCCESSORS, WITH RESPECT TO ANY TRANSACTION, OCCURRENCE, OMISSION, ACTION OR OTHER MATTER (INCLUDING FORMAL DISCOVERY PROCEEDINGS IN ANTICIPATION THEREOF), INCLUDING, WITHOUT LIMITATION, (I) ANY CLAIMS OR CAUSES OF ACTION ARISING UNDER CHAPTER 5 OF THE BANKRUPTCY CODE; (II) ANY SO-CALLED "LENDER LIABILITY" CLAIMS AND CAUSES OF ACTION; (III) ANY ACTION WITH RESPECT TO THE

HOWEVER, THAT IN EACH CASE UNDER THIS *SECTION 8.6*, BOTH BEFORE AND IMMEDIATELY AFTER GIVING EFFECT THERETO, NO DEFAULT OR EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING OR WOULD RESULT THEREFROM. 79

SECTION 8.7 **CHANGE IN NATURE OF BUSINESS**. OTHER THAN AS A RESULT OF THE FILING OF THE CASE, SUCH ISSUER RELATED PARTY SHALL NOT, AND SHALL NOT PERMIT ANY OF ITS SUBSIDIARIES TO, MAKE ANY MATERIAL CHANGE IN THE NATURE OR CONDUCT OF ITS BUSINESS AS CARRIED ON AS OF THE CLOSING DATE AND BUSINESS REASONABLY RELATED THERETO OR EMPLOY THE SAME OR RELATED TECHNOLOGIES OR PROCESSES AS THOSE BUSINESSES IN EFFECT ON THE CLOSING DATE. 79

SECTION 8.8 **TRANSACTIONS WITH AFFILIATES**. SUCH ISSUER RELATED PARTY SHALL NOT, AND SHALL NOT PERMIT ANY OF ITS SUBSIDIARIES TO, EXCEPT AS OTHERWISE EXPRESSLY PERMITTED HEREIN, DO ANY OF THE FOLLOWING: (A) MAKE ANY INVESTMENT IN AN AFFILIATE OF ANY ISSUER RELATED PARTY WHICH IS NOT A GUARANTOR; (B) TRANSFER, SELL, LEASE, ASSIGN OR OTHERWISE DISPOSE OF ANY ASSET TO ANY AFFILIATE OF ANY ISSUER RELATED PARTY WHICH IS NOT A GUARANTOR; (C) EXCEPT TO THE EXTENT PERMITTED BY *SECTION 8.6*, MERGE INTO OR CONSOLIDATE WITH OR PURCHASE OR ACQUIRE ASSETS FROM ANY AFFILIATE OF ANY ISSUER RELATED PARTY WHICH IS NOT A GUARANTOR; (D) REPAY ANY INDEBTEDNESS TO ANY AFFILIATE OF ANY ISSUER RELATED PARTY WHICH IS NOT A GUARANTOR OR THE ISSUER (OTHER THAN WITH RESPECT TO THE NOTES); (E) PAY ANY MANAGEMENT FEES TO ANY AFFILIATE OF ANY ISSUER RELATED PARTY THAT IS NOT A GUARANTOR; OR (F) ENTER INTO ANY OTHER TRANSACTION DIRECTLY OR INDIRECTLY WITH OR FOR THE BENEFIT OF ANY AFFILIATE OF ANY ISSUER RELATED PARTY WHICH IS NOT A GUARANTOR (INCLUDING GUARANTIES AND ASSUMPTIONS OF OBLIGATIONS OF ANY SUCH AFFILIATE), EXCEPT FOR IN THE CASE OF THIS *CLAUSE (F)*, (I) TRANSACTIONS IN THE ORDINARY COURSE OF BUSINESS ON A BASIS NO LESS FAVORABLE TO ANY ISSUER RELATED PARTY OR SUCH GUARANTOR AS WOULD BE OBTAINED IN A COMPARABLE ARM'S LENGTH TRANSACTION WITH A PERSON NOT AN AFFILIATE, (II) SALARIES AND OTHER COMPENSATION TO OFFICERS OR DIRECTORS OF ANY ISSUER RELATED PARTY OR ANY GUARANTOR COMMENSURATE WITH CURRENT COMPENSATION LEVELS, IN EACH CASE, TO THE EXTENT PERMITTED UNDER *SECTION 8.22* AND (III) TRANSACTIONS

SHALL BE DEEMED AUTOMATICALLY VACATED OR LIFTED, AS APPLICABLE, WITHOUT FURTHER ACTION OR ORDER OF THE BANKRUPTCY COURT AND THE ADMINISTRATIVE AGENT AND THE NOTE PURCHASERS SHALL BE ENTITLED TO EXERCISE ALL OF THEIR RESPECTIVE RIGHTS AND REMEDIES UNDER THE NOTE DOCUMENTS AND APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, ALL RIGHTS AND REMEDIES WITH RESPECT TO THE COLLATERAL AND THE GUARANTORS; *PROVIDED, HOWEVER*, THAT NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, PRIOR TO EXERCISING ANY REMEDIES WITH RESPECT TO THE COLLATERAL (OTHER THAN SETOFF REMEDIES, TERMINATING THE ISSUER'S RIGHT TO USE OF CASH COLLATERAL, EXERCISING ANY RIGHTS TO FREEZE MONIES OR BALANCES IN THE ISSUER RELATED PARTIES' ACCOUNTS OR SWEEPING ANY OR ALL FUNDS CONTAINED IN THE DIP COLLATERAL ACCOUNT), THE ADMINISTRATIVE AGENT SHALL BE REQUIRED TO PROVIDE FIVE (5) BUSINESS DAYS WRITTEN NOTICE TO THE ISSUER (WITH A COPY TO THE ISSUER'S BANKRUPTCY COUNSEL), COUNSEL TO THE COMMITTEE, COUNSEL TO THE PREPETITION SENIOR NOTEHOLDERS AND THE U.S. TRUSTEE. UPON WRITTEN NOTICE TO THE LANDLORD OF ANY LEASED PREMISES THAT AN EVENT OF DEFAULT, THE ADMINISTRATIVE AGENT, AT THE DIRECTION OF THE REQUISITE NOTE PURCHASERS, MAY, SUBJECT TO ANY SEPARATE AGREEMENT BY AND BETWEEN SUCH LANDLORD AND THE ADMINISTRATIVE AGENT (A "*SEPARATE AGREEMENT*"), ENTER UPON ANY LEASED PREMISES OF THE DEBTORS FOR THE PURPOSE OF EXERCISING ANY REMEDY WITH RESPECT TO COLLATERAL LOCATED THEREON AND, SUBJECT TO SUCH SEPARATE AGREEMENT, SHALL BE ENTITLED TO ALL OF THE DEBTORS' RIGHTS AND PRIVILEGES AS LESSEE UNDER SUCH LEASE WITHOUT INTERFERENCE FROM SUCH LANDLORD; *PROVIDED*, THAT, SUBJECT TO SUCH SEPARATE AGREEMENT, THE ADMINISTRATIVE AGENT, AT THE DIRECTION OF THE REQUISITE NOTE PURCHASERS, SHALL ONLY PAY, TO THE EXTENT FUNDS FOR SUCH PAYMENT ARE FIRST RECEIVED BY THE ADMINISTRATIVE AGENT FROM THE NOTE PURCHASERS, RENT OF THE DEBTORS THAT FIRST ACCRUES AFTER THE WRITTEN NOTICE REFERENCED ABOVE AND THAT IS PAYABLE DURING THE PERIOD OF SUCH OCCUPANCY BY THE ADMINISTRATIVE AGENT, CALCULATED ON A PER DIEM BASIS. NOTHING HEREIN SHALL REQUIRE THE ADMINISTRATIVE AGENT TO ASSUME ANY LEASE AS A CONDITION TO THE RIGHTS AFFORDED TO THE

ADMINISTRATIVE AGENT IN THIS PARAGRAPH OR IMPAIR THE DEBTORS' RIGHTS UNDER THE LEASE EXCEPT AS CONTEMPLATED BY THE PRECEDING SENTENCE OR UNDER SECTION 365 OF THE BANKRUPTCY CODE.....87

SECTION 9.3 **RESCISSION**. IF AT ANY TIME AFTER TERMINATION OF THE COMMITMENTS AND/OR ACCELERATION OF THE MATURITY OF THE NOTES, THE ISSUER SHALL PAY ALL ARREARS OF INTEREST AND ALL PAYMENTS ON ACCOUNT OF PRINCIPAL OF THE NOTES WHICH SHALL HAVE BECOME DUE OTHERWISE THAN BY ACCELERATION (WITH INTEREST ON PRINCIPAL AND, TO THE EXTENT PERMITTED BY LAW, ON OVERDUE INTEREST, AT THE RATES SPECIFIED HEREIN) AND ALL EVENTS OF DEFAULT AND DEFAULTS (OTHER THAN NON-PAYMENT OF PRINCIPAL OF AND ACCRUED INTEREST ON THE NOTES DUE AND PAYABLE SOLELY BY VIRTUE OF ACCELERATION) SHALL BE REMEDIED OR WAIVED PURSUANT TO *SECTION 13.1*, THEN UPON THE WRITTEN CONSENT OF THE REQUISITE NOTE PURCHASERS AND WRITTEN NOTICE TO THE ISSUER, THE TERMINATION OF THE COMMITMENTS AND/OR THE ACCELERATION AND THEIR CONSEQUENCES MAY BE RESCINDED AND ANNULLED; *PROVIDED*, *HOWEVER*, THAT SUCH ACTION SHALL NOT AFFECT ANY SUBSEQUENT EVENT OF DEFAULT OR DEFAULT OR IMPAIR ANY RIGHT OR REMEDY CONSEQUENT THEREON. THE PROVISIONS OF THE PRECEDING SENTENCE ARE INTENDED MERELY TO BIND THE NOTE PURCHASERS TO A DECISION WHICH MAY BE MADE AT THE ELECTION OF THE REQUISITE NOTE PURCHASERS AND THEY ARE NOT INTENDED TO BENEFIT THE ISSUER AND DO NOT GIVE THE ISSUER THE RIGHT TO REQUIRE THE NOTE PURCHASERS TO RESCIND OR ANNUL ANY ACCELERATION HEREUNDER, EVEN IF THE CONDITIONS SET FORTH HEREIN ARE MET.....88

SECTION 9.4 **WAIVER OF CERTAIN RIGHTS**. THE ISSUER AND THE GUARANTORS HEREBY WAIVE ANY RIGHT TO SEEK RELIEF UNDER THE BANKRUPTCY CODE, INCLUDING UNDER SECTION 105 THEREOF, TO THE EXTENT SUCH RELIEF WOULD RESTRICT OR IMPAIR THE RIGHTS AND REMEDIES OF THE ADMINISTRATIVE AGENT AND THE NOTE PURCHASERS SET FORTH HEREIN, IN THE NOTE DOCUMENTS OR IN THE ORDERS. IN THE EVENT ANY PARTY REQUESTS A HEARING SEEKING TO PREVENT THE ADMINISTRATIVE AGENT OR THE NOTE PURCHASERS FROM EXERCISING ANY OF THEIR RIGHTS AND REMEDIES THAT ARISE UPON THE OCCURRENCE OR DURING THE CONTINUATION OF AN EVENT OF DEFAULT, THE SOLE ISSUE BEFORE THE BANKRUPTCY COURT AT SUCH HEARING SHALL BE WHETHER AN EVENT OF DEFAULT HAS

AND DISBURSEMENTS OF LEGAL COUNSEL) OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST, THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ADVISORS IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE ORDERS OR THE OTHER NOTE DOCUMENTS OR ANY ACTION TAKEN OR OMITTED BY THE ADMINISTRATIVE AGENT UNDER THIS AGREEMENT, THE ORDERS OR THE OTHER NOTE DOCUMENTS; *PROVIDED*, *HOWEVER*, THAT NO NOTE PURCHASER SHALL BE LIABLE FOR ANY PORTION OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS RESULTING FROM THE ADMINISTRATIVE AGENT'S OR SUCH AFFILIATE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. WITHOUT LIMITING THE FOREGOING, EACH NOTE PURCHASER AGREES TO REIMBURSE THE ADMINISTRATIVE AGENT PROMPTLY UPON DEMAND FOR ITS RATABLE SHARE OF ANY OUT-OF-POCKET EXPENSES (INCLUDING FEES AND DISBURSEMENTS OF LEGAL COUNSEL) INCURRED BY THE ADMINISTRATIVE AGENT IN CONNECTION WITH THE PREPARATION, EXECUTION, DELIVERY, ADMINISTRATION, MODIFICATION, AMENDMENT OR ENFORCEMENT (WHETHER THROUGH NEGOTIATIONS, LEGAL PROCEEDINGS OR OTHERWISE) OF OR LEGAL ADVICE IN RESPECT OF ITS RIGHTS OR RESPONSIBILITIES UNDER, THIS AGREEMENT, THE ORDERS OR THE OTHER NOTE DOCUMENTS, TO THE EXTENT THAT THE ADMINISTRATIVE AGENT IS NOT REIMBURSED FOR SUCH EXPENSES BY THE ISSUER OR ANOTHER ISSUER RELATED PARTY. 109

SECTION 12.6 **SUCCESSOR ADMINISTRATIVE AGENT**. THE ADMINISTRATIVE AGENT MAY RESIGN AT ANY TIME BY GIVING WRITTEN NOTICE THEREOF TO THE NOTE PURCHASERS AND THE ISSUER. UPON ANY SUCH RESIGNATION, THE REQUISITE NOTE PURCHASERS SHALL HAVE THE RIGHT TO APPOINT A SUCCESSOR ADMINISTRATIVE AGENT. IF NO SUCCESSOR ADMINISTRATIVE AGENT SHALL HAVE BEEN SO APPOINTED BY THE REQUISITE NOTE PURCHASERS, AND SHALL HAVE ACCEPTED SUCH APPOINTMENT, WITHIN THIRTY (30) DAYS AFTER THE RETIRING ADMINISTRATIVE AGENT'S GIVING OF NOTICE OF RESIGNATION, THEN THE RETIRING ADMINISTRATIVE AGENT MAY, ON BEHALF OF THE NOTE PURCHASERS, APPOINT A SUCCESSOR ADMINISTRATIVE AGENT, SELECTED FROM AMONG THE NOTE PURCHASERS. IF NO SUCH SUCCESSOR SHALL HAVE ACCEPTED SUCH APPOINTMENT WITHIN THIRTY

(30) DAYS AFTER THE RETIRING ADMINISTRATIVE AGENT GIVES NOTICE OF ITS RESIGNATION, THEN THE ADMINISTRATIVE AGENT SHALL NOTIFY THE ISSUER AND THE NOTE PURCHASERS THAT NO NOTE PURCHASER HAS ACCEPTED SUCH APPOINTMENT, THEN SUCH RESIGNATION SHALL NONETHELESS BECOME EFFECTIVE IN ACCORDANCE WITH SUCH NOTICE AND (I) THE RETIRING ADMINISTRATIVE AGENT SHALL BE DISCHARGED FROM ITS DUTIES AND OBLIGATIONS HEREUNDER AND UNDER THE OTHER NOTE DOCUMENTS (EXCEPT THAT, IN THE CASE OF ANY COLLATERAL SECURITY HELD BY THE ADMINISTRATIVE AGENT ON BEHALF OF THE NOTE PURCHASERS UNDER ANY OF THE NOTE DOCUMENTS, THE RETIRING ADMINISTRATIVE AGENT SHALL CONTINUE TO HOLD SUCH COLLATERAL SECURITY UNTIL SUCH TIME AS A SUCCESSOR ADMINISTRATIVE AGENT IS APPOINTED) AND (II) ALL PAYMENTS, COMMUNICATIONS AND DETERMINATIONS PROVIDED TO BE MADE BY, TO OR THROUGH THE ADMINISTRATIVE AGENT SHALL INSTEAD BE MADE BY OR TO EACH NOTE PURCHASER DIRECTLY, UNTIL SUCH TIME AS THE REQUISITE NOTE PURCHASERS APPOINT A SUCCESSOR ADMINISTRATIVE AGENT AS PROVIDED FOR ABOVE IN THIS PARAGRAPH. UPON THE ACCEPTANCE OF ANY APPOINTMENT AS ADMINISTRATIVE AGENT HEREUNDER BY A SUCCESSOR ADMINISTRATIVE AGENT, THAT SUCCESSOR ADMINISTRATIVE AGENT SHALL THEREUPON SUCCEED TO AND BECOME VESTED WITH ALL THE RIGHTS, POWERS, PRIVILEGES AND DUTIES OF THE RETIRING OR REMOVED ADMINISTRATIVE AGENT AND THE RETIRING OR REMOVED ADMINISTRATIVE AGENT SHALL PROMPTLY (I) TRANSFER TO SUCH SUCCESSOR ADMINISTRATIVE AGENT ALL SUMS, SECURITIES AND OTHER ITEMS OF COLLATERAL HELD UNDER THE NOTE DOCUMENTS, TOGETHER WITH ALL RECORDS AND OTHER DOCUMENTS NECESSARY OR APPROPRIATE IN CONNECTION WITH THE PERFORMANCE OF THE DUTIES OF THE SUCCESSOR ADMINISTRATIVE AGENT UNDER THE NOTE DOCUMENTS, AND (II) TAKE SUCH OTHER ACTIONS, AS MAY BE NECESSARY OR APPROPRIATE IN CONNECTION WITH THE ASSIGNMENT TO SUCH SUCCESSOR ADMINISTRATIVE AGENT OF THE SECURITY INTERESTS CREATED UNDER THE NOTE DOCUMENTS, WHEREUPON SUCH RETIRING OR REMOVED ADMINISTRATIVE AGENT SHALL BE DISCHARGED FROM ITS DUTIES AND OBLIGATIONS HEREUNDER. SUCH APPOINTMENT BY THE ADMINISTRATIVE AGENT SHALL BE SUBJECT TO THE PRIOR WRITTEN APPROVAL OF THE ISSUER (WHICH APPROVAL MAY NOT BE UNREASONABLY WITHHELD, DELAYED OR

SECTION 13.5 **LIMITATION OF LIABILITY**. THE ISSUER AND EACH GUARANTOR AGREES THAT NO INDEMNIFIED PARTY SHALL HAVE ANY LIABILITY (WHETHER DIRECT OR INDIRECT, IN CONTRACT, TORT OR OTHERWISE) TO ANY ISSUER RELATED PARTY OR ANY OF THEIR RESPECTIVE SUBSIDIARIES OR ANY OF THEIR RESPECTIVE EQUITY HOLDERS OR CREDITORS FOR OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY AND IN THE OTHER NOTE DOCUMENTS AND THE ORDERS, EXCEPT TO THE EXTENT SUCH LIABILITY IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED SOLELY FROM SUCH INDEMNIFIED PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN NO EVENT, HOWEVER, SHALL ANY INDEMNIFIED PARTY BE LIABLE ON ANY THEORY OF LIABILITY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, BUSINESS, OR ANTICIPATED SAVINGS) AND THE ISSUER AND EACH ISSUER RELATED PARTY HEREBY WAIVE, RELEASE AND AGREE (FOR THEMSELVES AND ON BEHALF OF THEIR RESPECTIVE SUBSIDIARIES) NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR. NO INDEMNIFIED PARTY SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY UNINTENDED RECIPIENTS OF ANY INFORMATION OR OTHER MATERIALS DISTRIBUTED BY IT THROUGH TELECOMMUNICATIONS, ELECTRONIC OR OTHER INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH THIS AGREEMENT OR THE OTHER NOTE DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. 116

SECTION 13.6 **RIGHT OF SET-OFF**. UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF ANY EVENT OF DEFAULT AND SUBJECT TO *SECTION 9.2*, EACH NOTE PURCHASER AND EACH AFFILIATE OF A NOTE PURCHASER IS HEREBY AUTHORIZED AT ANY TIME AND FROM TIME TO TIME, TO THE FULLEST EXTENT PERMITTED BY LAW, TO SET OFF AND APPLY ANY AND ALL DEPOSITS (GENERAL OR SPECIAL, TIME OR DEMAND, PROVISIONAL OR FINAL) AT ANY TIME HELD AND OTHER INDEBTEDNESS AT ANY TIME OWING BY SUCH NOTE PURCHASER OR ITS AFFILIATES TO OR FOR THE CREDIT OR THE ACCOUNT OF THE ISSUER OR ANY OTHER ISSUER RELATED PARTY AGAINST ANY AND ALL OF THE OBLIGATIONS NOW OR HEREAFTER EXISTING WHETHER OR NOT SUCH NOTE PURCHASER SHALL HAVE MADE ANY DEMAND UNDER THIS AGREEMENT OR ANY OTHER NOTE

Schedules

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Exhibits

Exhibit A	-	Form of Assignment and Acceptance
Exhibit B	-	Form of Copyright Security Agreement
Exhibit C	-	Form of Interim Order
Exhibit D	-	Perfection Certificate
Exhibit E	-	Form of Issuance Date Certificate
Exhibit F	-	Form of Note
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Exhibit M	-	Revolving Loan DIP Agreement
Exhibit N	-	Form of Joinder Agreement
Exhibit O	-	Form of Intercreditor Agreement

JUNIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION NOTE PURCHASE AGREEMENT, dated as of March [__], 2011, among Harry and David, an Oregon corporation, as a debtor and debtor-in-possession under chapter 11 of the Bankruptcy Code (as defined below) (the "*Issuer*"), the direct parent of the Issuer, Harry & David Holdings, Inc., a Delaware corporation, as a debtor and debtor-in-possession under chapter 11 of the Bankruptcy Code (the "*Parent Guarantor*") and each of the Parent Guarantor's Subsidiaries (as defined below) listed on the signature pages hereto as Subsidiary Guarantors, each as a debtor and debtor-in-possession under chapter 11 of the Bankruptcy Code (the "Subsidiary Guarantors" and, together with the Parent Guarantor, each a "Guarantor" and collectively the "*Guarantors*" and, together with the Issuer, individually a "*Debtor*" and collectively, the "*Debtors*"), the Note Purchasers (as defined below) from time to time party hereto, and Wilmington Trust FSB, as administrative agent for the Note Purchasers (in such capacity, together with its successors and permitted assigns, the "*Administrative Agent*").

W I T N E S S E T H:

WHEREAS, on March [__], 2011 (the "*Petition Date*"), the Issuer and the Guarantors each filed a voluntary petition for relief (collectively, the "*Case*") under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "*Bankruptcy Court*"); and

WHEREAS, the Issuer and the Guarantors are continuing to operate their respective businesses and manage their respective properties as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, in connection with the Case, the Issuer and the Guarantors are entering into a senior secured super-priority revolving credit facility in an aggregate principal amount not to exceed $100,000,000 in order to fund the continued operation of the Issuer's and the Guarantors' businesses as debtors and debtors-in-possession under the Bankruptcy Code and for the other purposes; and

WHEREAS, in order to provide additional liquidity, the Issuer has authorized the issuance and sale to the Note Purchasers of, and the Note Purchasers are, subject to the terms and conditions hereof, willing to purchase, secured notes of the Issuer in the form of Exhibit F hereto on the terms and conditions described herein (the "*Notes*") in an aggregate principal amount not to exceed $55,000,000 in order to fund the continued operation of the Issuer's and the Guarantors' businesses as debtors and debtors-in-possession under the Bankruptcy Code and for the other purposes specified herein; and

WHEREAS, each of the Guarantors has agreed to guaranty the obligations of the Issuer hereunder and the Issuer and each of Guarantors has agreed to secure its obligations to the Note Purchasers hereunder with, *inter alia*, security interests in and liens on all of its property and assets, whether real or personal, tangible or intangible, now existing or hereafter acquired or arising, and wherever located, all as more fully provided herein;

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

ARTICLE I

DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS

Section 1.1 Defined Terms. As used in this Agreement, the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"*Account*" means any "*account*" as specified in Article 9 of the UCC, whether due or to become due, whether or not the right of payment has been earned by performance, and whether now owned or hereafter acquired or arising in the future.

"*Account Debtor*" has the meaning specified in Article 9 of the UCC.

"*Accounts Receivable*" means all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of or services rendered or to be rendered, including, without limitation, all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Property, together with all of each Issuer Related Party's right, title and interest, if any, in all goods or other property giving rise to such right to payment, including any rights to stoppage in transit, replevin, reclamation and resales, and all related security interests, Liens and pledges, whether voluntary or involuntary, in each case whether now existing or owned or hereafter arising or acquired, and all Collateral Support and Supporting Obligations related to the foregoing and all Accounts Receivable Records.

"*Accounts Receivable Records*" means (a) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Accounts Receivable, (b) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Accounts Receivable, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Accounts Receivable, whether in the possession or under the control of an Issuer Related Party or any computer bureau or agent from time to time acting for an Issuer Related Party or otherwise, (c) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or lenders, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (d) all credit information, reports and memoranda relating thereto and (e) all other written, electronic or other non-written forms of information related in any way to the foregoing or any Accounts Receivable.

"*Additional Pledged Collateral*" means all shares of, limited and/or general partnership interests in, and limited or unlimited liability company interests in, and all securities convertible into, and warrants, options and other rights to purchase or otherwise acquire, stock of, either (i) any Person that, after the date of this Agreement, as a result of any occurrence, becomes a direct Subsidiary of any Issuer Related Party or (ii) any issuer of Pledged Stock, any Partnership, any LLC or any unlimited liability company that are acquired by any Issuer Related Party after the date hereof; all certificates or other instruments representing any of the foregoing; all Security

Entitlements of any Issuer Related Party in respect of any of the foregoing; all additional Indebtedness from time to time owed to any Issuer Related Party by any obligor on the Pledged Notes and the instruments evidencing such Indebtedness; and all interest, cash, instruments and other property or Proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing. Additional Pledged Collateral may be General Intangibles or Investment Property.

"*Adequate Protection Obligations*" means the adequate protection, if any, for the use of the Prepetition Collateral provided to the Prepetition Revolving Lenders or any other Person pursuant to the Orders, subject in each case to (i) the liens and super-priority claims granted to secure this Facility, (ii) the liens and super-priority claims granted to secure the Revolving Loan DIP Facility and (iii) the Carve-Out.

"*Administrative Agent*" has the meaning specified in the preamble to this Agreement.

"*Affiliate*" means, with respect to any Person, (i) any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person, (ii) each officer, director, general partner or joint-venturer of such Person, and (iii) each Person that is the beneficial owner of 10% or more of any class of Voting Stock of such Person. For the purposes of this definition, "*control*" means the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"*Agent Fee Letter*" means that certain fee letter, dated as of March 27, 2011, addressed to the Issuer from the Administrative Agent and accepted by the Issuer on March 27, 2011, with respect to certain fees to be paid from time to time to the Administrative Agent.

"*Agreement*" means this Junior Secured Super-Priority Debtor-In-Possession Note Purchase Agreement.

"*Aggregate Commitment*" means $55,000,000.

"*Applicable Margin*" means a rate per annum equal to (x) 9.25% in the case of Base Rate Notes and (y) 11.50% in the case of Eurodollar Rate Notes.

"*Approved Fund*" means any Fund that is advised or managed by (a) a Note Purchaser, (b) an Affiliate of a Note Purchaser or (c) an entity or Affiliate of an entity that administers or manages a Note Purchaser.

"*Asset Sale*" has the meaning specified in *Section 8.4*.

"*Assignment and Acceptance*" means an assignment and acceptance entered into by a Note Purchaser and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of *Exhibit A*.

"*Bank*" has the meaning specified in *Section 2.15(a)*.

"*Bankruptcy Code*" means title 11, United States Code, as amended from time to time.

"*Bankruptcy Court*" has the meaning specified in the recitals to this Agreement or any other court having competent jurisdiction over the Case.

"*Bankruptcy Law*" means each of the Bankruptcy Code, any similar federal, state or foreign Requirement of Law for the relief of debtors or any arrangement, reorganization, insolvency, moratorium or assignment for the benefit of creditors or any other marshalling of the assets and liabilities of any Issuer Related Party and any similar Requirement of Law relating to or affecting the enforcement of creditors' rights generally.

"*Base Rate*" means, for any period, a fluctuating interest rate per annum as shall be in effect from time to time, which rate per annum shall be equal at all times to the higher of (a) the rate of interest announced from time to time, as the prime lending rate in the Wall Street Journal (or a substitute national publication selected by the Requisite Note Purchasers) and (b) the sum of (i) 0.50% per annum plus (ii) the Federal Funds Rate; provided that in no event shall the Base Rate at any time be less than 3.75% per annum.

"*Base Rate* Note" means any Note or portion of a Note during any period in which such Note or portion of a Note bears interest based on the Base Rate.

"*Budget*" means the operating budget delivered to the Administrative Agent and the Note Purchasers in accordance with *Section 3.1(b)(xii)*, as updated pursuant to *Section 6.1(f)* during the continuance of the Case to the extent such update is reasonably satisfactory to the Requisite Note Purchasers.

"*Business Day*" means a day of the year on which banks are not required or authorized to close in New York City and, if the applicable Business Day relates to notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Rate Notes, a day on which dealings in Dollar deposits are also carried on in the London interbank market.

"*Business Plan*" means the business plan of the Parent Guarantor and its Subsidiaries and the projected operating budget of the Debtors for Fiscal Years 2011 and 2012, dated March 4, 2011, as may be updated from time to time pursuant to this Agreement.

"*Business Entity*" means a partnership, limited partnership, limited liability company, corporation (including a business trust), unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity.

"*Capital Lease*" means, with respect to any Person, any lease of, or other arrangement conveying the right to use, property by such Person as lessee that would be accounted for as a capital lease on a balance sheet of such Person prepared in conformity with GAAP.

"*Capital Lease Obligations*" means, with respect to any Person, the capitalized amount of all obligations of such Person or any of its Subsidiaries under Capital Leases, as determined on a consolidated basis in conformity with GAAP.

"*Carve-Out*" has the meaning set forth in the Interim Order or the Final Order, as applicable.

"*Carve-Out Trigger Notice*" means a written notice delivered by the Administrative Agent to the Debtors' lead counsel, the U.S. Trustee, and lead counsel to any Committee, which notice may be delivered at any time following the occurrence and during the continuation of any Event of Default.

"*Case*" has the meaning specified in the recitals to this Agreement.

"*Cash Collateral Account*" means any deposit account or Securities Account, including the Note DIP Collateral Account, established by a financial institution reasonably acceptable to the Requisite Note Purchasers in which cash and Cash Equivalents may from time to time be on deposit or held therein as provided herein.

"*Cash Equivalents*" means (a) Dollar denominated securities issued or directly and fully guaranteed or insured by the United States government or any agency thereof; provided that the full faith and credit of the United States is pledged in support thereof, (b) Dollar denominated certificates of deposit, overnight bank deposits and bankers' acceptances of any commercial bank organized under the laws of the United States, any state thereof, the District of Columbia, or its branches or agencies that (i) is a member of the Federal Reserve System, (ii) issues (or a holding company of which issues) commercial paper, rated at least "A-1" by S&P or "P-1" by Moody's and (iii) has combined capital and surplus of at least $500,000,000, (c) Dollar denominated commercial paper of an issuer rated at least "A-1" by S&P or "P-1" by Moody's, and (d) Dollar denominated shares of any money market fund that (i) has at least 95% of its assets invested continuously in the types of investments referred to in *clauses (a)* through *(c)* above, inclusive (giving effect to the proviso at the end of this paragraph), (ii) has net assets of not less than $500,000,000 and (iii) is rated at least "A-1" by S&P or "P-1" by Moody's; *provided*, *however*, that the maturities of all obligations of the type specified in *clauses (a)* through *(c)* above, inclusive, shall not exceed one hundred eighty (180) days.

"*Change of Control*" means the occurrence of any of the following: (a) any person or group of persons (within the meaning of the Securities Exchange Act of 1934, as amended) (i) shall have acquired (after the Closing Date) beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended) of 35% or more of the issued and outstanding common Stock of the Parent Guarantor or Stock representing 35% or more of the voting or economic power of the Parent Guarantor's Stock or (ii) shall have obtained (after the Closing Date) the power (whether or not exercised) to elect a majority of the members of the board of directors of the Parent Guarantor or the Issuer; (b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Parent Guarantor or the Issuer by persons who were neither (i) nominated by the board of directors of the Parent Guarantor or the Issuer nor (ii) appointed by members so nominated; or (c) the Parent Guarantor shall cease to own and control all of the economic and voting rights associated with all of the outstanding Stock of the other Issuer Related Parties. If, at any time, any of the members of the board of directors of the Parent Guarantor or the Issuer shall have more than one vote per person, then any determination of a majority of the board of directors shall be based on a majority of the voting power of the members thereof rather than a majority of the members or seats.

"*Chattel Paper*" has the meaning specified in Section 9-102(a)(11) of the UCC.

"*Chief Restructuring Officer*" has the meaning specified in *Section 3.1(l).*

"*Claim*" has the meaning ascribed to such term in section 101(5) of the Bankruptcy Code.

"*Closing Date*" means the first date on which the conditions set forth in *Section 3.1* are satisfied or waived; *provided,* that such date shall not be later than March 31, 2011.

"*Code*" means the Internal Revenue Code of 1986 (or any successor legislation thereto), as amended from time to time.

"*Collateral*" has the meaning specified in *Section 11.1*.

"*Collateral Support*" means all property (real or personal) assigned, hypothecated or otherwise securing any of *items (i)* through *(xxii)* in the definition of Collateral set forth in *Section 11.1* and includes any security agreement or other agreement granting a lien or security interest in such real or personal property.

"*Commercial Tort Claims*" has the meaning specified in Article 9 of the UCC.

"*Commitment*" means, with respect to each Note Purchaser, (i) prior to the Commitment Adjustment Time, such Note Purchaser's Stated Commitment and (ii) as of and after the Commitment Adjustment Time, such Note Purchaser's Final Commitment, in each case, as such commitment may be reduced from time to time pursuant to *Section 2.3*.

"*Commitment Adjustment Time*" means that time on the Final Issuance Date that is immediately prior to the Issuance of Notes on such date.

"*Commitment Parties*" means (i) LC Capital Master Fund, Ltd.; (ii) Northeast Investors Trust; (iii) Scoggin Worldwide Fund Ltd.; (iv) Scoggin Capital Management II LLC; (v) Scoggin International Fund Ltd.; (vi) Newport Global Credit Fund (Master) LP, (vii) Oppenheimer Distressed Opportunities, LP, (viii) Singer Children's Management Trust, (ix) CC Arbitrage, Ltd., (x) CC ARB SIF I., Ltd, (xi) Litespeed Master Fund Ltd., (xii) Lloyd I. Miller Trust A-4, (xiii) UBS Securities, LLC, (xiv) Wasserstein, (xv) B2 LLC, and (xvii) Investin Pro FMBA Dalton Distressed Debt.

"*Commitment Reduction Amount*" has the meaning given thereto in the definition of "Final Commitment".

"*Committee*" means the official statutory committee of unsecured creditors, if any, appointed in the Case pursuant to section 1102 of the Bankruptcy Code.

"*Commodity Account*" has the meaning specified in Article 9 of the UCC.

"*Commodity Intermediary*" has the meaning specified in Article 9 of the UCC.

"*Compliance Certificate*" has the meaning specified in *Section 6.1(d).*

"*Constituent Documents*" means, with respect to any Person, (a) the articles/certificate of incorporation or certificate of formation (or the equivalent organizational documents) of such Person, (b) the by-laws or LLC Agreement (or the equivalent governing documents) of such Person and (c) any document setting forth the manner of election and duties of the directors or managing members of such Person (if any) and the designation, amount and/or relative rights, limitations and preferences of any class or series of such Person's Stock.

"*Contaminant*" means any material, substance or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including any petroleum or petroleum-derived substance or waste, asbestos and polychlorinated biphenyl.

"*Contracts*" means, with respect to any Issuer Related Party, any and all "contracts" (as such term is defined in Article 1 of the UCC) of such Issuer Related Party.

"*Contractual Obligation*" means, with respect to any Person, any obligation, agreement, undertaking or similar provision of any Security issued by such Person or of any agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument (excluding the Note Documents) to which such Person is a party or by which it or any of its property is bound or to which any of its properties is subject.

"*Control*" has the meaning specified in Section 9-106 of the UCC.

"*Copyright Licenses*" means any written agreement naming any Issuer Related Party as licensor or licensee granting any right under any Copyright, including the grant of rights to copy, publicly perform, create derivative works, manufacture, distribute, exploit and sell materials derived from any Copyright.

"*Copyright Security Agreement*" means the Copyright Security Agreement, if any, between the Issuer Related Parties and the Administrative Agent, in the form of *Exhibit B.*

"*Copyrights*" means (a) all copyrightable works, including but not limited to software, databases, websites, data, and other works of authorship, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act) whether registered or unregistered arising under the copyright laws of the United States, any other country or any political subdivision thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any foreign counterparts thereof and (b) the right to obtain all renewals thereof.

"*Critical Vendors*" means the Issuer's critical vendors, as such term is commonly used, *provided* that no Affiliate of the Parent Guarantor or its Subsidiaries shall be a Critical Vendor without the prior written consent of the Requisite Note Purchasers.

"*Customary Permitted Liens*" means, with respect to any Person, any of the following Liens:

(a) Liens with respect to the payment of taxes, assessments or governmental charges in each case that are not yet due payable or delinquent or that are being contested in

good faith by appropriate proceedings in accordance with all applicable Requirements of Law and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP and which proceedings have the effect of permitting the forfeiture or sale of the assets encumbered by any such lien;

(b) Liens of landlords arising by statute and liens of suppliers, mechanics, carriers, materialmen, warehousemen or workmen and other liens imposed by law created in the ordinary course of business for amounts not yet due or that are being contested in good faith by appropriate proceedings in accordance with all applicable Requirements of Law and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP;

(c) pledges and deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security benefits or to secure the performance of bids, tenders, sales, contracts (other than for the repayment of borrowed money) and surety, stay, appeal, customs or performance bonds arising in each case in the ordinary course of business;

(d) encumbrances arising by reason of zoning restrictions, easements, licenses, reservations, covenants, rights-of-way, utility easements, building restrictions and other similar encumbrances on the use of Real Property that do not secure any obligations for borrowed money and do not in the aggregate materially detract from the value of such Real Property or interfere with the ordinary conduct of the business conducted and proposed to be conducted at such Real Property;

(e) encumbrances arising under leases or subleases of Real Property, in the ordinary course of business, that are subordinate in all respects to the liens created by the Note Documents and the Orders do not materially detract from the value of such Real Property or interfere with the ordinary conduct of the business conducted and proposed to be conducted at such Real Property;

(f) financing statements with respect to a lessor's rights in and to personal property leased to such Person in the ordinary course of such Person's business other than through a Capital Lease;

(g) liens of a collection bank arising in the ordinary course of business under Section 4-208 of the UCC; and

(h) judgment liens in respect of judgments that do not constitute a Default or an Event of Default.

"*Debtors*" has the meaning specified in the preamble to this Agreement.

"*Default*" means any event which with the passing of time or the giving of notice or both would become an Event of Default.

"*Deposit Account*" has the meaning specified in Article 9 of the UCC.

"*DIP Intercreditor Agreement*" means the Intercreditor Agreement, among the Revolving Loan DIP Agent and the Administrative Agent, substantially in the form attached hereto as *Exhibit O*.

"*Disclosure Statement*" has the meaning specified in *Section 9.1(r)*.

"*Document*" has the meaning specified in Article 9 of the UCC.

"*Dollar Equivalent*" means, with respect to any amount, (i) if such amount is denominated in Dollars, such amount and (ii) if such amount is denominated in a currency other than Dollars, the equivalent of such amount in Dollars as determined by the Administrative Agent in accordance with its normal practices.

"*Dollars*" and the sign "*$*" each mean the lawful money of the United States of America.

"*Domestic IP Agreements*" means the Trademark Security Agreement, the Patent Security Agreement and the Copyright Security Agreement.

"*Domestic Subsidiary*" means any Subsidiary of an Issuer Related Party that is incorporated or formed pursuant to the laws of a State of the United States of America or the District of Columbia.

"*Effective Date*" means the date upon which a Plan becomes effective.

"*Eligible Assignee*" means (a) a Note Purchaser, (b) an Affiliate of a Note Purchaser, (c) an Approved Fund, and (d) any other Person approved by the Administrative Agent at the direction of the Requisite Note Purchasers and, unless a Default or an Event of Default shall have occurred, the Issuer (which consent of the Issuer not to be unreasonably withheld, delayed or conditioned); *provided*, that "Eligible Assignee" shall not include any Issuer Related Party or any Person controlled by any Issuer Related Party.

"*Eligible Holder*" means a beneficial holder of the Prepetition Senior Notes who is a holder of record of such Prepetition Senior Notes as of the Record Date and who, prior to the Syndication Deadline, (a) provides the Administrative Agent with written evidence, upon which the Administrative Agent may conclusively rely without independent investigation, demonstrating (i) its beneficial ownership of the Prepetition Senior Notes (which shall include proof of holdings as reflected in a broker dealer medallion-stamped statement to be provided by the beneficial holder), and (ii) that it is an accredited investor or qualified institutional buyer, as such terms are defined in Rules 501 and 144A promulgated under the Securities Act, respectively. Each of the Initial Note Purchasers shall automatically be deemed to be an Eligible Holder if it satisfies the foregoing clause (ii); *provided*, that "Eligible Holder" shall not include any Issuer Related Party or any Person controlled by any Issuer Related Party.

"*Eligible Share*" means, with respect to each New Note Purchaser, a fraction (expressed as a percentage) (x) the numerator of which is the principal amount of such New Note Purchaser's beneficial holdings of Prepetition Senior Notes as of the Record Date, plus accrued interest thereon up to the Record Date, and (y) the denominator of which is the aggregate principal amount of all outstanding Prepetition Senior Notes as of the Record Date, other than

any Prepetition Senior Notes held by any Issuer Related Parties, plus accrued interest thereon up to the Record Date.

"*Entry Date*" means the date of the entry of the Final Order on the docket of the Bankruptcy Court.

"*Environmental Laws*" means all applicable Requirements of Law now or hereafter in effect, as amended or supplemented from time to time, relating to pollution or the regulation and protection of human or animal health, safety, the environment or natural resources, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq*.); the Hazardous Materials Transportation Uniform Safety Act, as amended (49 U.S.C. 5101 *et seq*.); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 *et seq*.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq*.); the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 *et seq*.); the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq*.); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq*.); the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 *et seq*.); the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq*.); and their state, municipal and local counterparts or equivalents and any transfer of ownership notification or approval statute, including the Industrial Site Recovery Act (N.J.S.A. § 13:1K-6 *et seq*.).

"*Environmental Liabilities and Costs*" means, with respect to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, including any thereof arising under any Environmental Law, Permit, order or agreement with any Governmental Authority or other Person, which relate to any environmental, health or safety condition or a Release or threatened Release, and result from or otherwise relate to the past, present or future operations of, or ownership of property by, such Person or any of its Subsidiaries.

"*Environmental Lien*" means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

"*Equipment*" has the meaning specified in Article 9 of the UCC.

"*Equity Issuance*" means the issuance by any Issuer Related Party or any of its Subsidiaries of any Stock.

"*ERISA*" means the Employee Retirement Income Security Act of 1974 (or any successor legislation thereto), as amended from time to time and the rules and regulations therein.

"*ERISA Affiliate*" means any trade or business (whether or not incorporated) under common control or treated as a single employer with the Parent Guarantor or any of its Subsidiaries within the meaning of Section 414 (b), (c), (m) or (o) of the Code.

"*ERISA Event*" means (a) a reportable event described in Section 4043(b) or 4043(c)(1), (3), (5), (6), (8), (9), (10), (11), (12), or (13) of ERISA with respect to a Title IV Plan or a Multiemployer Plan, other than a reportable event for which PBGC notice requirements have been waived; (b) the withdrawal of the Parent Guarantor, any of its Subsidiaries or any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of the Parent Guarantor, any of its Subsidiaries or any ERISA Affiliate from any Multiemployer Plan; (d) notice of reorganization or insolvency of a Multiemployer Plan; (e) the filing of a notice of intent to terminate or the treatment of a plan amendment as a termination under Sections 4041 or 4041A of ERISA of a Title IV Plan or Multiemployer Plan; (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (g) the failure to make any required contribution to a Title IV Plan or Multiemployer Plan; (h) the imposition of a lien under Section 430 of the Code or Section 303 of ERISA on the Parent Guarantor or any of its Subsidiaries or any ERISA Affiliate; (i) the occurrence of any Title IV Plan or Multiemployer Plan entering into "at risk" status (as defined in Section 403 of the Code or Section 303 of ERISA) or "endangered" or "critical" status (as defined in Section 305 of ERISA); or (j) notice from the PBGC of any other event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA upon Parent Guarantor or any of its Subsidiaries or any ERISA Affiliate.

"*Eurocurrency Liabilities*" has the meaning assigned to that term in Regulation D of the Federal Reserve Board, as in effect from time to time.

"*Eurodollar Base Rate*" means, with respect to any Interest Period for any Eurodollar Rate Note, the rate determined by the Administrative Agent to be the offered rate for deposits in Dollars for the applicable Interest Period which appears on the Dow Jones Markets Telerate Page 3750 (or any successor page) as of 11:00 A.M., London time, on the second full Business Day next preceding the first day of each Interest Period. In the event that such rate does not appear on the Dow Jones Markets Telerate Page 3750 (or otherwise on the Dow Jones Markets screen), the Eurodollar Base Rate for the purposes of this definition shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Administrative Agent, or, in the absence of such availability, the Eurodollar Base Rate shall be the rate of interest determined by the Administrative Agent to be the average (rounded upward to the nearest whole multiple of 1/16 of one percent per annum, if such average is not such a multiple) of the rates per annum at which deposits in Dollars are offered by a bank selected by the Administrative Agent at 11:00 A.M. (London time) two (2) Business Days before the first day of such Interest Period in an amount substantially equal to the Eurodollar Rate Note for a period equal to such Interest Period.

"*Eurodollar Rate*" means, with respect to any Interest Period for any Eurodollar Rate Note, an interest rate per annum equal to the rate per annum obtained by dividing (a) the Eurodollar Base Rate by (b) a percentage equal to 100% *minus* the reserve percentage applicable two (2) Business Days before the first day of such Interest Period under regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement

(including any emergency, supplemental or other marginal reserve requirement) for a member bank of the Federal Reserve System in New York City with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (or with respect to any other category of liabilities that includes deposits by reference to which the Eurodollar Rate is determined) having a term equal to such Interest Period; provided, that in no event shall the Eurodollar Rate at any time be less than 1.50% per annum.

"*Eurodollar Rate* Note" means any Note or portion of a Note that, for an Interest Period, bears interest based on the Eurodollar Rate.

"*Event of Default*" has the meaning specified in *Section 9.1*.

"*Exit ABL Commitment Letter*" shall have the meaning set forth in *Section 3.1(k).*

"*Exit ABL Facility"* shall have the meaning set forth in *Section 3.1(k).*

"*Facility*" means the Commitments and the provisions herein related to the Notes.

"*Federal Funds Rate*" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"*Federal Reserve Board*" means the Board of Governors of the Federal Reserve System, or any successor thereto.

"*Fee Letters*" means the Agent Fee Letter and the Note Purchaser Fee Letter.

"*Final Commitment*" means, as of the Final Issuance Date, (i) with respect to each New Note Purchaser, its Special Allocation Amount, (ii) with respect to each Initial Note Purchaser that does not have an Oversubscription Commitment, the Commitment of such Initial Note Purchaser immediately prior to the Commitment Adjustment Time, and (iii) with respect to each Initial Note Purchaser that has an Oversubscription Commitment, an amount (which shall not be less than zero) equal to (a) its Commitment immediately prior to the Commitment Adjustment Time less (b) its pro rata portion (based upon the amount of its Oversubscription Commitment as compared to the aggregate Oversubscription Commitment of all Initial Note Purchasers) of the aggregate amount of Commitments of all New Note Purchasers as of the Commitment Adjustment Time (such pro rata portion in clause (b) above with respect to such Initial Note Purchaser, the "*Commitment Reduction Amount*").

"*Final Issuance Date*" means the date occurring not later than three (3) days after the Entry Date, on which all conditions to the purchase of the Notes specified in *Section 3.1* and *3.2* are satisfied. There shall be no more than one Final Issuance Date, if any.

"*Final Order*" means an order of the Bankruptcy Court pursuant to section 364 of the Bankruptcy Code, approving this Agreement, the other Note Documents, the Revolving Loan DIP Agreement and the other Revolving Loan DIP Documents and authorizing the incurrence by the Issuer Related Parties of permanent post-petition secured and super-priority debtor-in-possession Indebtedness in accordance with this Agreement, and as to which no stay has been entered and which has not been reversed, modified, vacated or overturned, and which is in form and substance substantially the same as the Interim Order, with such modifications as are acceptable in all respects to the Administrative Agent (at the direction of the Requisite Note Purchasers).

"*Financial Assets*" has the meaning specified in Article 8 of the UCC.

"*Financial Statements*" means the financial statements of the Issuer Related Parties delivered in accordance with *Sections 4.4* and *6.1*.

"*First Day Orders*" means all orders entered by the Bankruptcy Court (a) on the Petition Date or (b) within five (5) Business Days of the Petition Date and based on motions filed on the Petition Date.

"*Fiscal Quarter*" means each of the three-month periods ending on the last Saturday in March, June, September and December, based on a 52/53-week year.

"*Fiscal Year*" means the twelve-month period ending on the last Saturday in June, based on a 52/53-week year.

"*Foreign Subsidiary*" means any Subsidiary of an Issuer Related Party that is not a Domestic Subsidiary.

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

"*Funding Bank*" shall have the meaning given thereto in *Section 2.8*.

"*Funds Flow Memorandum*" has the meaning specified in *Section 3.1(b)(xv)*.

"*GAAP*" means generally accepted accounting principles in the United States of America as in effect from time to time set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, that are applicable to the circumstances as of the date of determination.

"*General Intangible*" has the meaning specified in Article 9 of the UCC.

"*Goods*" has the meaning specified in Article 9 of the UCC.

"*Governmental Authority*" means any nation, sovereign or government, any state or other political subdivision thereof and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any central bank or stock exchange.

"*Guaranteed Obligations*" has the meaning specified in *Section 10.1*.

"*Guarantor*" has the meaning specified in the preamble to this Agreement.

"*Guaranty*" means the guaranty of the Guaranteed Obligations made by the Guarantors pursuant to *Article X* of this Agreement.

"*Guaranty Obligation*" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose or intent of such Person in incurring the Guaranty Obligation is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor, or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, if required, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, or (v) to supply funds to or in any other manner invest in such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if in the case of any agreement described under *subclause (i)*, *(ii)*, *(iii)*, *(iv)* or *(v)* of *clause (b)* of this sentence the primary purpose or intent thereof is to provide assurance that Indebtedness of another Person will be paid or discharged, that any agreement relating thereto will be complied with or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof. The amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported.

"*Hedging Contracts*" means all Interest Rate Contracts, foreign exchange contracts, currency swap or option agreements, forward contracts, commodity swap, purchase or option agreements, other commodity price hedging arrangements, and all other similar agreements or arrangements designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices.

"*Indebtedness*" means, with respect to any Person, without duplication (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced

by notes, bonds, debentures or similar instruments or that bear interest, (c) all reimbursement and all obligations with respect to letters of credit, bankers' acceptances, surety bonds and performance bonds, whether or not matured, (d) all indebtedness of such Person for the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business on normal trade terms and, in the case of post-petition trade accounts payable only, not overdue by more than 90 days, (e) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (f) all Capital Lease Obligations and Synthetic Lease Obligations, (g) all Guaranty Obligations of such Person, (h) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any Stock or Stock Equivalents of such Person, valued, in the case of redeemable preferred stock, at the greater of its voluntary liquidation preference and its involuntary liquidation preference plus accrued and unpaid dividends, (i) all payments that such Person would have to make in the event of an early termination on the date Indebtedness of such Person is being determined in respect of Hedging Contracts of such Person and (j) all Indebtedness of the type referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including Accounts and General Intangibles) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"*Indemnified Matters*" has the meaning specified in Section 13.4(a).

"*Indemnified Party*" has the meaning specified in *Section 13.4(a).*

"*Initial Budget*" has the meaning specified in *Section 3.1(b)(xii).*

"*Initial Issuance Date*" means the Closing Date.

"*Initial Note Purchaser*" means each Note Purchaser listed on *Schedule I* on the Closing Date.

"*Instrument*" has the meaning specified in Article 9 of the UCC, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

"*Insurance*" has the meaning specified in Article 9 of the UCC.

"*Intellectual Property*" means, collectively, all rights, priorities and privileges of any Issuer Related Party relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks, Trademark Licenses, information technology, know-how, processes and trade secrets, and all rights to sue at law or in equity for any past, present or future infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom and all royalties and income associated therewith.

"*Interest Period*" means, in the case of each Eurodollar Rate Note, (a) initially, the period commencing on the date such Eurodollar Rate Note is issued and purchased hereunder and ending one month thereafter, and (b) thereafter, a period commencing on the last day of the

immediately preceding Interest Period therefor and ending one month thereafter, *provided, however*, that all of the foregoing provisions relating to Interest Periods in respect of Eurodollar Rate Notes are subject to the following:

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

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

(c) no Interest Period may end after the Scheduled Termination Date;

(d) the Issuer may not select any Interest Period in respect of all Eurodollar Rate Notes having an aggregate principal amount of less than $5,000,000 and the Issuer may not select an Interest Period with respect to a portion of the Eurodollar Rate Notes such that the remaining portion having a principal amount of less than $5,000,000, would have a distinct Interest Period; and

(e) there shall be outstanding at any one time no more than five (5) Interest Periods in the aggregate.

"*Interest Rate Contracts*" means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest rate insurance.

"*Interim Order*" means that certain order issued by the Bankruptcy Court in substantially the form of *Exhibit C* and otherwise in form and substance satisfactory in all respects to the Administrative Agent (at the direction of the Requisite Note Purchasers).

"*Interim Order Entry Date*" means the date of the entry of the Interim Order on the docket of the Bankruptcy Court.

"*Inventory*" has the meaning specified in Section 9-102(a)(48) of the UCC, wherever located.

"*Investment*" means, with respect to any Person, any of the following: (a) any purchase or other acquisition by such Person of (i) any Security issued by, (ii) a beneficial interest in any Security issued by, or (iii) any other equity ownership interest in, any other Person, (b) any purchase by such Person of all or a significant part of the assets of a business conducted by any other Person, or all or substantially all of the assets constituting the business of a division, branch or other unit operation of any other Person, and (c) any loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business as presently conducted), or capital contribution by such Person to any other Person, including all Indebtedness of any other Person to such Person arising from a sale of property by such Person other than in the ordinary course of its business.

"*Investment Property*" means, with respect to any Issuer Related Party, any and all "investment property" (as such term is defined in Article 9 of the UCC) of such Issuer Related Party, wherever located.

"*IRS*" means the Internal Revenue Service of the United States or any successor thereto.

"*Issuance*" means an issuance of Notes by the Issuer pursuant to *Section 2.1(b)(i)*, *Section 2.1(b)(ii)*, or *Section 2.1(b)(iii)* as applicable.

"*Issuance Date Certificate*" has the meaning set forth in *Section 2.2(a)* hereof.

"*Issuance Date*" means the Initial Issuance Date or the Final Issuance Date, as applicable.

"*Issuer*" has the meaning specified in the preamble to this Agreement.

"*Issuer Related Party*" means the Issuer, each Guarantor and each other Subsidiary, if any, of the Issuer and any Guarantor.

"*Issuer Stock*" has the meaning specified in *Section 4.3(a)*.

"*Issuer's Accountants*" means PricewaterhouseCoopers or such other independent nationally recognized public accountants reasonably acceptable to the Administrative Agent (at the direction of the Requisite Note Purchasers).

"*Joinder Agreement*" means a joinder agreement entered into by a New Note Purchaser and the Issuer Related Parties, and accepted by the Administrative Agent, in substantially the form of *Exhibit N*.

"*Leases*" means, with respect to any Person, all of those leasehold estates in real property of such Person, as lessee, as the same may be amended, supplemented or otherwise modified from time to time.

"*Letter of Credit Rights*" has the meaning specified in Article 9 of the UCC.

"*Lien*" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, lien (statutory or other), security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever intended to assure payment of any Indebtedness or other obligation, including any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease and any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction naming the owner of the asset to which such Lien relates as debtor.

"*LLC*" means any limited liability company in which any Issuer Related Party has an interest.

"*LLC Agreement*" means the limited liability company agreement or such analogous agreement governing the operation of any LLC.

"*Margin Stock*" means margin stock within the meaning of Regulation U of the Federal Reserve Board.

"*Material Adverse Change*" means a material adverse change in any of (a) the business, assets, operations, performance, properties, condition (financial or otherwise) or prospects of Parent Guarantor and its Subsidiaries, taken as a whole (other than publicly disclosed (or disclosed to the Note Purchasers in writing pursuant to applicable confidentiality agreements) events leading up to the commencement of the Case, the commencement and continuation of the Case and the consequences that would normally result therefrom), (b) the legality, validity or enforceability of any Note Document or the Orders, (c) the ability of the Issuer or the other Guarantors to perform their respective obligations under the Note Documents, (d) the perfection or priority of the Liens granted pursuant to the Note Documents or the Orders, or (e) the rights and remedies of the Administrative Agent or the other Secured Parties under, or the ability of the Administrative Agent or the other Secured Parties to enforce, the Note Documents or the Orders.

"*Material Adverse Effect*" means an effect that results in or causes, or could reasonably be expected to result in or cause, a Material Adverse Change.

"*Material Intellectual Property*" means Intellectual Property used by, owned by or licensed to an Issuer Related Party which is material to the business, assets, operations, performance, properties, condition (financial or otherwise) or prospects of such Issuer Related Party.

"*Money*" has the meaning specified in Article 1 of the UCC.

"*Moody's*" means Moody's Investors Services, Inc. and its successors.

"*Multiemployer Plan*" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Parent Guarantor, any of its Subsidiaries or any ERISA Affiliate has any obligation or liability, contingent or otherwise.

"*Net Cash Proceeds*" means proceeds received by any Issuer Related Party or any of its Subsidiaries after the Closing Date in cash or Cash Equivalents from any (a) Asset Sale, other than an Asset Sale permitted under *clauses (a)* through *(g)*, inclusive, of *Section 8.4*, net of (i) the reasonable cash costs of sale, assignment or other disposition, (ii) taxes paid or payable as a result thereof and (iii) any amount required by the Bankruptcy Court to be paid or prepaid on Indebtedness (other than the Obligations) secured by a perfected and unavoidable lien on the assets subject to such Asset Sale; *provided*, *however*, that the evidence of each of *(i)*, *(ii)* and *(iii)* are provided to the Administrative Agent in form and substance satisfactory to the Requisite Note Purchasers; (b) Property Loss Event (net of any expenses of the type described in clause (a)(iii) above, if any); (c) (i) Equity Issuance (other than any such issuance of common Stock of any Issuer Related Party or any of its Subsidiaries occurring in the ordinary course of business to any director, member of the management or employee of any Issuer Related Party or any of its Subsidiaries) or (ii) the incurrence of Indebtedness, other than the incurrence of Indebtedness permitted under *Section 8.1*, in each case net of brokers' and advisors' fees and other costs actually incurred in connection with such transaction; *provided*, *however*, that in the case of this

clause (c), evidence of such costs is provided to the Administrative Agent in form and substance satisfactory to the Requisite Note Purchasers.

"*New Note Purchaser*" means each Eligible Holder (other than an Initial Note Purchaser) that commits to purchase Notes on the Final Issuance Date pursuant to the Syndication Procedures.

"*Non-Funding Note Purchaser*" has the meaning specified in *Section 2.2(b)*.

"*Non-U.S. Note Purchaser*" means each Note Purchaser that is not a United States person as defined in Section 7701(a)(30) of the Code.

"*Note*" has the meaning prescribed in the recitals hereto.

"*Note DIP Collateral Account*" has the meaning specified in *Section 2.15(a)*.

"Note DIP Collateral Account Control Agreement" has the meaning specified in *Section 2.15(c)*.

"*Note DIP Priority Collateral*" means the portion of the collateral securing the Facility in which the Note Purchasers have a first priority perfected security interest pursuant to the DIP Intercreditor Agreement, which for the avoidance of doubt includes the Note DIP Collateral Account.

"*Note Documents*" means, collectively, this Agreement (including the Guaranty), the Notes, the Fee Letters, the DIP Intercreditor Agreement, the Domestic IP Agreements, the Note DIP Collateral Account Control Agreement and each agreement, instrument or other document which creates or perfects a security interest in any Collateral and each certificate, agreement or document executed by an Issuer Related Party and delivered to the Administrative Agent or any Note Purchaser in connection with or pursuant to any of the foregoing.

"*Note Purchaser*" means each financial institution or other entity that (a) is listed on the signature pages hereof as a "Note Purchaser" or (b) from time to time becomes a party hereto as a Note Purchaser by execution of (i) an Assignment and Acceptance or (ii) a Joinder Agreement pursuant to the Syndication Procedures.

"*Note Purchaser Fee Letter*" means that certain fee letter, dated as of March 27, 2011, addressed to the Issuer from the Commitment Parties and accepted by the Issuer on March 27, 2011, with respect to certain fees to be paid from time to time to the Note Purchasers and the Commitment Parties.

"*Notice of Continuation*" has the meaning specified in *Section 2.7*.

"*Obligations*" means the Notes and all other amounts, obligations, covenants and duties owing by the Issuer Related Parties to the Administrative Agent, any Note Purchaser, any Affiliate of any of them, any Indemnified Party or any other Secured Party, of every type and description (whether by reason of an extension of credit, loan, guaranty, indemnification or otherwise), present or future, arising under this Agreement, any other Note Document or the

Orders, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and whether or not evidenced by any note, guaranty or other instrument or for the payment of money, including all fees, interest, charges, expenses, fees, attorneys' fees and disbursements and other sums chargeable to the Issuer Related Parties under this Agreement, any other Note Document or the Orders.

"*Orders*" means the Interim Order and the Final Order, collectively.

"*Original Currency*" has the meaning specified in *Section 13.12(d)*.

"*Other Currency*" has the meaning specified in *Section 13.12(d)*.

"*Oversubscription Commitment*" means, with respect to each Initial Note Purchaser, the amount, if any, by which such Initial Note Purchaser's Stated Commitment exceeds its Pro Rata Percentage of the Aggregate Commitment.

"*Parent Guarantor*" has the meaning specified in the preamble to this Agreement.

"*Partnership*" means any Person classified as a partnership for U.S. federal income tax purposes in which any Issuer Related Party has an interest.

"*Partnership Agreement*" means the partnership agreement of any Partnership or such analogous agreement governing the operation of any Partnership.

"*Patent License*" means all agreements, whether written or oral, providing for the grant by or to any Issuer Related Party of any right to manufacture, use, import, sell or offer for sale any invention covered in whole or in part by a Patent.

"*Patent Security Agreement*" means the Patent Security Agreement, between the Issuer Related Parties and the Administrative Agent, in the form of *Exhibit L*.

"*Patents*" means (a) all letters patent of the United States, any other country or any political subdivision thereof and all reissues and extensions thereof, (b) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, and (c) all rights to obtain any reissues or extensions of the foregoing.

"*Payment Intangible*" has the meaning specified in Section 9-102(a)(61) of the UCC.

"*PBGC*" means the Pension Benefit Guaranty Corporation or any successor thereto.

"*Perfection Certificate*" means a certificate from a Responsible Officer of the Issuer, substantially in the form of *Exhibit D*.

"*Permit*" means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under an applicable Requirement of Law.

"*Permitted Prepetition Claim Payment*" means a payment (as adequate protection or otherwise) that is made by an Issuer Related Party on account of any Claim arising or deemed to have arisen prior to the Petition Date, which is made pursuant to authority granted by First Day Orders of the Bankruptcy Court, which First Day Orders are in full force and effect, as to which no stay has been entered and which have not been reversed, amended, modified, vacated or overturned without the consent of the Requisite Note Purchasers; *provided*, that no such payment shall be made after the occurrence and during the continuance of a Default or an Event of Default.

"*Person*" means an individual, partnership, corporation (including a business trust), joint stock company, estate, trust, limited liability company, unincorporated association, joint venture or other entity, or a Governmental Authority.

"*Petition Date*" has the meaning specified in the recitals to this Agreement.

"*Plan*" means the plan of reorganization proposed by or on behalf of the Issuer and the other Issuer Related Parties, which Plan shall, among other things, provide for the termination of the Commitments and the indefeasible payment in full in cash and satisfaction of the Obligations on or prior to the Effective Date unless otherwise agreed by the Administrative Agent at the direction of the Requisite Note Purchasers.

"*Pledge Amendment*" has the meaning specified in *Section 11.4(g).*

"*Pledged Collateral*" means, collectively, the Pledged Notes, the Pledged Stock, the Pledged Partnership Interests, the Pledged LLC Interests, any other Investment Property of any Issuer Related Party, all certificates or other instruments representing any of the foregoing, all Security Entitlements of any Issuer Related Party in respect of any of the foregoing, all dividends, interest distributions, cash, warrants, rights, instruments and other property or Proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing. Pledged Collateral may be General Intangibles or Investment Property.

"*Pledged LLC Interests*" means all of any Issuer Related Party's right, title and interest as a member of any LLC and all of such Issuer Related Party's right, title and interest in, to and under any LLC Agreement to which it is a party.

"*Pledged Notes*" means all right, title and interest of any Issuer Related Party, in all Instruments evidencing any Indebtedness owed to such Issuer Related Party, including all Indebtedness described on *Schedule 4.21(b)*, issued by the obligors named therein, and all interest, cash, Instruments and other property or Proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

"*Pledged Partnership Interests*" means all of any Issuer Related Party's right, title and interest as a limited and/or general partner in all Partnerships and all of such Issuer Related Party's right, title and interest in, to and under any Partnership Agreements to which it is a party.

"*Pledged Stock*" means the Stock owned by each Issuer Related Party, including all shares of Stock listed on *Schedule 4.21(a)*; *provided*, *however*, that with respect to each Foreign

Subsidiary, only the outstanding Stock of such Foreign Subsidiary possessing up to but not exceeding 65% of the voting power of all classes of Stock of such Foreign Subsidiary entitled to vote shall be deemed to be pledged hereunder if, in the judgment of the Administrative Agent (at the direction of the Requisite Note Purchasers), the pledge of more than 65% of such stock would have materially adverse tax consequences to the Issuer Related Parties.

"*Prepetition Collateral*" means the collateral (including cash collateral) securing the Prepetition Revolving Facility.

"*Prepetition Facilities Documents*" means the Prepetition Revolving Facility, the Prepetition Senior Notes and each certificate, agreement (including, without limitation, all credit or loan agreements, indentures, security agreements, pledge agreements, mortgages and intercreditor agreements) or document executed and delivered by an Issuer Related Party or a Subsidiary or Affiliate thereof in connection with or pursuant to any of the foregoing.

"*Prepetition Revolving Facility*" means the revolving loan facility established under the Prepetition Revolving Loan Agreement.

"*Prepetition Revolving Facility Agent*" means UBS AG, Stamford Branch, as administrative agent and collateral agent for itself and the other Prepetition Revolving Lenders under the Prepetition Revolving Facility.

"*Prepetition Revolving Facility Collateral*" means the collateral securing the Prepetition Revolving Facility in which the lenders thereunder have a Prepetition Revolving Facility Lien.

"*Prepetition Revolving Facility Collateral Documents*" means the Prepetition Revolving Loan Agreement and each certificate, agreement (including, without limitation, all credit or loan agreements, indentures, security agreements, pledge agreements, mortgages and intercreditor agreements) or document executed and delivered by an Issuer Related Party or a Subsidiary or Affiliate thereof in connection with or pursuant to any of the foregoing.

"*Prepetition Revolving Facility Liens*" means the liens and security interests granted to the Prepetition Revolving Facility Agent for the benefit of the Prepetition Revolving Lenders pursuant to the Prepetition Revolving Facility Collateral Documents.

"*Prepetition Revolving Lenders*" means the lenders from time to time party to the Prepetition Revolving Facility.

"*Prepetition Revolving Loan Agreement*" means the Credit Agreement, dated as of March 20, 2006, by and among the Issuer, as borrower, the Parent Guarantor and certain subsidiaries of the Parent Guarantor listed on the signature pages to thereto, Prepetition Revolving Lenders, and the Prepetition Revolving Facility Agent, as amended by the First Amendment to Credit Agreement, dated as of June 21, 2007, the Consent and Second Amendment to Credit Agreement, dated as of August 8, 2008, and the Third Amendment to Credit Agreement, dated as of July 7, 2010.

"*Prepetition Senior Indenture*" means the Indenture, dated as of February 25, 2005, among the Issuer, as successor to Harry and David Operations Corp., as issuer, the guarantors party thereto, and the Prepetition Senior Indenture Trustee.

"*Prepetition Senior Indenture Trustee*" means Wells Fargo Bank, N.A. (and its successors and assigns), in its capacity as trustee under the Prepetition Senior Indenture.

"*Prepetition Senior Noteholders*" means holders of the Prepetition Senior Notes.

"*Prepetition Senior Notes*" means the notes issued under the Prepetition Senior Indenture which are designated as (a) the Senior Floating Rate Notes due 2012 and (b) the 9.0% Senior Notes due 2013.

"*Proceeds*" means any and all "proceeds", as such term is defined in Section 9-102(a)(64) of the UCC.

"*Property Loss Event*" means any loss of or damage to property of the Issuer Related Parties or any of their Subsidiaries that results in the receipt by such Person of proceeds of insurance in excess of $500,000 or any taking of property of the Issuer Related Parties or any of its Subsidiaries that results in the receipt by such Person of a compensation payment in respect thereof in excess of $500,000.

"*Pro Rata Percentage*" means, with respect to each Initial Note Purchaser, a fraction (expressed as a percentage) (x) the numerator of which is the aggregate principal amount of Prepetition Senior Notes beneficially held by such Initial Note Purchaser on the Record Date, plus accrued interest thereon up to the Record Date, and (y) the denominator of which is the aggregate principal amount of all Prepetition Senior Notes on the Record Date, other than any Prepetition Senior Notes held by any Issuer Related Parties, plus accrued interest thereon up to the Record Date.

"*Pro Rata Share*" or "*ratably*" means, with respect to any Note Purchaser, as of any date of determination, a fraction (expressed as a percentage) the numerator of which is the Total Exposure of such Note Purchaser on such date and the denominator of which is the Aggregate Commitment.

"*PUHCA*" means the Public Utility Holding Company Act of 2005, enacted as part of the Energy Policy Act of 2005, Pub. L. No. 109-58 as codified at Sections 1261 et seq., and the regulations adopted thereunder, as amended.

"*Purchase*" means a purchase of Notes by Note Purchasers pursuant to *Section 2.1(b)(i)*, *Section 2.1(b)(ii)* or *Section 2.1(b)(iii)*.

"*Purchasing Note Purchaser*" has the meaning specified in *Section 13.7(a)*.

"*Real Property*" means, with respect to any Person, all of those plots, pieces or parcels of land now owned, leased or hereafter acquired or leased by such Person (the "*Land*"), together with the right, title and interest of such Person, if any, in and to the streets, the land lying in the bed of any streets, roads or avenues, opened or proposed, in front of, the air space and

development rights pertaining to the Land and the right to use such air space and development rights, all rights of way, privileges, liberties, tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, all fixtures, all easements now or hereafter benefiting the Land and all royalties and rights appertaining to the use and enjoyment of the Land, including all alley, vault, drainage, mineral, water, oil and gas rights, together with all of the buildings and other improvements now or hereafter erected on the Land, and any fixtures appurtenant thereto.

"*Record Date*" means 5:00 p.m. New York time, on the Petition Date.

"*Records*" has the meaning specified in Article 9 of the UCC.

"*Register*" has the meaning specified in *Section 13.2(c)*.

"*Reinvestment Event*" means a Property Loss Event, to the extent that (i) the Administrative Agent shall have received, within five (5) Business Days of the receipt by an Issuer Related Party of insurance proceeds or other compensation in respect of such Property Loss Event, a certificate of a Responsible Officer of the Issuer certifying the intent of the Issuer to apply all Net Cash Proceeds received in connection with such Property Loss Event to repair or replace the damaged, taken or sold property within 360 days of the receipt of such Net Cash Proceeds, and (ii) such Net Cash Proceeds are actually used to repair or replace the damaged, taken or sold property within 360 days of the receipt of such Net Cash Proceeds.

"*Release*" means, with respect to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration, in each case, of any Contaminant into the indoor or outdoor environment or into or out of any property owned, leased or operated by such Person, including the movement of Contaminants through or in the air, soil, surface water, ground water or property.

"*Remedial Action*" means all actions required under Environmental Laws to (a) clean up, remove, treat or in any other way address any Contaminant in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release so that a Contaminant does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

"*Requirement of Law*" means, with respect to any Person, the common law and all U.S. federal, state, municipal, local and foreign laws, treaties, rules and regulations, orders, judgments, decrees, permits and other legal requirements or determinations of any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"*Requisite Note Purchasers*" means, collectively, as of any date of determination, Note Purchasers (other than the Non-Funding Note Purchasers) having more than fifty percent (50%) of the Total Exposure; *provided*, that for the avoidance of doubt, any Non-Funding Note Purchaser shall not be entitled to vote on any matters arising hereunder, and the portion of its Commitment and the Notes held by any such Non-Funding Note Purchaser shall be disregarded in determining whether the Requisite Note Purchasers have approved or consented to any matters

hereunder, including, without limitation, any matters requiring the approval or consent of the Requisite Note Purchasers or unanimous consent of the Note Purchasers.

"*Responsible Financial Officer*" means the chief financial officer, treasurer or controller of the Issuer.

"*Responsible Officer*" means, with respect to any Person, any of the principal executive officers, managing members or general partners of such Person.

"*Restricted Payment*" means (a) any dividend, distribution or any other payment, direct or indirect, on account of any Stock or Stock Equivalent of any Issuer Related Party or any of its Subsidiaries now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalent of any Issuer Related Party or any of its Subsidiaries now or hereafter outstanding and (c) any payment or prepayment of principal, premium (if any), interest, fees (including fees to obtain any waiver or consent in connection with any Security) or other charges on, or redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Indebtedness of any Issuer Related Party or any of its Subsidiaries.

"*Revolving DIP Lender*" means the lenders under the Revolving Loan DIP Facility.

"*Revolving DIP Loan*" means the loans and other advances made by the Revolving DIP Lenders under the Revolving Loan DIP Facility.

"*Revolving DIP Priority Collateral*" means the portion of the collateral securing the Revolving Loan DIP Facility in which the lenders thereunder have a first priority perfected security interest by virtue of the Orders and the DIP Intercreditor Agreement, which for the avoidance of doubt shall not include the Note DIP Priority Collateral.

"*Revolving Loan DIP Agent*" means UBS AG, Stamford Branch, in its capacity as agent under the Revolving Loan DIP Facility, together with its successors and assigns.

"*Revolving Loan DIP Agreement*" means the Postpetition Agreement, dated as of the date hereof, to be entered into by and among the Issuer, the Guarantors, the Revolving DIP Lenders and the Revolving Loan DIP Agent, substantially in the form of Exhibit M hereto, as the same may be amended from time to time in accordance with the Orders.

"*Revolving Loan DIP Documents*" means, collectively, the Revolving Loan DIP Agreement, the DIP Intercreditor Agreement and each agreement, instrument or other document which creates or perfects a security interest in any Revolving Loan DIP Facility collateral and each certificate, agreement or document executed by a Person and delivered to the Revolving Loan DIP Agent or any Revolving DIP Lender in connection with or pursuant to any of the foregoing, each of which shall be in form and substance reasonably satisfactory to the Requisite Note Purchasers.

"*Revolving Loan DIP Facility*" means the super-priority secured debtor-in possession revolving loan facility established under the Revolving Loan DIP Agreement.

"*S&P*" means Standard & Poor's Rating Services and its successors.

"*Sale/Leaseback Transaction*" means any lease, whether an operating lease or a capital lease, whereby any Issuer Related Party or any of its Subsidiaries, directly or indirectly, becomes or remains liable as lessee or as guarantor or other surety, of any property whether now owned or hereafter acquired, (a) that any Issuer Related Party or any of its Subsidiaries, as the case may be, has sold or transferred or is to sell or transfer to any other Person (other than any other Issuer Related Party), or (b) that is acquired by any other Person, as part of a financing transaction to which any Issuer Related Party or any of its Subsidiaries is a party, in contemplation of leasing such property to any Issuer Related Party or any of its Subsidiaries, as the case may be.

"*Scheduled Termination Date*" means [_____], 2012. [Insert date 12 months after Closing Date]

"*Secured Parties*" means the Note Purchasers, the Administrative Agent, each of their respective successors and assigns, and any other holder of any of the Obligations or of any other obligations under the Note Documents and the Orders, including the beneficiaries of each indemnification obligation undertaken by the Issuer Related Parties.

"*Securities Account*" has the meaning specified in Article 8 of the UCC.

"*Securities Act*" has the meaning specified in *Section 13.20.*

"*Securities Intermediary*" has the meaning specified in Article 8 of the UCC.

"*Security*" means any Stock, Stock Equivalent, voting trust certificate, bond, debenture, note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, or any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

"*Security Entitlement*" means any "*security entitlement*" as specified in Article 8 of the UCC.

"*Selling Note Purchaser*" has the meaning specified in *Section 13.7(a).*

"*Special Allocation Amount*" means, as of the Final Issuance Date with respect to each New Note Purchaser, the principal amount of Notes that such New Note Purchaser commits to purchase on the Final Issuance Date pursuant to the Syndication Procedures, which amount shall not exceed such New Note Purchaser's Eligible Share of the Aggregate Commitment.

"*Special Redemption Amount*" means, as of the Final Issuance Date with respect to each Initial Note Purchaser, the excess, if any, of (x) such Initial Note Purchaser's Commitment Reduction Amount (if any) as of the Commitment Adjustment Time over (y) such Initial Note Purchaser's Commitment as in effect immediately prior to the Commitment Adjustment Time.

"*Special Redemption Notice*" has the meaning set forth in *Section 2.13(a).*

"*Stated Commitment*" means, with respect to each Initial Note Purchaser, the amount set forth for such Initial Note Purchaser on Schedule I hereto.

"*Stock*" means shares of capital stock (whether denominated as common stock or preferred stock), beneficial, partnership or membership interests, participations, equity interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company, unlimited liability company, or equivalent entity, whether voting or non-voting.

"*Stock Equivalents*" means all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable.

"*Subsidiary*" means, with respect to any Person, any corporation, partnership, limited liability company or other business entity of which an aggregate of greater than 50% of the outstanding Voting Stock is, at the time, directly or indirectly, owned or controlled by such Person or one or more Subsidiaries of such Person.

"*Subsidiary Guarantor*" means each Subsidiary of the Parent Guarantor party to this Agreement.

"*Superpriority Claims*" has the meaning specified in *Section 4.18(c)*.

"*Supporting Obligations*" has the meaning specified in Article 9 of the UCC.

"*Syndication Deadline*" means the twentieth (20th) calendar day following the Interim Order Entry Date.

"*Syndication Procedures*" means the Syndication Procedures set forth in Schedule III hereto.

"*Synthetic Lease*" means, as to any Person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (i) that is not a capital lease in accordance with GAAP and (ii) in respect of which the lessee retains or obtains ownership of the property so leased for federal income tax purposes, other than any lease under which the Person is a lessor.

"*Synthetic Lease Obligations*" means, as to any Person, the obligations of such Person under any Synthetic Lease.

"*Tax Affiliate*" means, with respect to any Person, (a) any Subsidiary of such Person, and (b) any Affiliate of such Person with which such Person files or is eligible to file consolidated, combined or unitary tax returns.

"*Tax Returns*" has the meaning specified in *Section 4.7(a)*.

"*Taxes*" has the meaning specified in *Section 2.14*.

"*Termination Date*" means the earliest of (a) the Scheduled Termination Date, (b) the Effective Date, (c) the date of confirmation of any other plan of reorganization of any Debtor (other than a Plan), (d) if the Final Order has not been entered, the date that is thirty-five (35) days after the Interim Order Entry Date, (e) the date of termination of the Commitments in full pursuant to any clause of *Section 2.3* (other than clause (a) thereof) or *Section 9.2*, (f) the date on which the Obligations become due and payable pursuant to *Section 9.2* and (g) the occurrence of the "Final Maturity Date" under, and as defined in, the Revolving Loan DIP Agreement.

"*Title IV Plan*" means an "employee benefit plan" as defined in Section 3(3) of ERISA, other than a Multiemployer Plan, which is covered by Title IV of ERISA maintained or sponsored by Parent Guarantor or any of its Subsidiaries or to which the Parent Guarantor or any of its Subsidiaries or any ERISA Affiliate has any obligation or liability (contingent or otherwise).

"*Total Exposure*" means, as of any date of determination, (i) with respect to each Note Purchaser, the sum of (x)(A) at any time prior to the Commitment Adjustment Time, such Note Purchaser's Stated Commitment and (B) from and any time after the Commitment Adjustment Time, such Note Purchaser's Final Commitment and (y) the aggregate principal amount of Notes held by such Note Purchaser on such date and (ii) with respect to the Facility, the aggregate Total Exposure of all Note Purchasers on such date.

"*Trademark License*" means any agreement, whether written or oral, providing for the grant by or to any Issuer Related Party of any right to use any Trademark.

"*Trademark Security Agreement*" means any Trademark Security Agreement, between the Issuer Related Parties and the Administrative Agent, in the form of *Exhibit K*.

"*Trademarks*" means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, Internet Domain Names and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, and (b) the right to obtain all renewals thereof.

"*UCC*" means, at any time, the Uniform Commercial Code in effect in the State of New York at such time.

"*U.S.*" and "*United States*" means the United States of America.

"*U.S. Note Purchaser*" means each Note Purchaser that is not a Non-U.S. Note Purchaser.

"*U.S. Trustee*" means the United States Trustee for the District of Delaware.

"*Variance Report*" means the weekly report to be provided by the Debtors pursuant to *Section 6.1(g)* for the prior week (x) setting forth actual cash receipts and disbursements of the

Parent Guarantor and its Subsidiaries for the immediately preceding week, and setting forth therein all the variances, on a line-item basis, from the amounts set forth for such period compared to (i) the Initial Budget on a weekly and cumulative basis and (ii) the most recent Budget on a weekly and cumulative basis, and shall include explanations for all material variances, and (y) certified by the Chief Restructuring Officer or the Issuer's Chief Financial Officer.

"*Vehicles*" means all vehicles covered by a certificate of title law of any state.

"*Voting Stock*" means Stock of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons, of such Person (irrespective of whether, at the time, Stock of any other class or classes of such entity shall have or might have voting power by reason of the happening of any contingency).

"*Wasserstein*" means Wasserstein Partners, LP.

"*Withholding Taxes*" has the meaning specified in *Section 2.14(a)*.

Section 1.2 Computation of Time Periods. In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word "*from*" means "*from and including*" and the words "*to*" and "*until*" each mean "to but excluding" and the word "*through*" means "*to and including*."

Section 1.3 Accounting Terms and Principles.

(a) Except as set forth below, all accounting terms not specifically defined herein shall be construed in conformity with GAAP and all accounting determinations required to be made pursuant hereto (including for purpose of measuring compliance with *Section 5.1*) shall, unless expressly otherwise provided herein, be made in conformity with GAAP.

(b) If any change in the accounting principles used in the preparation of the most recent Financial Statements referred to in *Section 6.1* is hereafter required or permitted by the rules, regulations, pronouncements and opinions of the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successors thereto) and such change is adopted by the Parent Guarantor with the agreement of the Issuer's Accountants and results in a change in any of the calculations required by *Section 5.1* or *Article VIII* that would not have resulted had such accounting change not occurred, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such change such that the criteria for evaluating compliance with such covenants by the Issuer Related Parties shall be the same after such change as if such change had not been made; *provided, however*, that no change in GAAP that would affect a calculation that measures compliance with any covenant contained in *Section 5.1* or *Article VIII* shall be given effect until such provisions are amended to reflect such changes in GAAP.

Section 1.4 Certain Terms.

(a) The words "*herein*", "*hereof*", "*hereto*" and "*hereunder*" and similar words refer to this Agreement as a whole, and not to any particular Article, Section, subsection or clause in this Agreement.

(b) Unless otherwise expressly indicated herein, (i) references in this Agreement to an Exhibit, Schedule, Article, Section, clause, or sub-clause refer to the appropriate Exhibit or Schedule to, or Article, Section, clause or sub-clause in this Agreement and (ii) the words "*above*" and "*below*", when following a reference to a clause or a sub-clause of any Note Document, refer to a clause or a sub-clause within, respectively, the same section or clause.

(c) Each agreement defined in this *Article I* shall include all appendices, exhibits and schedules thereto. Unless the prior written consent of the Requisite Note Purchasers is required hereunder for an amendment, restatement, supplement or other modification to any such agreement and such consent is not obtained, references in this Agreement to such agreement shall be to such agreement as so amended, restated, supplemented or modified.

(d) References in this Agreement to any statute shall be to such statute as amended or modified from time to time and to any successor legislation thereto, in each case as in effect at the time any such reference is operative.

(e) The term "*including*" when used in any Note Document means "*including without limitation*", except when used in the computation of time periods.

(f) The terms "*Note Purchaser*" and "*Administrative Agent*" include their respective successors and permitted assigns.

(g) Upon the appointment of any successor Administrative Agent pursuant to *Section 12.6*, references to Wilmington Trust FSB in *Section 12.3* shall be deemed to refer to the financial institution then acting as the Administrative Agent or one of its Affiliates if it so designates.

(h) Terms not otherwise defined herein and defined in the UCC are used herein with the meanings specified in the UCC.

ARTICLE II

THE NOTES

Section 2.1 Sale and Purchase of Notes.

(a) Authorization of the Notes. Subject to the terms and conditions hereof, the Issuer will issue and sell to the Note Purchasers, and the Note Purchasers will purchase from the Issuer, Notes in an aggregate principal amount not to exceed $55,000,000. As used herein, the term "*Notes*" includes all notes originally issued pursuant to this Agreement and any notes issued in substitution therefor pursuant to *Section 13.2*.

(b) Sale and Purchase of Notes.

(i) Subject to the terms and conditions set forth herein, including timely delivery of an Issuance Date Certificate, and relying on the representations and warranties set forth herein and subject to the Orders, (A) on the Initial Issuance Date (as provided in *Section 2.1(c)*), the Issuer shall issue and sell to the Initial Note Purchasers (other than Wasserstein if it elects not to purchase Notes on the Initial Issuance Date) an aggregate principal amount of Notes equal to $30,000,000 less, in the event Wasserstein elects not to purchase Notes on the Initial Issuance Date, Wasserstein's Pro Rata Share of such amount, and each Initial Note Purchaser shall purchase from the Issuer such Initial Note Purchaser's Pro Rata Share of such Issuance at a purchase price equal to 100% of such Initial Note Purchaser's Pro Rata Share of such Issuance and (B) if Wasserstein elects not to purchase Notes on the Initial Issuance Date, on a date selected by Wasserstein, but in any event not later than April 5, 2011 (as provided in *Section 2.1(c)*), the Issuer shall issue and sell to Wasserstein an aggregate principal amount of Notes equal to Wasserstein's Pro Rata Share of $30,000,000, and Wasserstein shall purchase from the Issuer its Pro Rata Share of $30,000,000 at a purchase price equal to 100% of Wasserstein's Pro Rata Share.

(ii) Subject to the terms and conditions set forth herein, including timely delivery of an Issuance Date Certificate, and relying on the representations and warranties set forth herein and subject to the Orders, on the Final Issuance Date (as provided in *Section 2.1(c)*), the Issuer shall issue and sell to the New Note Purchasers an aggregate principal amount of Notes equal to the Special Allocation Amounts of all New Note Purchasers, and each New Note Purchaser shall purchase from the Issuer a Note having a principal amount equal to its Special Allocation Amount at a purchase price equal to 100% of such Special Allocation Amount.

(iii) Subject to the terms and conditions set forth herein, including timely delivery of an Issuance Date Certificate, and relying on the representations and warranties set forth herein and subject to the Orders, on the Final Issuance Date (as provided in *Section 2.1(c)*), the Issuer shall issue and sell to the Initial Note Purchasers an aggregate principal amount of Notes equal to the sum of all Initial Note Purchasers' Commitments as of the Commitment Adjustment Time, and each Initial Note Purchaser shall purchase from the Issuer a Note having a principal amount equal to its Final Commitment at a purchase price equal to 100% of such Final Commitment.

(iv) No Note Purchaser shall purchase Notes on any Issuance Date in an aggregate principal amount which would exceed such Note Purchaser's Commitment on such Issuance Date.

(c) Issuance Proceedings. On each Issuance Date, the Issuer will deliver to each Note Purchaser the Note to be purchased by such Note Purchaser on such date in the form of a single Note dated such Issuance Date and registered in such Note Purchaser's name (or the name of such Note Purchaser's nominee), against delivery by the Administrative Agent to the Issuer of such Note Purchaser's purchase price actually received. If Wasserstein elects not to purchase Notes on the Initial Issuance Date, on the date Wasserstein purchases a Note under

Section 2.1(b)(i)(B), the Issuer will deliver to Wasserstein the Note to be purchased by Wasserstein on such date in the form of a single Note dated such date and registered in Wasserstein's name (or the name of Wasserstein's nominee), against delivery by the Administrative Agent to the Issuer of Wasserstein's purchase price actually received.

Section 2.2 Issuing the Notes.

(a) Notice of Issuance of Notes. Notice of the proposed date for each Issuance (other than an Issuance to Wasserstein under *Section 2.1(b)(i)* if not on the Closing Date) shall be given by the Issuer to the Administrative Agent not later than 12:00 noon (New York City time) on the day of such proposed date by delivering an Issuance Date Certificate (an "*Issuance Date Certificate*"). The Issuance Date Certificate shall be delivered by telecopier or portable document format (pdf), promptly confirmed in writing, in substantially the form of Exhibit E, specifying the (A) requested date of Purchase, which must be the Initial Issuance Date or the Final Issuance Date and (B) the aggregate amount of Notes to be issued and purchased. If the Issuance Date Certificate is given by the Issuer to the Administrative Agent not later than 12:00 noon (New York City time) three (3) Business Days prior to the proposed Issuance date, the Notes issued with respect to such Issuance will be Eurodollar Rate Notes, otherwise such Notes will be Base Rate Notes and the Issuance Date Certificate will be a request by the Issuer to have such Base Rate Notes automatically convert to Eurodollar Rate Notes on the third Business Day following such Issuance and the Note Purchasers agree that such Base Rate Notes shall automatically convert to Eurodollar Rate Notes on such third Business Day, subject to the terms of this Agreement. The Issuance Date Certificate shall be irrevocable and binding on the Issuer. The Administrative Agent shall give to each Note Purchaser prompt notice of the Issuance Date Certificate received from the Issuer and the applicable interest rate determined pursuant to *Section 2.11(a)*, if applicable. If the conditions in *Section 3.1* or *Section 3.2*, as applicable, are satisfied or waived, each Note Purchaser shall before 1:00 p.m. (New York City time) on the date it is required to purchase Notes pursuant to *Section 2.1(b)*, make available to the Administrative Agent at the Administrative Agent's account by wire transfer of immediately available funds, an amount determined as set forth in *Section 2.1* above.

(b) A Note Purchaser who fails to purchase a Note as provided in Section 2.1 is referred to herein as a "*Non-Funding Note Purchaser*." No Note Purchaser shall be responsible for the failure of any Non-Funding Note Purchaser to purchase a Note.

(c) Amount of Issuances. The Issuance on the Initial Issuance Date shall be in a maximum aggregate principal amount not to exceed $30,000,000 less, in the event Wasserstein elects not to purchase Notes on the Initial Issuance Date, Wasserstein's Pro Rata Share of such amount. The aggregate principal amount set forth in the Issuance Date Certificate with respect to the Final Issuance Date less the aggregate amount of Special Redemption Amounts to be paid on the Final Issuance Date shall be limited to the excess of $55,000,000 over the aggregate amount of Notes issued, whether or not prepaid, prior to such date.

Section 2.3 Termination and Reduction.

(a) Each Note Purchaser's Commitment shall be automatically and permanently reduced on each date on which a Purchase is made under this Article II by an

aggregate amount equal to the principal amount of Notes Purchased by such Note Purchaser on such date.

(b) The Issuer may reduce the aggregate Commitment at any time and from time to time upon ten (10) days' prior written notice to the Administrative Agent, in each case in an amount equal to the then remaining Commitments of the Note Purchasers, *provided* that the Issuer shall not have delivered an Issuance Date Certificate in respect of the Commitment amount to be reduced. The Issuer shall, upon any such reduction, pay to the Note Purchasers any breakage costs pursuant to *Section 2.12*. Any such reduction in the Commitment shall be permanent.

(c) All Commitments shall automatically and permanently terminate on the Termination Date.

Section 2.4 Repayments of Notes.

(a) Notes. Subject to the Orders, the outstanding principal amount of the Notes and all other amounts outstanding hereunder shall be repaid on the Termination Date to the Administrative Agent for the account of the Note Purchasers and other Persons with respect to fees and disbursements, as applicable.

(b) Payments to Include Accrued Interest. All repayments of principal under this *Section 2.4* shall be made together with interest accrued to the date of such repayment on the principal amount repaid.

Section 2.5 Redemptions

(a) Subject to the terms set forth in the Orders, the Issuer may, upon at least three (3) Business Days prior written notice to the Administrative Agent in the case of Eurodollar Rate Notes and at least one Business Day's prior written notice to the Administrative Agent in the case of the Base Rate Notes (which notice shall, in each case, state the proposed date of the redemption), and if such notice is given the Issuer shall redeem the outstanding principal amount of the Notes issued under this Agreement in the aggregate principal amount and on the date specified in such notice, together with (i) accrued interest to the date of such redemption on the aggregate principal amount prepaid and (ii) any breakage costs pursuant to *Section 2.12*, *provided*, that (x) such amounts shall be applied pro rata among the outstanding Notes and (y) such notice shall be delivered to the Administrative Agent on the relevant day not later than 12:00 p.m. (New York City time).

(b) Upon receipt by any Issuer Related Party or any of its Subsidiaries of any Net Cash Proceeds (other than Net Cash Proceeds from a Reinvestment Event), the Issuer shall immediately redeem the Notes in an amount equal to 100% of such Net Cash Proceeds (other than the portion thereof constituting proceeds of the Revolving DIP Priority Collateral, to the extent that such proceeds are required to be, and are, distributed to the Revolving DIP Lenders and applied to prepay outstanding obligations under the Revolving Loan DIP Facility pursuant to and in accordance with the Orders and the DIP Intercreditor Agreement). Any such mandatory prepayment shall be applied, subject to *Section 2.10(g)* hereof, *first* to repay the outstanding principal amount of the Notes until such Notes shall have been repaid in full; and *second* to any

other Obligation then due and payable. It is agreed and understood that this *Section 2.5* is subject to the terms and conditions of the DIP Intercreditor Agreement and the Orders.

(c) All prepayments or redemptions of the Notes under this *Section 2.5* shall be made together with (i) accrued interest to the date of such prepayment or redemption on the principal amount repaid or redeemed and (ii) any breakage costs pursuant to *Section 2.12*. Each prepayment or redemption of the Notes under this *Section 2.5* shall be applied to the outstanding principal amount of the Notes ratably (in accordance with the aggregate principal amount of Notes held by each Note Purchaser to the aggregate principal amount of all outstanding Notes held by all Note Purchasers).

(d) Each Note Purchaser's Notes may be redeemed as set forth in *Section 2.13* below and in the Syndication Procedures, which redemption will not be on a pro rata basis with other Notes.

Section 2.6 Interest.

(a) *Rate of Interest*. Each Note and the outstanding amount of all other Obligations shall bear interest, in the case of a Note, on the unpaid principal amount thereof from the date of issuance of such Note and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full in cash, except as otherwise provided in *Section 2.6(c)*, as follows:

(i) If a Base Rate Note or such other Obligation, at a rate per annum equal to the sum of (A) the Base Rate as in effect from time to time, and (B) the Applicable Margin for Base Rate Notes; and

(ii) If a Eurodollar Rate Note, at a rate per annum equal to the sum of (A) the Eurodollar Rate determined for the applicable Interest Period, and (B) the Applicable Margin for Eurodollar Rate Notes.

(b) *Interest Payments*. (i) Interest accrued on each Base Rate Note shall be payable in arrears (A) on the last Business Day of each calendar month, commencing on the first such day following the issuance of such Base Rate Note, (B) upon the payment or prepayment thereof in full or in part, and (C) if not previously paid in full, at the Termination Date; (ii) interest accrued on each Eurodollar Rate Note shall be payable in arrears (A) on the last day of each Interest Period applicable to such Note, (B) upon the payment or prepayment thereof in full or in part, and (C) if not previously paid in full, at the Termination Date; and (iii) interest accrued on the amount of all other Obligations shall be payable on demand from and after the time such Obligation becomes due and payable (whether by acceleration or otherwise).

(c) *Default Interest*. Notwithstanding the rates of interest specified in *Section 2.6(a)* or elsewhere herein, effective immediately upon the occurrence of an Event of Default, and for as long thereafter as such Event of Default shall be continuing, the principal amount of all Notes and the amount of all other Obligations shall bear interest at a rate which is two percent (2.00%) per annum in excess of the rate of interest then applicable to such Notes or such other Obligations from time to time. Such interest shall be payable on demand.

Section 2.7 Continuation Option.

(a) The Issuer may elect, at any time, to convert Base Rate Notes or any portion thereof to Eurodollar Rate Notes or the Issuer may elect, at the end of any applicable Interest Period, to continue any Eurodollar Rate Notes or any portion thereof for an additional Interest Period or such Notes may automatically be so continued under *Section 2.7(b)*; *provided, however*, that the aggregate principal amount of Eurodollar Rate Notes so converted or continued must be in the amount of at least $5,000,000 or an integral multiple of $500,000 in excess thereof. Each conversion or continuation shall be allocated among the Notes of each Note Purchaser in accordance with such Note Purchaser's Pro Rata Share. Each such election shall be in substantially the form of Exhibit F hereto (a "*Notice of Continuation*") and shall be made by giving the Administrative Agent at least three (3) Business Days' prior written notice specifying (A) the amount of Notes being converted or continued and (B) that the conditions set forth in *Section 3.2(b)* have been satisfied.

(b) The Administrative Agent shall promptly notify each Note Purchaser of its receipt of a Notice of Continuation and of the options selected therein. Notwithstanding the foregoing, no conversion or continuation in whole or in part of Eurodollar Rate Notes upon the expiration of any applicable Interest Period, shall be permitted at any time at which (i) a Default or an Event of Default shall have occurred and be continuing and the Administrative Agent, at the request of the Requisite Note Purchasers, has so notified the Issuer or (ii) the conversion or continuation of a Eurodollar Rate Note would violate any of the provisions of *Section 2.11*. If, within the time period required under the terms of this *Section 2.7*, the Administrative Agent does not receive a Notice of Continuation from the Issuer containing a permitted election to continue any Eurodollar Rate Notes for an additional Interest Period upon the expiration of the applicable Interest Period, such Notes will be automatically continued as Eurodollar Rate Notes, unless a Default or Event of Default shall have occurred and is continuing and the Administrative Agent, at the request of the Requisite Note Purchasers, has so notified the Issuer, in which case such Notes will automatically convert to Base Rate Notes. Each Notice of Continuation shall be irrevocable.

Section 2.8 Changes in Laws and Increased Costs.

(a) If after the date hereof, either (i) any change in, or in the interpretation of, any law or regulation is introduced, including, without limitation, with respect to reserve requirements, applicable to any Note Purchaser or any banking or financial institution from whom any Note Purchaser borrows funds or obtains credit (a "*Funding Bank*"), or (ii) a Funding Bank or any Note Purchaser complies with any future guideline or request from any central bank or other Governmental Authority or (iii) a Funding Bank or any Note Purchaser determines that the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof has or would have the effect described below, or a Funding Bank or any Note Purchaser complies with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, and in the case of any event set forth in this clause (iii), such adoption, change or compliance has or would have the direct or indirect effect of reducing the rate of return on any Note Purchaser's capital as a

consequence of its obligations hereunder to a level below that which such Note Purchaser could have achieved but for such adoption, change or compliance (taking into consideration the Funding Bank's or Note Purchaser's policies with respect to capital adequacy) by an amount deemed by such Note Purchaser to be material, and the result of any of the foregoing events described in clauses (i), (ii) or (iii) is or results in an increase in the cost to any Note Purchaser of purchasing and holding the Notes, then the Issuer Related Parties shall, except to the extent that such change is the subject of *Section 2.14* hereof, from time to time upon demand by a Note Purchaser pay to the Administrative Agent on behalf of such Note Purchaser additional amounts sufficient to indemnify such Note Purchaser against such increased cost on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified). A certificate as to the amount of such increased cost shall be submitted to the Issuer by the applicable Note Purchaser, with a copy to the Administrative Agent, and shall be conclusive, absent manifest error.

(b) Failure or delay on the part of any Note Purchaser to demand compensation pursuant to the foregoing provisions of this *Section 2.8* shall not constitute a waiver of such Note Purchaser's right to demand such compensation, provided, that the Issuer shall not be required to compensate a Note Purchaser pursuant to the foregoing provisions of this *Section 2.8* for any increased costs incurred more than six months prior to the date that such Note Purchaser notifies the Issuer of the change in law giving rise to such increased costs and of such Note Purchaser's intention to claim compensation therefor (except that, if the change in law giving rise to such increased costs is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(c) Notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder issued in connection therewith or in implementation thereof shall be deemed to be a "change in law", regardless of the date enacted, adopted, issued or implemented.

Section 2.9 Fees.

The Issuer has agreed to pay to the Administrative Agent, the Note Purchasers and the Commitment Parties certain fees, the amount and dates of payment of which are set forth in the Fee Letters.

Section 2.10 Payments and Computations.

(a) The Issuer shall make each payment hereunder (including fees and expenses) not later than 2:00 P.M. (New York City time) on the day when due, in Dollars, to the Administrative Agent at its address referred to in *Section 13.8*, in immediately available funds without set-off, deduction, counterclaim or other defense. The Administrative Agent shall promptly thereafter cause to be distributed immediately available funds relating to the payment of principal or interest or fees to the Note Purchasers, in accordance with the application of payments set forth in *clauses (f)* and *(g)* of this *Section 2.10*, as applicable, for the account of each Note Purchaser; *provided, however*, that amounts payable pursuant to *Section 2.8*, *2.12* or *2.14* shall be paid only to the affected Note Purchaser or Note Purchasers. Payments received by

the Administrative Agent after 2:00 P.M. (New York City time) shall be deemed to be received on the next succeeding Business Day.

(b) All computations of interest and of fees shall be made by the Administrative Agent on the basis of a year of 360 days for Eurodollar Rate Notes and 365 days or 366 days, as applicable, for Base Rate Notes and other Obligations, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest and fees are payable. Each determination by the Administrative Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) If and to the extent any payment owed to the Administrative Agent or any Note Purchaser is not made when due, each Issuer Related Party hereby authorizes the Administrative Agent and such Note Purchaser, as applicable, subject to any notice period provided in *Section 9.2* or the Orders, to setoff and charge any amount so due against any Deposit Account maintained by such Issuer Related Party with the Administrative Agent or such Note Purchaser, as applicable.

(d) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fees, as the case may be; *provided, however*, that if such extension would cause payment of interest on or principal of any Eurodollar Rate Note to be made in the next calendar month, such payment shall be made on the immediately preceding Business Day. All repayments of any Notes shall be applied first to repay such Notes outstanding as Base Rate Notes and then to repay such Notes outstanding as Eurodollar Rate Notes with those Eurodollar Rate Notes which have earlier expiring Interest Periods being repaid prior to those which have later expiring Interest Periods.

(e) Unless the Administrative Agent shall have received notice from the Issuer prior to the date on which any payment is due hereunder that the Issuer will not make such payment in full, the Administrative Agent may assume that the Issuer has made such payment in full to the Administrative Agent on such date and the Administrative Agent may but is not obligated to, in reliance upon such assumption, cause to be distributed to each Note Purchaser on such due date an amount equal to the amount then due such Note Purchaser. If and to the extent that the Issuer shall not have made such payment in full to the Administrative Agent, each Note Purchaser shall repay to the Administrative Agent forthwith on demand such amount distributed to such Note Purchaser together with interest thereon at the Federal Funds Rate, for the first Business Day, and, thereafter, at the rate applicable to Eurodollar Rate Notes with an Interest Period of one month, for each day from the date such amount is distributed to such Note Purchaser until the date such Note Purchaser repays such amount to the Administrative Agent.

(f) Subject to the provisions of *clause (g)* of this *Section 2.10* (or required to be applied in accordance with *Section 2.5*), all payments and any other amounts received by the Administrative Agent from or for the benefit of the Issuer or any other Issuer Related Party shall be applied *first*, to pay all Obligations then due and payable; and *second*, as the Issuer so designates. Payments in respect of Notes received by the Administrative Agent shall be distributed to each Note Purchaser in accordance with such Note Purchaser's Pro Rata Share

thereof (other than Special Redemption Amounts received pursuant to *Section 2.13*); and all payments of fees and all other payments in respect of any other Obligation shall be allocated among such of the Note Purchasers as are entitled thereto, and, if to the Note Purchasers, in proportion to their respective Pro Rata Shares.

(g) After the occurrence and during the continuance of an Event of Default, the Issuer hereby irrevocably waives the right to direct the application of any and all payments in respect of the Obligations and any proceeds of Collateral, and agrees that the Administrative Agent may, and shall upon either (A) the written direction of the Requisite Note Purchasers or (B) the acceleration of the Obligations pursuant to *Section 9.2*, apply all payments in respect of any Obligations and all funds on deposit in any Cash Collateral Account and all other proceeds of Collateral, in each case subject to the DIP Intercreditor Agreement, in the following order:

(i) *first*, to pay Obligations in respect of any expense reimbursements, fees or indemnities then due to the Administrative Agent;

(ii) *second*, to pay Obligations in respect of any expense reimbursements, fees or indemnities then due to the Note Purchasers;

(iii) *third*, to pay interest then due and payable in respect of the Notes;

(iv) *fourth*, to pay or prepay principal amounts on the Notes, ratably to the aggregate principal amount of such Notes; and

(v) *fifth*, to the ratable payment of all other Obligations;

provided, *however*, that if sufficient funds are not available to fund all payments to be made in respect of any of the Obligations described in any of the foregoing *clauses first* through *fifth*, inclusive, the available funds being applied under any such clause with respect to any such Obligation (unless otherwise specified in such clause) shall be allocated to the payment of such Obligations ratably, based on the proportion of the Administrative Agent's and each Note Purchaser's interest in the aggregate outstanding Obligations described in any such clause. The order of priority set forth in clauses *first* through *fifth* of this *Section 2.10(g)* may at any time and from time to time be changed by the agreement of the Requisite Note Purchasers without necessity of notice to or consent of or approval by the Issuer, any Secured Party that is not a Note Purchaser, or any other Person. The order of priority set forth in *clauses first* through third of this *Section 2.10(g)* may be changed only with the prior written consent of the Administrative Agent in addition to the Requisite Note Purchasers.

(h) Subject to *Section 9.2*, the Issuer and the Guarantors hereby authorize the Administrative Agent and/or each Note Purchaser to charge from time to time against any or all of the accounts of any of the Issuer Related Parties with the Administrative Agent or such Note Purchaser any of the Obligations which are then due and payable. Each Note Purchaser receiving any payment as a result of charging any such account shall promptly notify the Administrative Agent thereof and make such arrangements as the Administrative Agent shall request to share the benefit thereof in accordance with *Section 13.7*.

Section 2.11 Special Provisions Governing Eurodollar Rate Notes.

(a) *Determination of Interest Rate*. The Eurodollar Rate for each Interest Period for Eurodollar Rate Notes shall be determined by the Administrative Agent pursuant to the procedures set forth in the definition of "Eurodollar Rate." The Administrative Agent's determination shall be presumed to be correct, absent manifest error, and shall be binding on the Issuer Related Parties.

(b) *Interest Rate Unascertainable, Inadequate or Unfair*. In the event that: (i) the Administrative Agent determines that adequate and fair means do not exist for ascertaining the applicable interest rates by reference to which the Eurodollar Rate then being determined is to be fixed; or (ii) the Requisite Note Purchasers notify the Administrative Agent that the Eurodollar Rate for any Interest Period will not adequately reflect the cost to the Note Purchasers of purchasing or maintaining such Notes for such Interest Period, the Administrative Agent shall forthwith so notify the Issuer and the Note Purchasers, whereupon each Eurodollar Rate Note will automatically, on the last day of the current Interest Period for such Note convert into a Base Rate Note and the obligations of the Lenders to purchase Eurodollar Rate Notes or maintain Eurodollar Rate Notes shall be suspended until the Administrative Agent shall notify the Issuer that the Requisite Note Purchasers have determined that the circumstances causing such suspension no longer exist. If at any time after the Administrative Agent or a Note Purchaser gives notice under this *Section 2.11* the Administrative Agent or such Note Purchaser determines that the circumstances causing such suspension no longer exist, the Administrative Agent or such Note Purchaser shall promptly give notice of that determination to the Issuer and the Administrative Agent, if applicable, and the Administrative Agent shall promptly transmit the notice to each other Note Purchaser.

(c) *Illegality*. Notwithstanding any other provision of this Agreement, if any Note Purchaser determines that the introduction of or any change in or in the interpretation of any law, treaty or governmental rule, regulation or order after the date of this Agreement shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for any Note Purchaser to purchase Eurodollar Rate Notes or to continue to fund or maintain Eurodollar Rate Notes, then, on notice thereof and demand therefor by such Note Purchaser to the Issuer through the Administrative Agent, (i) the obligation of such Note Purchaser to purchase or to continue Eurodollar Rate Notes shall be suspended, and each such Note Purchaser shall purchase a Base Rate Note instead of a Eurodollar Rate Note as part of any Purchase and (ii) if the affected Eurodollar Rate Notes are then outstanding, the Issuer shall immediately convert each such Note into a Base Rate Note if required by such law. If at any time after a Note Purchaser gives notice under this *Section 2.11* such Note Purchaser determines that it may lawfully purchase and maintain Eurodollar Rate Notes, such Note Purchaser shall promptly give notice of that determination to the Issuer and the Administrative Agent, and the Administrative Agent shall promptly transmit the notice to each other Note Purchaser. The Issuer's right to request, and such Note Purchaser's obligation, if any, to make Eurodollar Rate Notes shall thereupon be restored.

Section 2.12 Breakage Costs. In addition to all amounts required to be paid by the Issuer pursuant to *Section 2.6*, the Issuer shall compensate each Note Purchaser, upon demand, for all losses, expenses and liabilities (including any loss or expense incurred by reason of the

liquidation or reemployment of deposits or other funds acquired by such Note Purchaser to fund or maintain such Note Purchaser's Eurodollar Rate Notes but excluding any loss of the Applicable Margin on the relevant Notes) which that Note Purchaser may sustain (i) if for any reason a proposed Purchase or continuation of Eurodollar Rate Notes does not occur on a date specified therefor in an Issuance Date Certificate or a Notice of Continuation given by the Issuer or a successive Interest Period does not commence after notice therefor is given pursuant to *Section 2.7*, (ii) if for any reason any Eurodollar Rate Note is prepaid (including mandatorily pursuant to *Section 2.5(b)* or *Section 9.2*) on a date which is not the last day of the applicable Interest Period, (iii) as a consequence of a required conversion of a Eurodollar Rate Note to a Base Rate Note as a result of any of the events indicated in *Section 2.11(c)*, or (iv) as a consequence of any failure by the Issuer to repay Eurodollar Rate Notes when required by the terms hereof. The Note Purchaser making demand for such compensation shall deliver to the Issuer, with a copy to the Administrative Agent, concurrently with such demand a written statement as to such losses, expenses and liabilities, and this statement shall be conclusive as to the amount of compensation due to that Note Purchaser, absent manifest error.

Section 2.13 Syndication; Special Redemption Procedures

(a) Not later than the third Business Day following the Syndication Deadline, the Administrative Agent shall receive from the Initial Note Purchasers a calculation of the Final Commitment, if any, and the Special Redemption Amount, if any, with respect to each Initial Note Purchaser, and shall send a notice to each Initial Note Purchaser (with a copy to the Issuer) setting forth such Initial Note Purchaser's Final Commitment and Special Redemption Amount. Each such notice which indicates that the applicable Initial Note Purchaser has a Special Redemption Amount shall be deemed to be a special redemption notice ("*Special Redemption Notice*").

(b) Simultaneously with the Issuance and Purchase of Notes on the Final Issuance Date, the Issuer shall redeem Notes of each Initial Note Purchaser that has received a Special Redemption Notice in a principal amount equal to such Initial Note Purchaser's Special Redemption Amount by paying to such Initial Note Purchaser amount equal to the principal amount of Notes to be redeemed plus accrued and unpaid interest thereon. Each such Initial Note Purchaser shall return its Note to the Issuer for destruction, and shall receive a new Note in an amount equal to the remaining aggregate principal amount thereof. No prepayment or breakage fees shall be payable in connection with such redemption.

(c) As a condition to the Purchase of a Note by a New Note Purchaser on the Final Issuance Date, a Joinder Agreement shall be executed and delivered to the Administrative Agent by each such New Note Purchaser and each Issuer Related Party.

Section 2.14 Taxes.

(a) Any and all payments by any Issuer Related Party under each Note Document or the Orders shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (w) in the case of each Note Purchaser and the Administrative Agent, taxes measured by its net income, and franchise taxes imposed on it in lieu of net income

taxes, by the jurisdiction (or any political subdivision thereof) under the laws of which such Note Purchaser or the Administrative Agent (as the case may be) is organized, (x) in the case of each Note Purchaser, taxes measured by its net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction in which such Note Purchaser's lending office is located or any other jurisdiction in which such Note Purchaser is engaged in business, (y) any branch profits or capital taxes imposed by the United States or any similar tax imposed in any other jurisdiction in which any Issuer Related Party is located, and (z) any United States federal withholding taxes that would not have been imposed but for a failure by the Administrative Agent or a Note Purchaser (or any financial institution through with any payment is made to such Note Purchaser) to comply with the procedures, certifications, information reporting, disclosure, or other related requirements of Sections 1471-1474 of the Code (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "*Taxes*"). If any Taxes shall be required by law to be deducted from or in respect of any sum payable under any Note Document or the Orders to any Note Purchaser or the Administrative Agent (including upon the payment of such amounts by the Administrative Agent to any Note Purchaser) ("*Withholding Taxes*") (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions of Withholding Taxes applicable to additional sums payable under this *Section 2.14*) such Note Purchaser or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the relevant Issuer Related Party shall make such deductions, (iii) the relevant Issuer Related Party shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law, and (iv) the relevant Issuer Related Party shall deliver to the Administrative Agent evidence of such payment; *provided, however*, that no Issuer Related Party shall be required to increase any sum payable pursuant to clause (i) above with respect to any Withholding Taxes that are attributable solely to any Note Purchaser's or Administrative Agent's failure to comply with the requirements of paragraph (f) of this *Section 2.14*; *provided* if such Note Purchaser or Administrative Agent shall have satisfied the requirements of paragraph (f) of this *Section 2.14* on the Closing Date, or on the date of the Assignment and Acceptance pursuant to which it became a Note Purchaser, as applicable, nothing in this last sentence of paragraph (a) of this *Section 2.14* shall relieve the Issuer Related Parties of their obligation to pay any additional amounts pursuant to this *Section 2.14* in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation administration or application thereof, such Note Purchaser or Administrative Agent is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing such Note Purchaser's or Administrative Agent's entitlement to an exemption from, or a reduced rate of, United States withholding taxes.

(b) In addition, each Issuer Related Party agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies imposed by any state, county, city or other political subdivision within the United States or by any applicable foreign jurisdiction, and all liabilities with respect thereto, in each case arising from any payment made under any Note Document or the Orders or from the execution, delivery or registration of, or otherwise with respect to, any Note Document or the Orders (collectively, "*Other Taxes*").

(c) Each Issuer Related Party shall, jointly and severally, indemnify each Note Purchaser and the Administrative Agent for the full amount of Withholding Taxes and Other Taxes (including any Withholding Taxes or Other Taxes imposed by any Governmental Authority on amounts payable under this *Section 2.14*) paid by such Note Purchaser or the Administrative Agent (as the case may be) and any liability (including for penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Withholding Taxes or Other Taxes were correctly or legally asserted; *provided, however*, that no Issuer Related Party shall be required to indemnify any Note Purchaser or Administrative Agent for any Withholding Taxes or Other Taxes that are attributable solely to any Note Purchaser's or Administrative Agent's failure to comply with the requirements of paragraph (f) of this *Section 2.14*; *provided*, if such Note Purchaser or Administrative Agent shall have satisfied the requirements of paragraph (f) of this *Section 2.14* on the Closing Date, or on the date of the Assignment and Acceptance pursuant to which it became a Note Purchaser, as applicable, nothing in this penultimate sentence of paragraph (c) of *Section 2.14* shall relieve the Issuer Related Parties of their obligation to pay any indemnification amounts pursuant to this *Section 2.14* in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation administration or application thereof, such Note Purchaser or Administrative Agent is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing such Note Purchaser's or Administrative Agent's entitlement to an exemption from, or a reduced rate of, United States withholding taxes. This indemnification shall be made within thirty (30) days from the date such Note Purchaser or the Administrative Agent (as the case may be) makes written demand therefor.

(d) Within thirty (30) days after the date of any payment of Withholding Taxes or Other Taxes by any Issuer Related Party, the Issuer shall furnish to the Administrative Agent, at its address referred to in *Section 13.8*, the original or a certified copy of a receipt evidencing payment thereof.

(e) Without prejudice to the survival of any other agreement of any Issuer Related Party hereunder, the agreements and obligations of such Issuer Related Party contained in this *Section 2.14* shall survive the payment in full of the Obligations.

(f) Prior to the Closing Date in the case of each Note Purchaser that is a signatory hereto, and on the date of the Assignment and Acceptance pursuant to which it becomes a Note Purchaser in the case of each other Note Purchaser and from time to time thereafter if reasonably requested in writing by the Issuer or the Administrative Agent, (A) each U.S. Note Purchaser shall provide the Administrative Agent and the Issuer with two completed originally executed copies of Form W-9, and (B) each Non-U.S. Note Purchaser that is entitled at such time to an exemption from United States withholding tax, or that is subject to such tax at a reduced rate under an applicable tax treaty, shall provide the Administrative Agent and the Issuer with two completed originally executed copies of: (i) Form W-8ECI (claiming exemption from withholding because the income is effectively connected with a U.S. trade or business) (or any successor form); (ii) Form W-8BEN (claiming exemption from, or a reduction of withholding tax under an income tax treaty) (or any successor form); (iii) in the case of a Non-U.S. Note Purchaser claiming exemption under Sections 871(h) or 881(c) of the Code, a Form W-8BEN (claiming exemption from withholding under the portfolio interest exemption) (or any successor form); or (iv) any other applicable form, certificate or document prescribed by the IRS certifying

as to such Non-U.S. Note Purchaser's entitlement to such exemption from United States withholding tax or reduced rate with respect to all payments to be made to such Non-U.S. Note Purchaser under the Note Documents. In addition, each Note Purchaser shall deliver such forms upon the obsolescence or invalidity of any form previously delivered by such Note Purchaser. Each Note Purchaser shall promptly notify the Administrative Agent and the Issuer at any time it determines that it is no longer in a position to provide any previously delivered form to the Administrative Agent and the Issuer (or any other form of certification adopted by the U.S. taxing authorities for such purposes). Unless the Issuer and the Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Note Document to or for a Non-U.S. Note Purchaser are not subject to United States withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, the Issuer Related Parties or the Administrative Agent shall withhold taxes from such payments at the applicable statutory rate.

(g) Any Note Purchaser claiming any additional amounts payable pursuant to this *Section 2.14* shall use its reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its applicable lending office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts which would be payable or may thereafter accrue and would not, in the sole determination of such Note Purchaser, be otherwise disadvantageous to such Note Purchaser.

(h) If any Administrative Agent or Note Purchaser receiving a payment under this *Section 2.14* with respect to Withholding Taxes or Other Taxes or liabilities arising therefrom subsequently receives a refund from any Governmental Authority which is specifically attributable to such payment, such Administrative Agent or Note Purchaser shall promptly pay the amount of such refund to the Issuer Related Party that initially made such payment.

Section 2.15 <u>Note DIP Collateral Account</u>.

(a) All proceeds of Purchases shall be deposited into a segregated Cash Collateral Account of the Issuer (the "*Note DIP Collateral Account*") held by a financial institution reasonably acceptable to the Requisite Note Purchasers (the "*Bank*").

(b) Amounts held in the Note DIP Collateral Account shall be invested at all times in cash and Cash Equivalents.

(c) The Note DIP Collateral Account shall be subject to an account control agreement (the "*Note DIP Collateral Account Control Agreement*") among the Issuer, the Bank, and the Administrative Agent, which shall be in form and substance reasonably satisfactory to the Administrative Agent and the Requisite Note Purchasers. Pursuant to the Note DIP Collateral Account Control Agreement, prior to the Requisite Note Purchasers giving notice (a "*Control Notice*") to the Administrative Agent that the Requisite Note Purchasers shall exercise exclusive control over the Note DIP Collateral Account, which Control Notice shall be delivered only after the occurrence and during the continuation of an Event of Default and subject to the provisions of *Section 9.2*, the Bank shall honor withdrawal, payment, transfer or other fund disposition or other instructions received from the Issuer concerning amounts held on deposit in Note DIP Collateral Account; provided, however, that in no event shall the Issuer withdraw more

than $7,500,000 in any calendar week (including the partial calendar week occurring after the Closing Date). On and after the receipt by the Bank of a Control Notice (the "*Control Effective Time*"), the Bank shall honor all instructions received from the Requisite Note Purchasers or the Administrative Agent at the direction of the Requisite Note Purchasers (but not those from Issuer or any other Issuer Related Party) concerning amounts held on deposit in the Note DIP Collateral Account, and the Issuer and the other Issuer Related Parties shall have no right or ability to control, access, withdraw or transfer funds from the Note DIP Collateral Account.

(d) Withdrawals from the Note DIP Collateral Account prior to the Control Effective Time shall be used only in accordance with *Section 4.12*.

(e) Under no circumstances shall any cash, funds, securities, financial assets or other property held in or credited to the Note DIP Collateral Account or the proceeds thereof held therein or credited thereto be used to repay Indebtedness of any Issuer Related Party with respect to the Revolving Loan DIP Facility (other than reimbursement for draws under letters of credit deemed issued thereunder on the Petition Date in accordance with the terms of the Revolving Loan DIP Facility) or the Prepetition Revolving Facility.

(f) The Issuer shall not deposit any amounts in the Note DIP Collateral Account other than the proceeds of Purchases as described herein and the proceeds of any investments held in or credited to such account.

(g) At the direction of the Requisite Note Purchasers, the Debtors shall (and the Debtors hereby authorize the Administrative Agent, at the direction of the Requisite Note Purchasers and with prompt notice to the Issuer, to) use any cash, funds, securities, financial assets or other property held in or credited to the Note DIP Collateral Account, or the proceeds thereof held therein or credited thereto, to cash collateralize the letters of credit issued under the Revolving Loan DIP Agreement provided that, at the time of such request, (i) there are no obligations outstanding under the Revolving Loan DIP Facility other than with respect to such letters of credit and (ii) such direction by the Requisite Note Purchasers is reasonably related to protecting the rights and remedies of the Administrative Agent or the Note Purchasers under the DIP Intercreditor Agreement.

ARTICLE III

CONDITIONS TO ISSUANCE AND PURCHASE OF NOTES

Section 3.1 **Conditions Precedent to Initial Issuance Date**. The obligation of each Note Purchaser to purchase any Note on the Closing Date (or, with respect to Wasserstein, on such date as Wasserstein elects to purchase such Notes pursuant to *Section 2.1(b)(i)*) is subject to the satisfaction of all of the following conditions precedent on or prior to the time of Issuance on the Closing Date:

(a) *Bankruptcy Court.*

(i) The Bankruptcy Court shall have entered the Interim Order, certified by the Clerk of the Bankruptcy Court as having been duly entered, within three (3) Business Days of the Petition Date, in form and substance satisfactory to the

Administrative Agent at the direction of the Requisite Note Purchasers, and entered on notice to such parties as may be reasonably satisfactory to the Administrative Agent at the direction of the Requisite Note Purchasers, inter alia (i) authorizing and approving the Note Documents and the transactions contemplated hereby and thereby, including, without limitation, the granting of the super-priority status, security interests and priming liens, and the payment of all fees, costs and expenses referred to herein and in the Fee Letters; (ii) granting (w) super-priority status to the Obligations pursuant to section 364(c)(1) of the Bankruptcy Code, (x) Liens in all unencumbered assets of the Issuer and the Guarantors pursuant to section 364(c)(2) of the Bankruptcy Code, (y) junior Liens on all encumbered assets of the Issuer and the Guarantors pursuant to section 364(c)(3) of the Bankruptcy Code, and (z) priming Liens on all assets of the Issuer and the Guarantors, subject only to the Liens and security interests under the Revolving Loan DIP Facility on the Revolving DIP Priority Collateral, pursuant to section 364(d)(1) of the Bankruptcy Code (the preceding clauses (w), (x), (y) and (z) in each case subject to the Carve-Out); (iii) lifting or modifying the automatic stay under section 362 of the Bankruptcy Code to permit the creation and perfection of the Liens of the Secured Parties in the Collateral and to permit the Issuer and the Guarantors to perform their obligations and the Note Purchasers to exercise their rights and remedies with respect to the Facility, including the enforcement, upon five Business Days' prior written notice, of such remedies against the Collateral; (iv) prohibiting the assertion of claims arising under Bankruptcy Code section 506(c) against the Note Purchasers or the assertion of the "equities of the case" exception in section 552 of the Bankruptcy Code upon entry of the Final Order or the commencement of other actions adverse to the Note Purchasers or their rights and remedies under the Facility or the Interim Order or the Final Order; (v) prohibiting the incurrence of debt with priority equal to or greater than that granted to the Note Purchasers under the Facility, except as expressly provided herein; (vi) prohibiting any granting or imposition of liens other than liens expressly herein; (vii) finding that the Note Purchasers are extending credit to the Issuer Related Parties in good faith within the meaning of Section 364(e) of the Bankruptcy Code; and (viii) determining that the Notes, whether held by the Note Purchasers or otherwise, and the Guaranty constitute valid and binding obligations of the Issuer and the Guarantors, enforceable in accordance with their respective terms and not subject to avoidance, recharacterization, recovery, attack, off-set, counterclaim, defenses or claims of any kind pursuant to the Bankruptcy Code or other applicable law, which Interim Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Note Purchasers. The Interim Order shall also include such other terms and conditions as are customary for transactions of this type, as determined by the Note Purchasers in their sole discretion, and in any event shall (a) approve the Debtors' waiver of any and all claims and causes of action against the Prepetition Senior Noteholders and the Prepetition Senior Indenture Trustee, including, but not limited to, claims for preference, fraudulent conveyance or other claims arising under the Bankruptcy Code, (b) establish a deadline of sixty (60) days from the appointment of an official unsecured creditors' committee, but in no event later than seventy-five (75) days from the date of entry of the Interim Order, for any trustee or statutorily appointed unsecured creditors' committee or any party in interest (other than the Issuer, the Guarantors or any of their Subsidiaries) to challenge any findings or

stipulations in the Interim Order, including any challenge to the validity or enforceability of the respective obligations under the respective Prepetition Senior Notes, or to bring any claim or cause of action against the Prepetition Senior Noteholders or the Prepetition Senior Indenture Trustee arising under or in connection with the Prepetition Senior Notes or any documents executed in connection therewith, (c) waive any right that any Issuer Related Party may have to seek authority (i) to propose, support or not oppose a plan of reorganization that does not provide for the full and indefeasible payment and satisfaction of all obligations owing to the Note Purchasers on the effective date of such plan on terms and conditions acceptable to Administrative Agent and the Note Purchasers and (ii) to seek relief under the Bankruptcy Code, including, without limitation, under Section 105, to the extent any such relief would in any way restrict or impair the rights and remedies of the Administrative Agent or any Note Purchaser hereunder and (d) subject to entry of the Final Order and the terms thereof, provide for a lien on the proceeds of avoidance actions with any such proceeds to be allocated in accordance with the relative priorities set forth herein and in the DIP Intercreditor Agreement.

(ii) All motions and other documents to be filed with and submitted to the Bankruptcy Court in connection with this Agreement and the approval thereof shall be in form and substance satisfactory to the Administrative Agent (at the direction of the Requisite Note Purchasers), and the Administrative Agent (at the direction of the Requisite Note Purchasers) shall be satisfied with the form and amount of any Adequate Protection Obligations; and

(iii) The Case shall have been commenced in the Bankruptcy Court, and all First Day Orders and related orders (other than the Interim Order) entered by the Bankruptcy Court in the Case and all First Day Orders and related orders and the motions in support thereof shall have been reviewed in advance by counsel to the Note Purchasers and shall be in form and substance reasonably satisfactory to the Administrative Agent (at the direction of the Requisite Note Purchasers).

(iv) The Issuer Related Parties shall be in compliance in all respects with the Interim Order.

(v) No trustee or examiner shall have been appointed with respect to any Issuer Related Parties or their respective properties.

(b) *Certain Documents*. The Administrative Agent or, with respect to each Note, the applicable Note Purchaser, shall have received on or prior to the Closing Date each of the following, each dated the Closing Date unless otherwise agreed to by the Administrative Agent (at the direction of the Requisite Note Purchasers), in form and substance satisfactory to the Administrative Agent (at the direction of the Requisite Note Purchasers) and each of their respective counsel, and in sufficient copies for each of the Administrative Agent and each Note Purchaser:

(i) this Agreement and, subject to *Section 7.16*, each Note Document, duly executed and delivered by each of the Issuer Related Parties and each other party

thereto and, for the account of each Note Purchaser, a Note conforming to the requirements set forth herein;

(ii) copies of UCC search reports as of a recent date listing all effective financing statements and/or financing change statements that name any Issuer Related Party or Subsidiary of an Issuer Related Party as debtor, together with copies of such financing statements, and/or financing change statements none of which shall cover the Collateral (except for those which shall be terminated on the Closing Date and Liens permitted under *Section 8.2*);

(iii) (A) subject to *Section 7.16(d)*, share certificates representing all certificated Stock being pledged pursuant to this Agreement and stock powers for such share certificates executed in blank, as the Administrative Agent (at the direction of the Requisite Note Purchasers) may require; and (B) instruments representing such of the Pledged Notes pledged pursuant to this Agreement as shall be requested by the Administrative Agent, duly endorsed in favor of the Administrative Agent or in blank; provided that such requirement may be satisfied to the extent such share certificates, stock powers, instruments and endorsements are held by the Revolving Loan DIP Agent as bailee for perfection for the Administrative Agent;

(iv) a favorable opinion of Jones Day, counsel to the Issuer Related Parties, in substantially the form of *Exhibit H*, addressed to the Administrative Agent and the Note Purchasers;

(v) a copy of the articles or certificate of incorporation (or equivalent Constituent Document) of each Issuer Related Party, certified as of a recent date by the Secretary of State or other Governmental Authority of the state of organization of such Issuer Related Party, together with certificates of such official attesting to the good standing of each such Issuer Related Party;

(vi) a certificate of the Secretary or an Assistant Secretary of each Issuer Related Party certifying (A) the names and true signatures of each officer of such Issuer Related Party who has been authorized to execute and deliver any Note Document or other document required hereunder to be executed and delivered by or on behalf of such Issuer Related Party, (B) the by-laws (or equivalent Constituent Document) of such Issuer Related Party as in effect on the date of such certification, (C) the resolutions of such Issuer Related Party's board of directors (or equivalent governing body) approving and authorizing the execution, delivery and performance of this Agreement and the other Note Documents to which it is a party and the Orders and (D) that there have been no changes in the certificate of incorporation (or equivalent Constituent Document) of such Issuer Related Party from the certificate of incorporation (or equivalent Constituent Document) delivered pursuant to the immediately preceding clause;

(vii) a certificate of a Responsible Officer of the Issuer to the effect that the conditions set forth in this *Section 3.1* have been satisfied;

(viii) [intentionally omitted];

(ix) evidence satisfactory to the Administrative Agent (at the direction of the Requisite Note Purchasers) (A) of the receipt of all necessary consents, authorizations and approvals of each Governmental Authority or third party necessary in connection with this Agreement and the transactions contemplated hereby (without the imposition of any conditions that are not reasonably acceptable to the Administrative Agent (at the direction of the Requisite Note Purchasers)), and that the same continue to remain in effect; and (B) that no law or regulation shall be applicable in the judgment of the Administrative Agent (at the direction of the Requisite Note Purchasers) that restrains, prevents or imposes materially adverse conditions upon the Facility or the transactions contemplated thereby;

(x) [intentionally omitted];

(xi) all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act;

(xii) a budget, in form and substance reasonably satisfactory to the Requisite Note Purchasers, reflecting a forecast of cash receipts and disbursements for the coming 13 week period of the Parent Guarantor and its Subsidiaries on a consolidated basis, broken down by week, including anticipated weekly uses of the Facility and the Revolving Loan DIP Facility for such period which shall provide, among other things, for the payment of the fees and expenses relating to the Facility and the Revolving Loan DIP Facility, ordinary course expenses, bankruptcy-related and court authorized expenses and working capital and other general corporate needs (the "*Initial Budget*");

(xiii) [intentionally omitted];

(xiv) a Perfection Certificate of the Issuer Related Parties and their Subsidiaries, satisfactory to the Requisite Note Purchasers in their sole discretion, and certified by a Responsible Officer to be accurate and complete as of the Closing Date;

(xv) a funds flow memorandum, dated as of the Closing Date and executed by the Issuer (the "*Funds Flow Memorandum*") specifying (i) the amounts to be paid on the Closing Date from the proceeds of the initial Issuance and Purchase and the proceeds of any borrowing on the Closing Date under the Revolving Loan DIP Facility, and (ii) the wiring or other payment instructions in respect of such payments; and

(xvi) such other certificates, documents, agreements and information (financial or otherwise) respecting any Issuer Related Party as any Note Purchaser through the Administrative Agent may reasonably request;

(c) *Fees and Expenses Paid; Other Obligations.* There shall have been paid to the Commitment Parties, the Administrative Agent and the Note Purchasers, as applicable, all fees, costs and expenses (including reasonable fees, costs and expenses of counsel) due and payable on or before the date of issuance and sale of the Notes as set forth in *Section 2.1(b)(i)* (including all such fees described in the Fee Letters and the other Note Documents), which fees,

costs and expenses may be paid from the proceeds of the issuance and sale of Notes such Issuance date.

(d) *Closing Date Material Adverse Change.* Since March 4, 2011, there shall have occurred no event which has resulted in or could reasonably be expected to result in a Closing Date Material Adverse Change.

(e) *Litigation.* Other than the Case, there shall exist no action, suit, investigation, litigation or proceeding pending or, to the Debtor's knowledge, threatened in any court or before any arbitrator or governmental Authority that (i) if adversely determined, could reasonably be expected to result in a Material Adverse Effect, (ii) restrains, prevents or imposes or could reasonably be expected to impose materially adverse conditions upon the Facility, the Collateral or the transactions contemplated thereby, or (iii) challenges, or could reasonably be expected to alter, the priorities set forth in *Section 4.18*.

(f) *Priority and Security.* The Administrative Agent, for the benefit of the Secured Parties, shall have a valid and perfected lien on and security interest in the Collateral (subject to Liens permitted under *Section 8.2*), with the priorities as set forth in *Section 4.18*.

(g) *Certain Laws*. There shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that, in the judgment of the Administrative Agent (at the direction of the Requisite Note Purchasers), prohibits, restricts or imposes a materially adverse condition on the Issuer or the Guarantors, the Facility or the exercise by the Administrative Agent (at the direction of the Requisite Note Purchasers) or of the other Secured Parties of their rights as secured parties with respect to the Collateral.

(h) the compliance with the terms of this Agreement and the Fee Letters, including by each Commitment Party.

(i) [intentionally omitted].

(j) *Revolving Loan DIP Agreement and DIP Intercreditor Agreement.* The Issuer Related Parties shall have received Bankruptcy Court approval under section 364 of the Bankruptcy Code to enter into the Revolving Loan DIP Agreement in an aggregate principal amount of $100,000,000 on substantially similar terms to the Prepetition Revolving Facility and in form and substance reasonably satisfactory to the Requisite Note Purchasers and the DIP Intercreditor Agreement in form and substance reasonably satisfactory to the Requisite Note Purchasers and the Revolving Loan DIP Agreement and the DIP Intercreditor Agreement shall have been duly executed and delivered by all parties thereto and shall be in full force and effect.

(k) *Exit ABL Facility.* On or prior to the Petition Date, the Debtors shall have received binding commitments from their existing lenders committing to enter into a senior asset based revolving credit facility in an aggregate principal amount of not less than $100,000,000 (to be entered into on the Effective Date) (the "*Exit ABL Facility*") pursuant to a commitment letter (including the summary of terms and conditions of the Exit ABL Facility) that is in form and substance reasonably satisfactory to the Initial Note Purchasers (the "*Exit ABL Commitment Letter*").

(l) *Chief Restructuring Officer*. The Issuer Related Parties shall maintain a chief restructuring officer acceptable to the Requisite Note Purchasers (the "*Chief Restructuring Officer*"), it being understood that the current chief restructuring officer of the Debtors shall be deemed to be acceptable to the Requisite Note Purchasers.

(m) *Other Items.* All corporate and judicial proceedings and all instruments and agreements in connection with the transactions among the Debtors, the Administrative Agent and the Note Purchasers contemplated by the Note Documents shall be reasonably satisfactory in form and substance to the Note Purchasers, and the Note Purchasers shall have received all information and copies of all documents or papers requested by any of them.

Section 3.2 **Conditions Precedent to Each Issuance Date**. The obligation of each Note Purchaser on any date (including the Closing Date) to purchase any Note is subject to the satisfaction of all of the following conditions precedent:

(a) *Issuance Date Certificate.* The Administrative Agent shall have received a duly executed Issuance Date Certificate as required under *Section 2.2*.

(b) *Representations and Warranties; No Defaults.* The following statements shall be true on the date of such Note, both before and after giving effect thereto and to the application of the proceeds therefrom:

(i) (A) The representations and warranties set forth herein and in the other Note Documents shall be true and correct on and as of the Closing Date and (B) the representations and warranties set forth herein and in the other Note Documents shall be true and correct in all material respects on and as of such Issuance Date after the Closing Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate solely to an earlier date in which case such representations and warranties shall be true and correct as of such earlier date, (*provided, however*, in each case in this clause (B), if any such representation or warranty shall be subject of a qualification as to "materiality," such qualified representation and warranty shall be true and correct in all respects on and as of such date); and

(ii) no Default or Event of Default shall have occurred and be continuing.

(c) *No Legal Impediments.* The making of the Notes on such date (i) does not violate any Requirement of Law applicable to any Issuer Related Party on the date of or immediately following the making of such Note and (ii) is not enjoined temporarily, preliminarily or permanently.

(d) *Final Order.* With respect to the Final Issuance Date, the Bankruptcy Court shall have entered the Final Order, in form and substance satisfactory to the Requisite Note Purchasers, certified by the Clerk of the Bankruptcy Court as having been duly entered on a motion by the Debtors that is in form and substance satisfactory to the Requisite Note Purchasers and entered on notice to such parties as may be reasonably satisfactory to the Administrative Agent (at the discretion of the Requisite Note Purchasers), and the Final Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended, supplemented or

stayed without the prior written consent of the Administrative Agent (at the direction of the Requisite Note Purchasers). The Debtors shall be in compliance with the Final Order.

(e) *Additional Matters.* The Administrative Agent shall have received such additional documents, information and materials as any Note Purchaser, through the Administrative Agent, may reasonably request.

(f) *No Material Adverse Change*. Since March 4, 2011, no Material Adverse Change shall have occurred.

(g) [intentionally omitted].

(h) *Budget*. The Note Purchasers shall have received the Budget, all periodic updates of the Budget required to be provided on or prior to such date and the related weekly Variance Reports, each in form and substance reasonably satisfactory to the Requisite Note Purchasers.

Each submission by the Issuer to the Administrative Agent of an Issuance Date Certificate and the acceptance by the Issuer of the proceeds of each Purchase requested therein shall be deemed to constitute a making of the representations and warranties by the Issuer as to the matters specified in this Section 3.2 on the date of the purchase of such Note and the Administrative Agent shall be entitled to conclusively rely upon such representations and warranties without independent investigation in discharging its duties hereunder.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

To induce the Note Purchasers and the Administrative Agent to enter into this Agreement, the Issuer represents and warrants as to itself and as to each other Issuer Related Party and its Subsidiaries, and each other Issuer Related Party represents and warrants as to such Issuer Related Party and its Subsidiaries, to the Note Purchasers and the Administrative Agent that, on and as of the date hereof, on and as of the Closing Date, after giving effect to the issuance and purchase of the Notes and other financial accommodations on the Closing Date and on and as of each date as required by *Section 3.2*:

Section 4.1 **Corporate Existence; Compliance with Law**. Each Issuer Related Party and each of its Subsidiaries (a) is duly incorporated, formed or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization; (b) is duly qualified to do business as a foreign entity and in good standing under the laws of each jurisdiction where such qualification is necessary, except where the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect; (c) has all requisite Business Entity power and authority and the legal right to own, pledge, mortgage and operate its properties, to lease the property it operates under lease and to conduct its business as now or currently proposed to be conducted; (d) is in compliance with its Constituent Documents and the Orders and all other orders of the Bankruptcy Court; (e) is in compliance with all applicable Requirements of Law, except where the failure to be in compliance could not reasonably be expected to have a Material Adverse Effect; and (f) has all necessary licenses,

permits, consents or approvals from or by, has made all necessary filings with, and has given all necessary notices to, each Governmental Authority having jurisdiction, to the extent required for such ownership, operation and conduct, except for licenses, permits, consents, approvals or filings which can be obtained or made by the taking of ministerial action to secure the grant or transfer thereof or the failure to obtain or make such licenses, permits, consents, approvals or filings could not reasonably be expected to have a Material Adverse Effect.

Section 4.2 Corporate Power; Authorization; Enforceable Obligations.

(a) The execution, delivery and performance by each Issuer Related Party of the Note Documents to which it is a party and the consummation of the transactions contemplated thereby, including the obtaining of the Notes and the creation and perfection of the Liens on the Collateral as security therefor:

(i) are, subject to the entry of the Interim Order and the Final Order, within such Issuer Related Party's Business Entity powers;

(ii) have been or, at the time of delivery thereof pursuant to *Article III* will have been, duly authorized by all necessary Business Entity action, including the consent of holders of such Issuer Related Party's Stock where required;

(iii) do not and will not (A) contravene any provision of such Issuer Related Party's or any of its Subsidiaries' respective Constituent Documents, (B) violate any other Requirement of Law applicable to such Issuer Related Party or any of its Subsidiaries (including Regulations T, U and X of the Federal Reserve Board), or any order or decree of any Governmental Authority (including the Bankruptcy Court) or arbitrator applicable to such Issuer Related Party or any of its Subsidiaries, (C) conflict with or result in the breach of, or constitute a default under, or result in or permit the termination or acceleration of, any Contractual Obligation of such Issuer Related Party or any of its Subsidiaries, (D) give rise to rights under any Contractual Obligation of such Issuer Related Party or any of its Subsidiaries to require any payment to be made by any Issuer Related Party or any of its Subsidiaries, or (E) result in the creation or imposition of any Lien upon any of the property of such Issuer Related Party or any of its Subsidiaries, other than those in favor of the Secured Parties or granted as adequate protection pursuant to this Agreement and the Orders; and

(iv) do not require the consent of, authorization by, approval of, notice to, or filing or registration with, any Governmental Authority or any other Person, other than the Bankruptcy Court and those listed on *Schedule 4.2* and that have been or will be, on or prior to the Closing Date, obtained or made, copies of which have been or will be delivered to the Administrative Agent pursuant to *Section 3.1*, and each of which on the Closing Date, and on each date contemplated in *Section 3.2*, will be in full force and effect.

(b) Subject to the entry of the Interim Order and the Final Order, this Agreement has been, and each of the other Note Documents will have been upon delivery thereof pursuant to the terms of this Agreement, duly executed and delivered by each Issuer Related

Party party thereto. Subject to the entry of the Interim Order and the Final Order, this Agreement is, and the other Note Documents will be, when delivered hereunder, the legal, valid and binding obligation of each Issuer Related Party party thereto, enforceable against such Issuer Related Party in accordance with its terms.

Section 4.3 Ownership of Issuer; Subsidiaries.

(a) All of the outstanding capital stock of the Issuer (the "*Issuer Stock*") has been validly issued, is fully paid and non-assessable and is owned beneficially and of record by the Parent Guarantor, free and clear of all Liens other than the Lien in favor of the Administrative Agent created by this Agreement and the Orders and the Liens securing the Revolving Loan DIP Facility pursuant to the Orders. Except as disclosed on *Schedule 4.3(a)*, there are no agreements or understandings to which the Issuer or the Parent Guarantor is a party with respect to the voting, sale or transfer of any shares of Stock of the Issuer or any agreement restricting the transfer or hypothecation of any such shares.

(b) Set forth on *Schedule 4.3(b)* hereto is a complete and accurate list, as of the Closing Date and on each date contemplated in *Section 3.2*, of all Subsidiaries of the Parent Guarantor and, as to each such Subsidiary, the exact legal name, jurisdiction of its incorporation or organization, taxpayer identification number, if applicable, jurisdictional identification number, the number of shares of each class of Stock authorized (if applicable), the number outstanding on the Closing Date and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Parent Guarantor, Issuer and any other owner. Except as disclosed on *Schedule 4.3(b)*, no Stock of the Parent Guarantor, the Issuer, or any other Subsidiary of the Parent Guarantor is subject to any outstanding option, warrant, right of conversion or purchase or any similar right. All of the outstanding Stock of each Subsidiary of the Parent Guarantor owned (directly or indirectly) by the Parent Guarantor (including the Pledged Stock) has been validly issued, is fully paid and non-assessable and is owned by the Parent Guarantor or a Subsidiary of the Parent Guarantor, free and clear of all Liens except those created under the Note Documents and the Orders and the Liens securing the Revolving Loan DIP Facility pursuant to the Orders. None of the Parent Guarantor, the Parent, the Issuer nor any such Subsidiary is a party to, or has knowledge of, any agreement restricting the transfer or hypothecation of any Stock of any such Subsidiary, other than the Note Documents. The Issuer Related Parties do not own or hold, directly or indirectly, any Stock of any Person other than such Subsidiaries and Investments listed on *Schedule 4.3(b)* and permitted by *Section 8.3*.

Section 4.4 Financial Statements.

(a) The consolidated balance sheet of the Parent Guarantor and its Subsidiaries as at June 30, 2010, and the related consolidated statements of income, retained earnings and cash flows of the Parent Guarantor and its Subsidiaries for the Fiscal Year then ended, certified by the Issuer's Accountants, fairly present in all material respects the consolidated financial condition of the Parent Guarantor and its Subsidiaries as at such dates and the consolidated results of the operations of the Parent Guarantor and its Subsidiaries for the period ended on such dates, all in conformity with GAAP.

(b) Neither the Issuer nor any other Issuer Related Party has any material obligation, contingent liability or liability for taxes, long-term leases or unusual forward or long-term commitment which is not reflected in the Financial Statements referred to in *paragraph (a)* above or in the notes thereto or permitted by this Agreement.

(c) The Budget and Business Plan have been prepared in good faith based upon assumptions believed by the Debtors to be reasonable at the time made and at the time the Budget and the Business Plan were delivered to the Commitment Parties and as of the Closing Date (it being understood that the Budget and Business Plan are subject to uncertainties and contingencies, many of which are beyond the Debtors' control, and that no assurance can be given that the Budget and Business Plan will be realized).

Section 4.5 Material Adverse Effect. Since March 4, 2011, there has been no Material Adverse Effect and there have been no events or developments that could reasonably be expected to have a Material Adverse Effect.

Section 4.6 Litigation. Other than the Case and for litigation that is stayed by the commencement and continuation of the Cases, there are no pending or, to the knowledge of any Issuer Related Party, threatened actions, investigations or proceedings affecting any Issuer Related Parties, or any of its Subsidiaries before any court, Governmental Authority or arbitrator other than those that if determined adversely to any Issuer Related Party could not reasonably be expected to have a Material Adverse Effect. The performance of any action by any Issuer Related Party required or contemplated by any of the Note Documents is not restrained or enjoined (either temporarily, preliminarily or permanently).

Section 4.7 Taxes.

(a) All federal, state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "*Tax Returns*") required to be filed by the Issuer or any of its Tax Affiliates have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed. All taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for non-payment thereof except where such taxes, charges or other impositions are being contested in good faith and by appropriate proceedings and adequate reserves therefor have been established on the books of the Issuer or such Tax Affiliate in conformity with GAAP. As of the date hereof and except as set forth on *Schedule 4.7*, no Tax Return is under audit or examination by any Governmental Authority.

(b) The Issuer does not intend to treat the Notes and the related transactions contemplated hereby as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4).

Section 4.8 Full Disclosure. All written Information (other than the Budget, the Business Plan and other financial projections) that has been or will hereafter be made available to the Administrative Agent, any Commitment Party, any Note Purchaser on behalf of the Debtors or any of their respective affiliates or representatives in connection with the transactions

contemplated hereby (when taken as a whole) is and will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made.

Section 4.9 Margin Regulations. Neither the Issuer nor any of the Guarantors is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Federal Reserve Board), and no proceeds of any Notes will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock in contravention of Regulation T, U or X of the Federal Reserve Board.

Section 4.10 No Burdensome Restrictions; No Defaults.

(a) None of the Issuer Related Parties nor any of their Subsidiaries (i) is a party to any Contractual Obligation the compliance with which could reasonably be expected to have a Material Adverse Effect or the performance of which by any thereof, either unconditionally or upon the happening of an event, would result in the creation of a Lien (other than a Lien permitted under *Section 8.2*) on the property or assets of any thereof or (ii) is subject to any charter or corporate or other Business Entity restriction which could reasonably be expected to have a Material Adverse Effect.

(b) None of the Issuer Related Parties nor any of their Subsidiaries is in default under or with respect to any Contractual Obligation owed by any of them and, to the knowledge of the Issuer Related Parties, no other party is in default under or with respect to any Contractual Obligation owed to any Issuer Related Party or to any Subsidiary of an Issuer Related Party, other than, in either case, those defaults which could not reasonably be expected to have a Material Adverse Effect.

(c) No Default or Event of Default has occurred and is continuing.

(d) To the best knowledge of the Issuer and each other Issuer Related Party, there is no Requirement of Law applicable to any Issuer Related Party or any Subsidiary of any Issuer Related Party the compliance with which by such Issuer Related Party or such Subsidiary, as the case may be, could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Investment Company Act; Public Utility Holding Company Act. No Issuer Related Party nor any of their Subsidiaries is (a) an "*investment company*" or an "*affiliated person*" of, or "*promoter*" or "*principal underwriter*" for, an "*investment company*," as such terms are defined in the Investment Company Act of 1940, as amended or (b) a "*holding company*," a "*public utility company*" or an "*affiliate*" of a "*holding company*" or a "*subsidiary company*" of a "*holding company*," as each such term is defined and used in the PUHCA.

Section 4.12 Use of Proceeds. The proceeds of the issuance and sale of the Notes are being used by the Issuer (and, to the extent provided to them by the Issuer, each other Issuer Related Party) solely as follows: to the extent set forth in the Budget and in accordance with the terms of the Orders, for working capital and other approved corporate purposes, of the Issuer Related Parties, in each case in the ordinary course of business, and not in contravention of any

Requirement of Law or the Note Documents, and to make a pension contribution (which is not reflected in the Budget) in an amount not to exceed $704,000. No proceeds of the Facility, the Notes, the Revolving DIP Loans, the Adequate Protection, if any, the Collateral, cash collateral, any portion of the Carve-Out or any other amounts may be used by any of the Debtors, any Committee, and any trustee or other estate representative appointed in the Case or any successor case, or any other person, party or entity to (or to pay any professional fees and disbursements incurred in connection therewith) (i) in connection with requesting authorization to obtain postpetition loans or other financial accommodation, other than the Revolving DIP Loan, pursuant to Section 364(c) or (d) of the Bankruptcy Code or otherwise, on a pari passu or senior basis to the Facility or (ii) in connection with investigating (including discovery proceedings), initiating, asserting, joining, commencing, supporting or prosecuting any claims, causes of action, adversary proceedings or other litigation against the Commitment Parties, the Note Purchasers, the Administrative Agent, the Prepetition Senior Noteholders or the Prepetition Senior Indenture Trustee, and each of their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (ii) any so-called "lender liability" claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of the Prepetition Senior Notes or the Notes; (iv) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition Senior Notes or the Notes; or (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to any or all of the Note Purchasers hereunder or the Note Documents, or for any purpose that is prohibited under the Bankruptcy Code; provided, however, that no more than $50,000 in the aggregate of the proceeds of the Facility, the Collateral, Adequate Protection Obligations (if any) or the Carve-out may be used by, or to reimburse, the fees, costs or expenses of the Committee to investigate the prepetition claims of the holders of the Prepetition Senior Notes or their affiliates. No portion or proceeds of the Notes may be used to pay any loans or other obligations under or in respect of the Prepetition Revolving Facility.

Section 4.13 Insurance. All policies of insurance of any kind or nature of each Issuer Related Party and any of its Subsidiaries, including policies of life, fire, theft, environmental, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation and employee health and welfare insurance, are in full force and effect and are of a nature and provide such coverage as is sufficient and as is customarily carried by businesses of the size and character of such Person. *Schedule 4.13* lists all insurance policies of any nature maintained, as of the Closing Date, by each Issuer Related Party.

Section 4.14 Labor Matters.

(a) There are no strikes, work stoppages, slowdowns or lockouts pending or, to the Debtors' knowledge, threatened against or involving any Issuer Related Party or any of its Subsidiaries.

(b) There are no unfair labor practices, grievances or complaints pending, or, to the Issuer's knowledge, threatened against or involving the Issuer Related Party or any of its

Subsidiaries, nor are there any arbitrations or grievances threatened involving any Issuer Related Party or any of its Subsidiaries.

(c) Except as set forth on *Schedule 4.14(c)*, as of the Closing Date, there is no collective bargaining agreement covering any of the employees of any Issuer Related Party or its Subsidiaries.

(d) [intentionally omitted].

(e) All payments due from any Issuer Related Party or its Subsidiaries, or for which any claim may be made against any Issuer Related Party or its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Issuer Related Party or such Subsidiary except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated hereby will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Issuer Related Party or any of its Subsidiaries is bound.

Section 4.15 ERISA.

(a) *Schedule 4.15(a)* separately identifies as of the date hereof all Title IV Plans and all Multiemployer Plans to which the Parent Guarantor or any of its Subsidiaries has any obligation or liability, contingent or otherwise.

(b) Each employee benefit plan of the Parent Guarantor or any of its Subsidiaries which is intended to qualify under Section 401(a) of the Code does so qualify, and any trust created thereunder is exempt from tax under the provisions of Section 501 of the Code, except where such failures could not reasonably be expected to have a Material Adverse Effect and to the best knowledge of the Parent Guarantor and each of its Subsidiaries, nothing has occurred which could cause the loss of such qualification.

(c) Each Title IV Plan is in compliance in all material respects with applicable provisions of ERISA, the Code and other Requirements of Law.

(d) Other than the Case, and except as disclosed on *Schedule 4.15(d)*, during the six-year period prior to the Closing Date, there has not been, nor is there reasonably expected to occur, any ERISA Event that could reasonably be expected to result in a material liability of any Debtor or ERISA Affiliate or the imposition of a Lien on any of the assets of the Debtors.

Section 4.16 Environmental Matters.

(a) Except as disclosed on *Schedule 4.16*, the operations of the Issuer Related Parties and their Subsidiaries are in compliance, and have been in compliance for the last five (5) years, with all Environmental Laws, including obtaining and complying with all required environmental, health and safety Permits, other than non-compliances that could not reasonably be expected to have a Material Adverse Effect and there are no unresolved notices of violation or citations issued to any of the Issuer Related Parties or their Subsidiaries by any Governmental Authority pursuant to any Environmental Laws.

(b) Except as disclosed on *Schedule 4.16*, none of the Issuer Related Parties or any of its Subsidiaries or any Real Property currently or, to the knowledge of any Issuer Related Party, previously owned, operated or leased by or for the Issuer Related Parties or any of their Subsidiaries is subject to any pending or, to the knowledge of any Issuer Related Party, threatened, claim, order, agreement, notice of violation, notice of potential liability or is the subject of any pending or threatened proceeding or governmental investigation under or pursuant to Environmental Laws other than those that could not reasonably be expected to have a Material Adverse Effect.

(c) Except as disclosed on *Schedule 4.16*, none of the Issuer Related Parties nor any of their Subsidiaries is a treatment, storage or disposal facility requiring a Permit under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq*., the regulations thereunder or any state analog.

(d) Except as disclosed on *Schedule 4.16*, neither any of the Issuer Related Parties nor any of their Subsidiaries have knowledge of any pending or threatened claim or demand for Environmental Liabilities and Costs arising out of or relating to the operations or ownership of Real Property owned, operated or leased, now or in the past, by the Issuer Related Parties or any of their Subsidiaries other than those that could not reasonably be expected to have a Material Adverse Effect.

(e) As of the date hereof, no Environmental Lien has attached to any property of the Issuer Related Parties or their Subsidiaries and, to the knowledge of the Issuer and the Issuer Related Parties, there is no pending or threatened action against any of the Issuer Related Parties or their Subsidiaries by any Governmental Authority that could reasonably be expected to result in the attachment of an Environmental Lien on any Real Property currently owned or operated by an Issuer Related Party or any Subsidiary thereof.

(f) None of the Issuer Related Parties nor any of their Subsidiaries have knowledge of any pending or threatened written claim or demand against them for Environmental Liabilities and Costs related to any treatment, storage or disposal facility that has received any Contaminant from the Issuer Related Parties or any of their Subsidiaries.

Section 4.17 Title; Real Property.

(a) Each Issuer Related Party and its Subsidiaries has good and marketable title to, or valid leasehold interests in, all Real Property and good title to all personal property in each case that is purported to be owned or leased by it, including those reflected on the most recent Financial Statements delivered by the Issuer, and none of such properties and assets is subject to any Lien, except Liens permitted under *Section 8.2*.

(b) Set forth on *Schedule 4.17(b)* hereto is a complete and accurate list of all Real Property owned, leased, subleased or used by each Issuer Related Party and its Subsidiaries showing as of the Closing Date the street address, county or other relevant jurisdiction, state, and record owner and, where applicable, lessee thereof.

(c) No portion of any Real Property owned or leased by any Issuer Related Party or any of its Subsidiaries has suffered any material damage by fire or other casualty loss which has not heretofore been completely repaired and restored to its original condition.

(d) All Permits required to have been issued or appropriate to enable all Real Property owned or leased by the Issuer Related Parties or any of their Subsidiaries to be lawfully occupied and used for all of the purposes for which they are currently occupied and used have been lawfully issued and are in full force and effect, except where such failure could not reasonably be expected to have a Material Adverse Effect.

(e) None of the Issuer Related Parties or any of their Subsidiaries has received any notice, or has any knowledge, of any pending, threatened or contemplated condemnation proceeding affecting any material Real Property owned or leased by the Issuer Related Parties or any of their Subsidiaries or any part thereof.

Section 4.18 Secured, Super-Priority Obligations.

(a) On and after the Closing Date, the provisions of the Note Documents and the Orders are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, legal, valid and perfected Liens on and security interests (having the priority provided for herein and in the Orders) in all right, title and interest in the Collateral, enforceable against each Issuer Related Party that owns an interest in such Collateral.

(b) All Obligations and all other amounts owing by the Issuer and the Guarantors hereunder and under the other Note Documents to the Administrative Agent and the Note Purchasers (including, without limitation, all principal and accrued interest, costs, fees and expenses) will be secured:

(i) pursuant to section 364(c)(2) of the Bankruptcy Code and the Orders, by a first priority perfected security interest in and Lien on, and security interest in, all property and assets unencumbered as of the Petition Date of each of the Issuer Related Parties and their estates of every kind or type whatsoever, tangible, intangible, real, personal and mixed, whether now owned or existing or hereafter acquired or arising and regardless of where located, whether within the United States or in other locations, and including, without limitation, all property of the estates of each of the Issuer Related Parties within the meaning of section 541 of the Bankruptcy Code, all proceeds, rents and products of all of the foregoing and all distributions thereon that are unencumbered as of the date hereof and all Pledged Stock of a Subsidiary of an Issuer Related Party unencumbered as of the Petition Date, subject only to the Carve-Out and the Revolving Loan DIP Facility;

(ii) pursuant to section 364(c)(3) of the Bankruptcy Code and the Orders, by a perfected junior Lien on, and security interest in all property and assets, of each of the Issuer Related Parties and their estates of every kind or type whatsoever, tangible, intangible, real, personal and mixed, whether now owned or existing or hereafter acquired or arising and regardless of where located, whether within the United States or in other locations, and including, without limitation, Pledged Stock of a Foreign

Subsidiary of an Issuer Related Party, all property of the estates of each of the Issuer Related Parties within the meaning of section 541 of the Bankruptcy Code, and all proceeds, rents and products of all of the foregoing and all distributions thereon that are subject to valid and perfected Liens in existence on the Petition Date or to valid Liens in existence on the Petition Date that are perfected subsequent to such date as permitted by subsection 546(b) of the Bankruptcy Code, other than Liens and security interests subject to priming Liens pursuant to clause (iii) of this *Section 4.18(b)* below, subject only to the Carve-Out and the Revolving Loan DIP Facility; and

(iii) pursuant to section 364(d)(1) of the Bankruptcy Code and the Orders, by a perfected first priority, senior priming Lien on and security interest in all property and assets of each of the Issuer Related Parties and their estates of every kind or type whatsoever, whether tangible, intangible, real, personal and mixed, whether now owned or existing or hereafter acquired or arising and regardless of where located, whether within the United States or in other locations, and including, without limitation, all property of the estates of each of the Issuer Related Parties within the meaning of section 541 of the Bankruptcy Code, and all proceeds thereof that are subject to valid and perfected Liens in existence on the Petition Date or to valid Liens in existence on the Petition Date that are perfected subsequent to such date as permitted by subsection 546(b) of the Bankruptcy Code other than the Prepetition Revolving Facility Liens, subject only to the Carve-Out and the Liens securing the Revolving Loan DIP Facility; and

(iv) pursuant to section 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code and the Orders, by a perfected first priority Lien on and security interest in the proceeds of any avoidance claims or causes of action under chapter 5 of the Bankruptcy Code.

(c) Pursuant to section 364(c)(1) of the Bankruptcy Code and the Orders, all Obligations and other amounts owing by the Issuer hereunder and under the other Note Documents and by the Guarantors under the Guaranty in respect thereof at all times will constitute allowed super-priority administrative expense claims in the Case having priority over any and all administrative expenses of the kind specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code ("*Superpriority Claims*"), subject only to the Carve-Out and the Revolving Loan DIP Facility.

(d) The Orders and the transactions contemplated hereby and thereby, are in full force and effect and have not been vacated, reversed, modified, amended or stayed without the prior written consent of the Note Purchasers.

Section 4.19 Accounts. The only Deposit Accounts, Securities Accounts or commodity accounts maintained by any Issuer Related Party on the date hereof are those listed on *Schedule 4.19*, which sets forth such information separately for each Issuer Related Party.

Section 4.20 Title; No Other Liens. Except for the Lien granted to the Administrative Agent for the benefit of the Secured Parties pursuant to this Agreement and the Liens securing the Prepetition Revolving Facility and the Revolving Loan DIP Facility, each Issuer Related Party is the record and beneficial owner of the Pledged Collateral pledged by it hereunder

constituting Instruments or certificated securities and is the entitlement holder of all such Pledged Collateral constituting Investment Property held in a Securities Account and owns each other item of Collateral in which a Lien is granted by it hereunder and all such Collateral is owned free and clear of any and all Liens other than Liens permitted under *Section 8.2*.

Section 4.21 Pledged Collateral.

(a) The Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests pledged hereunder by each Issuer Related Party constitutes that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on *Schedule 4.21(a)*.

(b) All of the Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests have been duly and validly issued and are fully paid and nonassessable.

(c) Each of the Pledged Notes constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

(d) All Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests of such Issuer Related Party as of the date hereof are listed on *Schedule 4.21(a)*.

(e) All Pledged Collateral consisting of certificated securities or Instruments has been delivered to the Administrative Agent, except for the Pledged Collateral which has been delivered to the Revolving Loan DIP Agent.

(f) Other than the Pledged Partnership Interests and the Pledged LLC Interests that constitute General Intangibles, there is no Pledged Collateral other than that represented by certificated securities or Instruments in the possession of the Administrative Agent or the Revolving Loan DIP Agent.

(g) No Person other than the Administrative Agent has Control over any Investment Property of such Issuer Related Party, except for the Revolving Loan DIP Agent, on behalf of itself and the Administrative Agent, to the extent permitted by the DIP Intercreditor Agreement.

(h) Subject to *Section 9.2*, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall be entitled to, and at the direction of the Requisite Note Purchasers shall, exercise all of the rights of the Issuer Related Party granting the security interest under the LLC Agreement governing any Pledged LLC Interests, the Partnership Agreement governing any Pledged Partnership Interests and a transferee or assignee of a membership interest, partnership interest or Stock, as the case may be, of such LLC or Partnership, as the case may be upon the election of the Administrative Agent (at the direction of the Requisite Note Purchasers), shall become a member, partner or stockholder, as the case may be, of such LLC or Partnership, as the case may be, entitled to participate in the management thereof and, upon the transfer of the entire interest of such Issuer Related Party, such Issuer Related Party ceases to be a member, partner or stockholder, as the case may be.

Section 4.22 Intellectual Property.

(a) *Schedule 4.22* lists all Material Intellectual Property of each Issuer Related Party on the date hereof, separately identifying that owned by such Issuer Related Party and that licensed to such Issuer Related Party. If before the Obligations shall have been irrevocably paid in full in cash, any Issuer Related Party shall obtain rights to any Material Intellectual Property not listed on *Schedule 4.22*, such Issuer Related Party, within thirty (30) days after obtaining such rights, shall update *Schedule 4.22* and provide Administrative Agent written notice thereof; *provided*, that, each Compliance Certificate required hereunder shall list any such rights that have not been added to *Schedule 4.22* as of the date of such Compliance Certificate and such *Schedule 4.22* shall be deemed to be amended to add all such rights so listed. The Material Intellectual Property set forth on *Schedule 4.22* for such Issuer Related Party constitutes all of the Intellectual Property rights necessary to conduct its business and such Issuer Related Party owns, or has a valid license to use such Intellectual Property.

(b) All Material Intellectual Property owned by such Issuer Related Party and to the knowledge of any Issuer Related Party all Material Intellectual Property licensed by such Issuer Related Party is in compliance with all formal legal requirements (including payment of filing, examination, annuity and maintenance fees and proofs of use), is valid, subsisting, unexpired and enforceable, has not been adjudged invalid and has not been abandoned and the use thereof in the business of such Issuer Related Party does not infringe upon or conflict with any rights of any other Person.

(c) Except as set forth in *Schedule 4.22*, on the date hereof, none of the Material Intellectual Property owned by such Issuer Related Party is the subject of any licensing or franchise agreement pursuant to which such Issuer Related Party is the licensor or franchisor.

(d) The operation of the business of each Issuer Related Party as currently conducted or currently contemplated to be conducted does not and will not infringe or misappropriate the Intellectual Property of any Person, violate any right of any Person or constitute unfair competition or trade practices under the laws of any jurisdiction, and no claim of infringement, misappropriation, unfair competition or other violation of a third party's rights has been asserted or threatened nor does any Issuer Related Party know of any valid basis for any such claim, except in each case those that could not reasonably be expected to have a Material Adverse Effect.

(e) Each Issuer Related Party has used and will continue to use for the duration of this Agreement, proper statutory notice, where appropriate in connection with the use of Material Intellectual Property.

(f) Each Issuer Related Party has used and will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture of products sold under the Trademarks comprising Material Intellectual Property.

(g) Other than as set forth in *Schedule 4.22*, no Person has asserted or threatened to assert any claims (A) contesting the right of any Issuer Related Party to use, exercise, sell, license, transfer or dispose of any Material Intellectual Property or any products,

processes or materials covered thereby in any manner; or (B) challenging the ownership, validity or enforceability of any Material Intellectual Property.

(h) No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or such Issuer Related Party's rights in, any Material Intellectual Property.

(i) No claim, action or proceeding seeking to limit, cancel or question the validity of any Material Intellectual Property or such Issuer Related Party's ownership interest therein is on the date hereof pending or, to the knowledge of such Issuer Related Party, threatened. There are no claims, judgments or settlements to be paid by such Issuer Related Party relating to the Material Intellectual Property.

(j) Each of the Issuer Related Parties is aware of no Material Intellectual Property that is subject to, or could become subject to a claim of ownership (in whole or in part) by a former or current employee of any of the Issuer Related Parties.

(k) The Issuer Related Parties have not received any opinion of counsel regarding the validity, infringement or enforceability of Material Intellectual Property.

Section 4.23 Waiver of any Priming Rights. Upon the Closing Date, and on behalf of itself and its estates, and for so long as any Obligations shall be outstanding, the Issuer Related Parties hereby irrevocably waive any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Lien securing the Obligations, or to approve a claim of equal or greater priority than the Obligations except as provided in *Section 4.18*.

ARTICLE V

FINANCIAL COVENANTS

Section 5.1 Adherence to Budget. Beginning with the 5th week subsequent to the Closing Date and continuing for each week thereafter, and as measured on a cumulative basis from the Closing Date, the Debtors' (i) net cash flow (excluding financing costs, professional fees and expenses and, to the extent the Issuer makes a pension contribution (which is not reflected in the Budget) the actual amount of such pension contribution in an amount not to exceed $704,000) through such week, (ii) post-petition disbursements with respect to the Debtors' professional fees through such week and (iii) post-petition disbursements with respect to the Committee's professional fees through such week, in each case, shall not have a Variance of greater than (a) with respect to testing in the 5th, 6th, 7th and 8th weeks, 20% of the projected amounts set forth in the Initial Budget for prior periods, (b) with respect to testing in the 9th, 10th, 11th, 12th and 13th weeks, 15% of the projected amounts set forth in the Initial Budget for prior periods and (c) with respect to testing in the 14th week and each week thereafter, 15% of the projected amounts set forth in the Initial Budget and the most recent updated Budget delivered prior to the end of the initial 13-week period covered by the Initial Budget. "*Variance*" for purposes of this *Section 5.1* means (x) with respect to the calculation of net cash flow, actual net cash flow being less than the amount set forth in the applicable Budget, and (y) with respect

to the Debtors' or the Committee's professional fees, post-petition professional fees being greater than the amount set forth therefor in the applicable Budget.

ARTICLE VI

REPORTING COVENANTS

As long as any of the Obligations or Commitments remain outstanding, unless the Requisite Note Purchasers otherwise consent in writing, the Issuer Related Parties agree with the Note Purchasers and the Administrative Agent that:

Section 6.1 Financial Statements and Other Information. The Issuer shall furnish to the Administrative Agent (with sufficient copies for each of the Note Purchasers) the following:

(a) *Monthly Reports*. (i) within thirty (30) days after the end of each fiscal month in each Fiscal Year, financial information regarding the Parent Guarantor and its Subsidiaries, in each case consisting of consolidated unaudited balance sheets as of the close of such month and the related statements of income and cash flow for such month and that portion of the current Fiscal Year ending as of the close of such month, setting forth for such consolidated statements in comparative form the figures for the corresponding period in the prior year, in each case certified by the Responsible Financial Officer of the Issuer as fairly presenting the consolidated financial position of the Parent Guarantor and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments).

(b) *Quarterly Reports.* (i) within 45 days after the end of each fiscal quarter in each Fiscal Year (other than the last fiscal quarter in any Fiscal Year), financial information regarding the Parent Guarantor and its Subsidiaries, in each case consisting of consolidated unaudited balance sheets as of the close of such fiscal quarter and the related statements of income and cash flow for such fiscal quarter and that portion of the current Fiscal Year ending as of the close of such fiscal quarter, setting forth for such consolidated statements in comparative form the figures for the corresponding period in the prior year, in each case certified by the Responsible Financial Officer of the Issuer as fairly presenting the consolidated financial position of the Parent Guarantor and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments).

(c) *Annual Reports*. Within ninety (90) days after the end of each Fiscal Year, financial information regarding the Parent Guarantor and its Subsidiaries consisting of consolidated balance sheets of the Parent Guarantor and its Subsidiaries as of the end of such year and related statements of income and cash flows of the Parent Guarantor and its Subsidiaries for such Fiscal Year, all prepared in conformity with GAAP and certified by the Issuer's Accountants, which shall not be qualified in any material respect as to scope but may contain a qualification with respect to the Case or "going concern", together with the report of the Issuer's Accountants stating that such financial statements fairly present the consolidated

financial position of the Parent Guarantor and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with which such Issuer's Accountants shall concur and which shall have been disclosed in the notes to the financial statements).

(d) *Compliance Certificate*. Together with each delivery of any financial statement pursuant to *clauses (a), (b)* or *(c)* of this *Section 6.1*, a certificate of a Responsible Financial Officer of the Issuer substantially in the form of *Exhibit I* hereto (each, a "*Compliance Certificate*") stating that no Default or Event of Default has occurred and is continuing or, if a Default or an Event of Default has occurred and is continuing, stating the nature thereof and the action which the Issuer proposes to take with respect thereto.

(e) *Business Plan*. As soon as available, any updates or modifications to the Business Plan, in form and substance satisfactory to the Requisite Note Purchasers.

(f) *Budget*. On each Friday prior to the beginning of each fiscal month, an updated approved Budget for the subsequent 13-week period following the period covered, which update shall be in form and substance reasonably acceptable to the Requisite Note Purchasers.

(g) *Weekly Variance Report*. As soon as available and in any event not later than the Friday of each week starting the third Friday after the Closing Date, a Variance Report for the prior week.

(h) *Management Letters, Etc*. Within one (1) Business Day after receipt thereof by any Issuer Related Party, copies of each management letter, exception report or similar letter or report received by such Issuer Related Party from its independent certified public accountants.

(i) *Intercompany Loan Balances*. Together with each delivery of any financial statement pursuant to *clause (b)* of this *Section 6.1*, a summary of the outstanding balance of all intercompany Indebtedness as of the last day of the fiscal quarter covered by such financial statement prepared in accordance with *Section 6.1(b)*, certified by a Responsible Officer.

(j) *Perfection Certificate.* Together with each delivery of any financial statement pursuant to *clause (b)* of this *Section 6.1*, an updated Perfection Certificate.

Section 6.2 Default Notices. As soon as practicable, and in any event within five (5) Business Days after a Responsible Officer of any Issuer Related Party has actual knowledge of the existence of any Default, Event of Default or other event which has had a Material Adverse Effect or having any reasonable likelihood of causing or resulting in a Material Adverse Effect, such Issuer Related Party or the Issuer shall give the Administrative Agent notice specifying the nature of such Default or Event of Default or other event, including the anticipated effect thereof, which notice, if given by telephone, shall be promptly confirmed in writing on the next Business Day.

Section 6.3 **Litigation**. Promptly after the commencement thereof, the Issuer shall give the Administrative Agent written notice of the commencement of all actions, suits and proceedings before any domestic or foreign Governmental Authority or arbitrator, affecting any Issuer Related Party or any of its Subsidiaries, which (i) seeks injunctive or similar relief or (ii) which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

Section 6.4 **Asset Sales**. Prior to the consummation of any Asset Sale anticipated to generate in excess of $2,000,000 (or its Dollar Equivalent) in Net Cash Proceeds, the Issuer shall send the Administrative Agent a notice (a) describing such Asset Sale or the nature and material terms and conditions of such transaction and (b) stating the estimated Net Cash Proceeds anticipated to be received by the Issuer Related Parties or any of their Subsidiaries.

Section 6.5 **Notices under Prepetition Facilities Documents**. Promptly after the sending or filing thereof, the Issuer shall send the Administrative Agent copies of all material notices, certificates or reports delivered pursuant to, or in connection with, any of the Prepetition Facilities Documents.

Section 6.6 **SEC Filings; Press Releases**. Unless such information is available through the Securities and Exchange Commission Electronic Data Gathering, Analysis and Retrieval System (EDGAR), promptly after the sending or filing thereof, the Issuer shall send the Administrative Agent copies of (a) all reports that the Issuer or the Parent Guarantor sends to its security holders generally, (b) all reports on Form 10-K, 10-Q or 8-K or otherwise and registration statements which any Issuer Related Party or any of its Subsidiaries files with the Securities and Exchange Commission or any national or foreign securities commission or securities exchange or the National Association of Securities Dealers, Inc., (c) all material press releases and (d) all other statements concerning material changes or developments in the business of such Issuer Related Party made available by any Issuer Related Party to the public.

Section 6.7 **Labor Relations**. Promptly after becoming aware of the same, the Issuer shall give the Administrative Agent written notice of (a) any material labor dispute to which any Issuer Related Party becomes or any of its Subsidiaries is or may become a party, including any strikes, lockouts or other disputes relating to any of such Person's plants and other facilities, and (b) any Worker Adjustment and Retraining Notification Act or related liability incurred with respect to the closing of any plant or other facility of any such Person.

Section 6.8 **Tax Returns**. Upon the request of any Note Purchaser, through the Administrative Agent, the Issuer shall provide copies of all federal, state, local and foreign tax returns and reports filed by the Issuer or any Issuer Related Party or any of their Subsidiaries in respect of taxes measured by income (excluding sales, use and like taxes).

Section 6.9 **Insurance**. As soon as is practicable and in any event within ninety (90) days after the end of each Fiscal Year, the Issuer shall furnish the Administrative Agent with an insurance broker's statement that all premiums then due and payable with respect to such coverage have been paid and that all such insurance names the Administrative Agent on behalf of the Secured Parties as additional insured or loss payee, as appropriate and as its interest may appear, and provides that no cancellation, material addition in amount or material change in

coverage shall be effective until after thirty (30) days' written notice to the Administrative Agent.

Section 6.10 ERISA and Pension Matters. The Issuer shall furnish the Administrative Agent (with sufficient copies for each of the Note Purchasers):

(a) promptly and in any event within thirty (30) days after the Parent Guarantor, any of its Subsidiaries or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, written notice that such event has occurred and copies of the notice from the regulator;

(b) promptly and in any event within ten (10) days after the Parent Guarantor, any of its Subsidiaries or any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under section 412 of the Code (or any corresponding successor provision) has been filed with respect to any Title IV Plan or Multiemployer Plan, a written statement of a Responsible Officer of the Issuer describing such waiver request and the action, if any, which the Parent Guarantor, its Subsidiaries and ERISA Affiliates propose to take with respect thereto and a copy of any notice filed with the PBGC or the IRS pertaining thereto;

(c) simultaneously with the date that the Parent Guarantor, any of its Subsidiaries or any ERISA Affiliate files a notice of intent to terminate any Title IV Plan, if such termination would require additional contributions in excess of $500,000 in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, a copy of each notice; and

(d) upon the request of any Note Purchaser, copies of any annual report filed pursuant to ERISA in connection with any Title IV Plan.

Section 6.11 Environmental Matters. The Issuer shall provide the Administrative Agent promptly, and in any event within ten (10) Business Days of the Parent Guarantor or any Subsidiary receiving written notice of any of the following, written notice of any of the following:

(a) that any Issuer Related Party is or may be liable to any Person as a result of a Release or threatened Release of a Contaminant attributable to any Issuer Related Party that could reasonably be expected to subject such Issuer Related Party to Environmental Liabilities and Costs of $2,000,000 or more or could reasonably be expected to result in a Material Adverse Effect;

(b) the receipt by any Issuer Related Party of notification that any real or personal property of such Issuer Related Party is or is reasonably likely to be subject to any material Environmental Lien;

(c) the receipt by any Issuer Related Party of any written notice of violation of any Environmental Law or any written claim for Environmental Liabilities and Costs which could reasonably be expected to result in a violation of or liability under any Environmental Law, except for violations and liabilities the consequence of which in the aggregate would have no reasonable likelihood of subjecting the Issuer Related Parties collectively to Environmental

Liabilities and Costs of $2,000,000 or more or could reasonably be expected to result in a Material Adverse Effect;

(d) the commencement of any judicial or administrative proceeding or investigation alleging a violation of or liability under any Environmental Law, which in the aggregate, if adversely determined, would have a reasonable likelihood of subjecting the Issuer Related Parties, individually or collectively, to Environmental Liabilities and Costs of $2,000,000 or more or could reasonably be expected to result in a Material Adverse Effect;

(e) any proposed acquisition of stock, assets or real estate, or any proposed leasing of property, the consequences of which in the aggregate have a reasonable likelihood of subjecting the Issuer Related Parties, individually or collectively, to Environmental Liabilities and Costs of $2,000,000 or more or could reasonably be expected to result in a Material Adverse Effect;

(f) any proposed action by any Issuer Related Party or any of its Subsidiaries to comply with Environmental Laws which in the aggregate have a reasonable likelihood of requiring the Issuer Related Parties to make additional capital improvements to obtain compliance with Environmental Laws that in the aggregate would cost $2,000,000 or more, subject the Issuer Related Parties, individually or collectively, to additional Environmental Liabilities and Costs of $2,000,000 or more or could reasonably be expected to result in a Material Adverse Effect; and

(g) upon written request by any Note Purchaser through the Administrative Agent, a report by the Issuer Related Parties providing an update of the status of any environmental, health or safety compliance, hazard or liability issue identified in any disclosure delivered pursuant to this *Section 6.11* or this Agreement.

Section 6.12 Bankruptcy Court. The Issuer shall use its best efforts to obtain the approval of the Bankruptcy Court of, and to satisfy the conditions precedent provided in, this Agreement and the other Note Documents and shall deliver to the Administrative Agent, the Note Purchasers and their respective counsel for review and comment prior to filing all material pleadings, motions and other documents (provided that any of the foregoing relating to the Facility or the Note Documents shall be deemed material) to be served, filed or entered, as the case may be, in, in connection with, or in relation to, the Case (including any documents to be provided to any statutory committee appointed in the Case or the U.S. Trustee), all such documents to be reasonably satisfactory to the Requisite Note Purchasers in form and substance after their review and comment.

Section 6.13 Other Information. The Issuer shall provide the Administrative Agent or any Note Purchaser with such other information respecting the business, properties, condition, financial or otherwise, or operations of any Issuer Related Party or any of its Subsidiaries as the Administrative Agent or any Note Purchaser through the Administrative Agent may from time to time reasonably request. The Issuer shall promptly provide the Administrative Agent all information provided or required to be provided to the Revolving DIP Lenders under the Revolving Loan DIP Agreement, and in any event within one Business Day unless the same or similar information is delivered under the terms of this Agreement.

Section 6.14 Public Information. Notwithstanding any of the foregoing, any Note Purchaser may elect not to receive any of the information required hereunder. If any Note Purchaser makes such an election, the Administrative Agent will refrain from delivering such information to such Note Purchaser until such Note Purchaser requests to be provided with such information.

ARTICLE VII

AFFIRMATIVE COVENANTS

As long as any of the Obligations or Commitments remain outstanding, unless the Requisite Note Purchasers otherwise consent in writing, each Issuer Related Party agrees with the Note Purchasers and the Administrative Agent that:

Section 7.1 Preservation of Legal Existence, Etc. Such Issuer Related Party shall, and shall cause each of its Subsidiaries to, preserve and maintain its (a) legal existence and (b) rights (charter and statutory) and franchises, except as permitted by *Sections 8.4* and *8.6* or, with respect to clause (b) above, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 7.2 Compliance with Laws, Etc. Such Issuer Related Party shall, and shall cause each of its Subsidiaries to, comply with all applicable Requirements of Law, Contractual Obligations (to the extent not stayed by the Case) and Permits other then where such noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 7.3 Conduct of Business. Such Issuer Related Party shall, and shall cause each of its Subsidiaries to, (a) conduct its business in the ordinary course and consistent with past practice and (b) use its reasonable efforts, in the ordinary course and consistent with past practice, to preserve its business and the goodwill and business of the customers, advertisers, suppliers and others having business relations with such Issuer Related Party or any of its Subsidiaries, except in each case where the failure to comply with the covenants in each of *clauses (a)* and *(b)* above could not reasonable be expected to have a Material Adverse Effect.

Section 7.4 Payment of Taxes, Etc. Subject to the Bankruptcy Court approval in the Case, such Issuer Related Party shall, and shall cause each of its Subsidiaries to, pay and discharge before the same shall become delinquent, all lawful governmental claims, taxes, assessments, charges and levies arising after the Petition Date, except where contested in good faith, by proper proceedings and for which adequate reserves have been established on the books of such Issuer Related Party or the appropriate Subsidiary in conformity with GAAP.

Section 7.5 Maintenance of Insurance. Such Issuer Related Party shall (i) maintain, and cause to be maintained for each of its Subsidiaries, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which such Issuer Related Party or such Subsidiary operates, and such other insurance as may be reasonably requested by the Requisite Note Purchasers, and, in any event, all insurance required by any Note Document and (ii) subject to *Section 7.16(a)*, cause all such

insurance to (A) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as applicable and as its interest may appear, under all liability policies and (B) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as applicable and as its interest may appear, under all casualty policies, and to provide that no cancellation, material addition in amount or material change in coverage shall be effective until after thirty (30) days' written notice thereof to the Administrative Agent.

Section 7.6 Access. Such Issuer Related Party shall from time to time during normal business hours permit the Administrative Agent and the Note Purchasers, or any agents or representatives thereof, within two (2) Business Days after written notification of the same (except that during the continuance of an Event of Default, no such notice shall be required) to (a) examine and make copies of and abstracts from the historical information, records and books of account of such Issuer Related Party and each of its Subsidiaries, (b) visit the properties of such Issuer Related Party and each of its Subsidiaries, (c) discuss the affairs, finances and accounts of such Issuer Related Party and each of its Subsidiaries with any of their respective officers or directors, and (d) communicate directly with such Issuer Related Party's (and any of its Subsidiaries') independent certified public accountants (and the Issuer shall be provided the opportunity to participate in such discussions under this clause (d)). Such Issuer Related Party shall authorize its independent certified public accountants, and shall cause the certified public accountants of each of its Subsidiaries, if any, to disclose to the Administrative Agent or any Note Purchaser any and all financial statements and other information of any kind, as the Administrative Agent or any Note Purchaser reasonably requests from such Issuer Related Party and that such accountants may have with respect to the business, financial condition, results of operations or other affairs of such Issuer Related Party or any of its Subsidiaries.

Section 7.7 Keeping of Books. Such Issuer Related Party shall, and shall cause each of its Subsidiaries to, keep proper books of record and account, in which full and correct entries shall be made in conformity with GAAP in all material respects (subject to normal year-end adjustments) of all financial transactions and the assets and business of such Issuer Related Party and each such Subsidiary.

Section 7.8 Maintenance of Properties, Etc. Such Issuer Related Party shall, and shall cause each of its Subsidiaries to, maintain and preserve (a) in good working order and condition, all of its properties which are necessary in the conduct of its business, (b) all rights, permits, licenses, approvals and privileges (including all Permits) which are material to or necessary in the conduct of its business, and (c) all Intellectual Property with respect to its business; except where the failure to so maintain and preserve could not reasonably be expected to have a Material Adverse Effect.

Section 7.9 Application of Proceeds. The Issuer (and, to the extent distributed to them by the Issuer, each of the other Issuer Related Parties) shall use the entire amount of the proceeds of the Notes solely as provided in *Section 4.12*.

Section 7.10 Environmental. Such Issuer Related Party shall, and shall cause each of its Subsidiaries and all lessees and other Persons occupying its properties to comply in all material respects with Environmental Laws and, without limiting the foregoing, such Issuer

Related Party shall, at its sole cost and expense, upon receipt of any notification or otherwise obtaining knowledge of any previously unknown Release which requires Remedial Action with a cost in excess of $250,000 to attain compliance with Environmental Laws, take such Remedial Action as required by Environmental Laws or as any Governmental Authority requires.

Section 7.11 Access to information; Meetings with Chief Restructuring Officer and Senior Management. There shall be weekly telephonic conference calls and other regularly scheduled meetings, as mutually agreed, among the Debtors' advisors and a subcommittee of the Note Purchasers and its legal and/or financial advisors, who shall be provided with access to all information they shall reasonably request. In addition, there shall be monthly telephonic conference calls among the Note Purchasers, the Chief Restructuring Officer and senior management of the Debtors with respect to asset sales, cost savings, key hires and expenses, initiatives for marketing, purchasing, merchandising, information technology, and call centers, store closures and other matters reasonably requested by the Note Purchasers.

Section 7.12 Cash Management. The Issuer Related Parties have established a cash management system and shall maintain at all times a cash management system reasonably satisfactory to the Administrative Agent and the Note Purchasers; provided, that, subject to the establishment of the Note DIP Collateral Account in accordance with the terms hereof, the cash management system of the Issuer Related Parties currently in existence shall be deemed acceptable.

Section 7.13 Further Assurances. (a) Each Issuer Related party shall, and shall cause each of its Subsidiaries to, execute any and all further documents, financing statements, financing change statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, financing change statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law, or which the Administrative Agent, or any Note Purchaser through the Administrative Agent, may reasonably request, to effectuate the transactions contemplated by the Note Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Note Documents or the validity or priority of any such Lien, all at the expense of the Issuer Related Parties, which shall include but not be limited to (1) filing UCC financing statements indicating the collateral as all assets of each Issuer Related Party and fixture filings, in each case in the appropriate filing offices indicated in the Perfection Certificate, (2) recording each of the Domestic IP Agreements in the U.S. Patent and Trade Office or U.S. Copyright Office, as applicable, and (3) recording abstracts of the Orders in the appropriate U.S. mortgage filing offices, as indicated in the Perfection Certificate. The Issuer also agrees to provide to the Administrative Agent and the Note Purchasers, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent (at the direction of the Requisite Note Purchasers) as to the perfection and priority of the Liens created or intended to be created by the Note Documents.

(b) Without limiting the generality of the foregoing, promptly upon reasonable request by the Administrative Agent, or any Note Purchaser through the Administrative Agent, the Issuer Related Parties shall correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Note Document or other document or instrument relating to any Collateral, and do, execute,

acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Note Purchaser through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Note Documents.

(c) If any material assets (including any real property or improvements thereto or any interest therein) are acquired by the Issuer or any other Issuer Related Party after the Closing Date (other than assets constituting Collateral that become subject to the Lien of the appropriate Note Documents or the Orders upon acquisition thereof), the Issuer shall notify the Administrative Agent and the Note Purchasers thereof, and, if requested by Administrative Agent, or any Note Purchaser through the Administrative Agent, the Issuer shall cause such assets to be subjected to a Lien securing the Obligations and Issuer Related Parties shall take, and cause each of their Subsidiaries to take, such actions as shall be necessary or advisable to grant and perfect such Liens, including actions described in paragraph (a) of this *Section 7.13*, all at the expense of the Issuer Related Parties; *provided* that the perfection of security interests in Intellectual Property that would require filings or recordations under laws other than the laws of the United States shall not be required by this *Section 7.13(c)*.

(d) If any Stock pledged pursuant to any Note Document is certificated, promptly upon the issuance of such certificates, the Issuer Related Parties shall deliver to the Administrative Agent such certificates accompanied by undated stock powers or other appropriate instruments of transfer executed in blank, unless such Stock is pledged, and has been delivered, to the Prepetition Revolving Facility Agent under the Prepetition Revolving Loan Agreement.

(e) If any Issuer Related Party obtains any Patent that constitutes Material Intellectual Property, the Issuer Related Parties shall execute a Patent Security Agreement, substantially in the form of *Exhibit L* hereto, as soon as practicable, and in any event within thirty (30) days, after obtaining such Patent.

(f) If any Issuer Related Party obtains any Copyright that constitutes Material Intellectual Property, the Issuer Related Parties shall execute a Copyright Security Agreement, substantially in the form of *Exhibit B* hereto, as soon as practicable, and in any event within thirty (30) days, after obtaining such Copyright.

(g) If any Issuer Related Party obtains any Trademark that constitutes Material Intellectual Property, the Issuer Related Parties shall execute a Trademark Security Agreement, substantially in the form of *Exhibit K* hereto, as soon as practicable, and in any event within thirty (30) days, after obtaining such Trademark.

Section 7.14 Tax. If the Issuer determines that it intends to treat the Notes and the related transactions contemplated hereby as a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4, the Issuer shall promptly give the Administrative Agent written notice thereof and shall deliver to the Administrative Agent all IRS forms required in connection therewith.

Section 7.15 Additional Subsidiaries. If (a) any additional Subsidiary of an Issuer Related Party is formed or acquired after the Closing Date, the Issuer shall immediately notify the Administrative Agent and the Note Purchasers and (i) if such additional Subsidiary is a Domestic Subsidiary, the Issuer shall cause such Subsidiary to become a party to (A) this Agreement and the Guaranty, as a Guarantor, and (B) each Domestic IP Agreement and each other applicable security document in the manner provided therein, in each case within three (3) Business Days after such Subsidiary is formed or acquired and promptly take such actions to create and perfect Liens on such Subsidiary's assets to secure the Obligations as the Administrative Agent or any of the Note Purchasers shall reasonably request; and (ii) if any Stock or Indebtedness of such Subsidiary are owned by or on behalf of any Issuer Related Party, the Issuer will cause certificates and promissory notes evidencing such Stock and Indebtedness to be pledged to secure the Obligations within three (3) Business Days after such Subsidiary is formed or acquired and (b) any Subsidiary which is not an Issuer Related Party commences a case under Chapter 11 of the Bankruptcy Code which is administratively consolidated with the Case, the Issuer shall immediately notify the Administrative Agent and the Note Purchasers and shall cause such Subsidiary to become a party to (A) this Agreement and the Guaranty, as a Guarantor and (B) each Domestic IP Agreement and each other applicable security document in the manner provided therein (or, with respect to a Subsidiary that is not a Domestic Subsidiary, such other loan agreements, guaranties, pledge agreements, security agreements or other documents as the Administrative Agent or the Requisite Note Purchasers may request, which, in each case, shall be in form and substance reasonably acceptable to the Requisite Note Purchasers), in each case within three (3) Business Days after such Subsidiary's case under Chapter 11 of the Bankruptcy Code is administratively consolidated with the Case and promptly take such actions to create and perfect Liens on such Subsidiary's assets to secure the Obligations as the Administrative Agent or any of the Note Purchasers shall reasonably request.

Section 7.16 Certain Post-Closing Obligations.

(a) As soon as practicable, and in any event not later than thirty (30) days after the Closing Date or such later date as the Administrative Agent (at the direction of the Requisite Note Purchasers) shall agree by prior written consent, the Issuer Related Parties shall deliver to the Administrative Agent endorsements naming (A) the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as applicable and as its interest may appear, under all liability policies maintained by each Issuer Related Party and (B) the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as applicable and as its interest may appear, under all insurance policies maintained with respect to the properties of each Issuer Related Party.

(b) As soon as practicable, and in any event not later than five (5) Business Days after the date that the Final Order is entered, each Issuer Related Party shall execute and deliver to the Administrative Agent any mortgages, deeds of trust, security instruments, financing statements, charges, notices of Orders, abstracts of Orders or any other documents reasonably requested by the Administrative Agent (at the direction of the Requisite Note Purchasers) in connection with recording or registering any security interests or liens against Real Property.

(c) As soon as practicable, and in any event not later than five (5) Business Days after the date that the Final Order is entered, each Issuer Related Party shall execute and deliver to the Administrative Agent the Trademark Security Agreement, the Copyright Security Agreement and the Patent Security Agreement and such other documents duly executed by each Issuer Related Party as the Administrative Agent (at the direction of the Requisite Note Purchasers) may request with respect to the perfection of its security interests (for the benefits of the Note Purchasers) in such Collateral.

(d) As soon as practicable, and in any event not later than the earlier of (x) the date of entry of the Final Order and (y) thirty (30) days after the Closing Date, the Issuer Related Parties shall use commercially reasonable efforts to deliver to the Administrative Agent a favorable opinion of Oregon counsel to the Issuer Related Parties, addressed to the Administrative Agent and the Note Purchasers, in form and substance satisfactory to the Requisite Note Purchasers and addressing such matters as the Requisite Note Purchasers may reasonably request.

(e) As soon as practicable, and in any event not later than ten (10) days after the Petition Date, the Issuer Related Parties shall use commercially reasonable efforts to cause to be delivered to the Administrative Agent, to the extent not already delivered to the Administrative Agent or the Revolving Loan DIP Agent, (A) all share certificates representing all certificated Stock being pledged pursuant to this Agreement and stock powers for such share certificates executed in blank, as the Administrative Agent (at the direction of the Requisite Note Purchasers) may require; and (B) instruments representing such of the Pledged Notes pledged pursuant to this Agreement as shall be requested by the Administrative Agent, duly endorsed in favor of the Administrative Agent or in blank.

Section 7.17 Certain Notices. Each Issuer Related Party shall notify the Administrative Agent promptly upon becoming a party to any lease for real property or warehouse space, or any arrangement whereby Inventory with a value in excess of $500,000 in the aggregate at any time may be shipped to a processor or converter after the Closing Date in each case to the extent such locations are not included on the most recently delivered Perfection Certificate.

Section 7.18 Milestones.

(a) *Revolving Loan DIP Facility*. On or prior to the Interim Order Entry Date, the Debtors shall have received Bankruptcy Court approval for the Revolving Loan DIP Facility in form and substance reasonably satisfactory to the Requisite Note Purchasers and subject to the terms of the DIP Intercreditor Agreement, to be drawn and applied as provided for in the Revolving Loan DIP Agreement during the Case.

(b) *Exit Asset Based Lending Facility*. On or prior to the Petition Date, the Exit ABL Commitment Letter shall have been duly executed and delivered by all parties thereto and shall be in full force and effect. The Debtors shall have obtained final Bankruptcy Court approval for such Exit ABL Facility on or prior to the date that is thirty-five (35) days after the Petition Date pursuant to an order of the Bankruptcy Court in form and substance reasonably

satisfactory to the Requisite Note Purchasers. The definitive documentation of the Exit ABL Facility shall be in form and substance reasonably satisfactory to the Requisite Note Purchasers.

(c) *Leases*. Within forty-five (45) calendar days after the Petition Date, the Debtors shall have obtained entry of final order(s) of the Bankruptcy Court extending the time for the Debtors to assume or reject their leases of commercial property to not less than 210 days after the Petition Date.

(d) *Disclosure Statement and Plan*. (x) On or prior to May 16, 2011, the Debtors shall have filed (i) a Plan and (ii) a disclosure statement that contains adequate information that is reasonably satisfactory to the Requisite Note Purchasers relating to such Plan, and (y) on or prior to June 29, 2011, the Debtors shall have obtained entry of an order of the Bankruptcy Court approving such disclosure statement.

(e) *Confirmation*. On or prior to September 12, 2011, the Debtors shall have obtained an order of the Bankruptcy Court confirming a Plan

(f) *Emergence*. On or prior to October 1, 2011, the effective date under the a Plan shall have occurred.

Section 7.19 Title. Such Issuer Related Party shall, and shall cause each of its Subsidiaries to warrant and defend (i) the title to each item of Collateral owned by such Person and every part thereof, subject only to Liens permitted under *Section 8.2*, (ii) the validity and priority of the Liens and security interests held by the Administrative Agent pursuant to the Note Documents, in each case against the claims of all Persons whomsoever, and (iii) the title to and in the Collateral.

ARTICLE VIII

NEGATIVE COVENANTS

As long as any of the Obligations or the Commitments remain outstanding, unless the Requisite Note Purchasers otherwise agree in writing, each Issuer Related Party agrees with the Note Purchasers and the Administrative Agent that:

Section 8.1 Indebtedness. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness existing on the date of this Agreement and disclosed on *Schedule 8.1(b)*;

(c) Guaranty Obligations incurred by the Issuer or any Guarantor in respect of Indebtedness of the Issuer or any Guarantor otherwise permitted by this *Section 8.1*; *provided*,

that none of the Issuer nor any Guarantor shall incur any Guaranty Obligations in respect of Indebtedness of any Foreign Subsidiary;

(d) Capital Lease Obligations (including the Capital Lease Obligations listed on *Schedule 8.1(d)*) and purchase money Indebtedness incurred by such Issuer Related Party to finance the acquisition of fixed assets in an aggregate outstanding principal amount not to exceed $5,000,000, with respect to all Issuer Related Parties and their Subsidiaries, at any time;

(e) Renewals, extensions, refinancings and refundings of Indebtedness permitted by *clause (d)* of this *Section 8.1*; *provided*, *however*, that any such renewal, extension, refinancing or refunding is in an aggregate principal amount not greater than the principal amount of, and is on terms no less favorable to any Issuer Related Party or any Subsidiary of any Issuer Related Party obligated thereunder, including as to weighted average maturity and final maturity, than the Indebtedness being renewed, extended, refinanced or refunded;

(f) Indebtedness in respect of Hedging Contracts by such Issuer Related Party permitted hereunder (including under *Section 8.15*), designed to hedge against fluctuations in interest rates or foreign exchange rates incurred in the ordinary course of business and consistent with prudent business practice;

(g) Indebtedness arising from intercompany loans (i) from any Issuer Related Party to any other Issuer Related Party or (ii) from any Foreign Subsidiary to any other Foreign Subsidiary or to any Issuer Related Party;

(h) Indebtedness arising under any performance, appeal or surety bond entered into by an Issuer Related Party in the ordinary course of business;

(i) Indebtedness arising under the Revolving Loan DIP Facility, in an aggregate principal amount of loans outstanding not to exceed $100,000,000; and

(j) other unsecured Indebtedness (not of the type covered in clauses (a) through (i) above) of any Debtor not to exceed $5,000,000 million in the aggregate principal amount at any time outstanding.

Section 8.2 Liens, Etc. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, create or suffer to exist, any Lien upon or with respect to any of its properties or assets including, without limitation, the Collateral, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, except for:

(a) Liens created pursuant to the Note Documents and the Orders;

(b) leases or subleases of Real Property of an Issuer Related Party, in each case, entered into in the ordinary course of such Issuer Related Party's business so long as such leases do not, individually or in the aggregate, (i) interfere in any material respect with the ordinary conduct of business of such Issuer Related Party or (ii) materially impair the use of the Real Property subject thereto;

(c) licenses or sublicenses of Intellectual Property granted by any Issuer Related Party in the ordinary course of business and in compliance with this Agreement;

(d) Liens existing on the date of this Agreement and disclosed on *Schedule 8.2* and subordinated to the extent provided for in *Section 4.18(b)(iii)* or the Orders;

(e) Customary Permitted Liens on the assets of the Parent Guarantor and its Subsidiaries;

(f) purchase money Liens granted by such Issuer Related Party (including the interest of a lessor under a Capital Lease and purchase money Liens to which any property is subject at the time, after the date hereof, of such Issuer Related Party's acquisition thereof) securing Indebtedness permitted under *Section 8.1(d)* and limited in each case to the property purchased with the proceeds of such purchase money Indebtedness or subject to such Capital Lease;

(g) any Lien securing the renewal, extension, refinancing or refunding of any Indebtedness secured by any Lien permitted by *clause (d)* of this *Section 8.2* without any change in the assets subject to such Lien and to the extent such renewal, extension, refinancing or refunding is permitted under *Section 8.1(e)*;

(h) Liens in favor of lessors securing operating leases of the Issuer Related Parties;

(i) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Debtor in the ordinary course of business in accordance with the past practices of such Debtor;

(j) Liens in favor of customs and revenues authorities which secure payment of customs duties in connection with the importation of goods to the extent required by law; and

(k) Liens granted under the Revolving Loan DIP Facility to the extent permitted pursuant to and with the priorities set forth in the DIP Intercreditor Agreement.

Section 8.3 Investments. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly make or maintain any Investment except:

(a) Investments existing on the date of this Agreement and disclosed on *Schedule 8.3*;

(b) Cash Equivalents held in a Cash Collateral Account with respect to which the Administrative Agent has a first priority perfected Lien for the benefit of the Secured Parties or an account in which the Revolving Loan DIP Agent has a first priority perfected Lien under the Revolving Loan DIP Facility;

(c) in the case of an Issuer Related Party, Accounts, Payment Intangibles and Chattel Paper, notes receivable and similar items arising or acquired in the ordinary course of business consistent with the past practice of such Issuer Related Party;

(d) Investments received in settlement of amounts due to such Issuer Related Party or any Subsidiary of such Issuer Related Party effected in the ordinary course of business;

(e) Investments by an Issuer Related Party in another Issuer Related Party;

(f) loans or advances to employees of such Issuer Related Party in the ordinary course of business, which loans and advances shall not exceed the aggregate outstanding principal amount of $1,000,000, with respect to all Issuer Related Parties and their Subsidiaries, at any time;

(g) Hedging Contracts permitted hereunder; and

(h) Investments not otherwise permitted hereby in an aggregate outstanding amount not to exceed $1,000,000, with respect to all Issuer Related Parties and their Subsidiaries, at any time.

Section 8.4 **Sale of Assets**. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, sell, convey, transfer, lease or otherwise dispose of any of its assets or any interest therein (including any disposition under section 363 of the Bankruptcy Code the sale or factoring at maturity or collection of any accounts or in connection with a Sale/Leaseback Transaction) to any Person, or permit or suffer any other Person to acquire any interest in any of its assets (other than as expressly permitted by *Section 8.2*) or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Stock or Stock Equivalents (any such disposition being an "*Asset Sale*"), except:

(a) the sale or disposition of Inventory in the ordinary course of business;

(b) the sale of assets from one Issuer Related Party to another Issuer Related Party;

(c) the sale or disposition of equipment which has become obsolete or is replaced in the ordinary course of business;

(d) the true lease or sublease of real property not constituting Indebtedness and not constituting a Sale/Leaseback Transaction, to the extent not otherwise prohibited by this Agreement;

(e) licenses of Intellectual Property of the Parent Guarantor and its Subsidiaries in the ordinary course of business;

(f) transfers of assets which are expressly permitted by *Section 8.3*; and

(g) during the term of this Agreement, disposing of assets in respect of a transaction or series of related transactions for total consideration of not more than $2,000,000 in the aggregate;

provided that the foregoing limitations are not intended to prevent such Issuer Related Party from rejecting unexpired leases or executory contracts pursuant to section 365 of the Bankruptcy Code in connection with the Case.

Section 8.5 Restricted Payments. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Payment except:

(a) Restricted Payments by any Issuer Related Party to any other Issuer Related Party;

(b) dividends and distributions declared and paid on the common stock of the Parent Guarantor and payable only in common stock of the Parent Guarantor;

(c) payments the Revolving Loan DIP Facility, in each case, to the extent permitted under the Orders;

(d) payments under Capital Leases set forth on *Schedule 8.1(d)*, to the extent assumed by the Issuer Related Parties during the Case, and Indebtedness entered into after the Petition Date, in each case to the extent permitted under *Section 8.1(d), (f), (g)* or *(h)*; and

(e) Restricted Payments made or declared under the backstop stock purchase agreement entered into immediately prior to the Petition Date or the transactions contemplated thereunder, including the payment of breakup fees.

Section 8.6 Restriction on Fundamental Changes. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to (a) merge with any Person, (b) consolidate with any Person, (c) acquire all or substantially all of the Stock or Stock Equivalents of any Person, (d) acquire all or substantially all of the assets of any Person or all or substantially all of the assets constituting the business of a division, branch or other unit operation of any Person, (e) enter into any joint venture or partnership with any Person or (f) acquire or create any Subsidiary (other than in compliance with *Section 7.15*), except that any Subsidiary may merge into or consolidate with any Issuer Related Party; *provided* that, in the case of any such merger or consolidation involving the Issuer, the Issuer shall be the surviving entity and in the case of any other merger or consolidation, the surviving entity shall be a Guarantor; *provided*, *however*, that in each case under this *Section 8.6*, both before and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom.

Section 8.7 Change in Nature of Business. Other than as a result of the filing of the Case, such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, make any material change in the nature or conduct of its business as carried on as of the Closing Date and business reasonably related thereto or employ the same or related technologies or processes as those businesses in effect on the Closing Date.

Section 8.8 Transactions with Affiliates. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, except as otherwise expressly permitted herein, do any of the following: (a) make any Investment in an Affiliate of any Issuer Related Party which is not a Guarantor; (b) transfer, sell, lease, assign or otherwise dispose of any asset to any Affiliate

of any Issuer Related Party which is not a Guarantor; (c) except to the extent permitted by *Section 8.6*, merge into or consolidate with or purchase or acquire assets from any Affiliate of any Issuer Related Party which is not a Guarantor; (d) repay any Indebtedness to any Affiliate of any Issuer Related Party which is not a Guarantor or the Issuer (other than with respect to the Notes); (e) pay any management fees to any Affiliate of any Issuer Related Party that is not a Guarantor; or (f) enter into any other transaction directly or indirectly with or for the benefit of any Affiliate of any Issuer Related Party which is not a Guarantor (including guaranties and assumptions of obligations of any such Affiliate), except for in the case of this *clause (f)*, (i) transactions in the ordinary course of business on a basis no less favorable to any Issuer Related Party or such Guarantor as would be obtained in a comparable arm's length transaction with a Person not an Affiliate, (ii) salaries and other compensation to officers or directors of any Issuer Related Party or any Guarantor commensurate with current compensation levels, in each case, to the extent permitted under *Section 8.22* and (iii) transactions with Wasserstein Partners, LP with respect to the Note Documents, the support agreement dated immediately prior to the Petition Date, by and among the Issuer and each of the holders of claims against the Issuer Related Parties signatory thereto and the transactions contemplated thereby.

Section 8.9 Restrictions on Subsidiary Distributions; No New Negative Pledge. Other than pursuant to the Note Documents, the Revolving Loan DIP Documents, the Prepetition Senior Indenture, the Prepetition Senior Notes and any agreements governing any purchase money Indebtedness or Capital Lease Obligations permitted by *clause (d)* or *(e)* of *Section 8.1* (in which latter case, any prohibition or limitation shall only be effective against the assets financed thereby) and restrictions and conditions imposed under applicable law, such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, after the Petition Date, (a) agree to enter into or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of such Subsidiary to pay dividends or make any other distribution or transfer of funds or assets or make loans or advances to or other Investments in, or pay any Indebtedness owed to, any Issuer Related Party or any other Subsidiary of the Issuer Related Parties or (b) enter into or suffer to exist or become effective any agreement which prohibits or limits the ability of any Issuer Related Party or any other Subsidiary of the Issuer Related Parties to create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, to secure the Obligations, including any agreement which requires any other Indebtedness or Contractual Obligation to be equally and ratably secured with the Obligations.

Section 8.10 Modification of Constituent Documents. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, change its capital structure (including in the terms of its outstanding Stock) or otherwise amend its Constituent Documents, except for immaterial changes and amendments which do not adversely affect the rights and privileges of such Issuer Related Party or any of its Subsidiaries, or the interests of the Administrative Agent and the Note Purchasers under the Note Documents or the Orders or in the Collateral.

Section 8.11 Accounting Changes; Fiscal Year. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, change its (a) accounting treatment and reporting practices or tax reporting treatment, except as required by GAAP or any Requirement of Law and disclosed to the Note Purchasers and the Administrative Agent or (b) fiscal year.

Section 8.12 Margin Regulations. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, use all or any portion of the proceeds of any credit extended hereunder to purchase or carry Margin Stock.

Section 8.13 Operating Leases; Sale/Leasebacks.

(a) Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, become or remain liable as lessee or guarantor or other surety with respect to any operating lease outside of the ordinary course of business.

(b) Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, enter into any Sale/Leaseback Transaction.

Section 8.14 Modification, Prepayment and Cancellation of Indebtedness. (a) Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, cancel, prepay, redeem, purchase, exchange, amend or modify Indebtedness owed to any of them except to the extent expressly provided for in the Budget and the First Day Orders or other orders of the Bankruptcy Court entered upon pleadings, which orders shall be reasonably satisfactory to the Requisite Note Purchasers in form and substance;

(b) Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, prepay, redeem, purchase, defease, exchange, repurchase or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, or modify or amend any of the terms of, any Indebtedness in each case other than pursuant to a Plan; *provided*, *however*, that such Issuer Related Party and each of its Subsidiaries may (i) prepay the Obligations in accordance with the terms of this Agreement, (ii) repay Indebtedness under the Prepetition Revolving Facility solely from the proceeds of the Prepetition Revolving Facility Priority Collateral, to the extent required under Revolving Loan DIP Documents and the DIP Intercreditor Agreement, (iii) prepay any Indebtedness payable to the Issuer by any of the Guarantors, (iv) prepay purchase money Indebtedness permitted under *Section 8.1(d)*, and (v) renew, extend, refinance and refund Indebtedness, to the extent that such renewal, extension, refinancing or refunding is permitted under *Section 8.1(e)*.

Section 8.15 No Speculative Transactions. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, engage in any speculative transaction or in any transaction involving Hedging Contracts except for the sole purpose of hedging in the normal course of business and consistent with industry practices and not for any speculative purpose.

Section 8.16 Compliance with ERISA. Other than in connection with the termination of any Title IV Plan of the Issuer Related Parties or their ERISA Affiliates during the Case, such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, or cause or permit any ERISA Affiliate to, cause or permit to occur (a) an event which could reasonably be expected to result in the imposition of a Lien under Section 430 of the Code or Section 303 or 4068 of ERISA against any Issuer Related Party or its Subsidiaries, or (b) ERISA Events (other than the Case) that could reasonably be expected to have a Material Adverse Effect in the aggregate.

Section 8.17 Environmental. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, allow a Release of any Contaminant in violation of any Environmental Law; *provided, however,* that such Issuer Related Party shall not be deemed in violation of this *Section 8.17* if, as the consequence of all such Releases, such Issuer Related Party would not incur Environmental Liabilities and Costs in excess of $2,000,000 in the aggregate for all Issuer Related Parties and their Subsidiaries unless such Release could reasonably be expected to have a Material Adverse Effect.

Section 8.18 Super-priority Claims. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, agree to, incur, create, assume, suffer to exist or permit (a) any administrative expense, unsecured claim, or other super-priority claim or lien which is *pari passu* with or senior to the claims of the Secured Parties against the Issuer Related Parties hereunder except for the Carve-Out, and the Superpriority Claims of the Revolving DIP Note Purchasers on the Revolving DIP Priority Collateral or apply to the Bankruptcy Court for authority to do so or (b) the grant of adequate protection with respect to the Prepetition Revolving Facility or apply to the Bankruptcy Court for authority to do so.

Section 8.19 The Orders. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, make, permit to be made or seek any change, amendment or modification, or any application or motion for any change, amendment or modification, to any Order or any other order of the Bankruptcy Court with respect to the Facility or the Revolving DIP Loan Facility without the prior written consent of the Administrative Agent (at the direction of the Requisite Note Purchasers in their sole discretion).

Section 8.20 Payments to Critical Vendors. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, make or permit to be made any payment to a Critical Vendor if, after giving effect to such payment, the aggregate of all payments made by the Issuer Related Parties to the Critical Vendors exceeds the amount contemplated by the First Day Orders.

Section 8.21 PUHCA. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, take any action which results in any Issuer Related Party or any of its Subsidiaries becoming a "holding company," a "public-utility company," a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company," as each of those terms is defined in PUHCA.

Section 8.22 Employee Compensation. Such Issuer Related Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay, make, commit to make, permit to be made or set aside any sum for any bonus or similar payments to executive officers of any Issuer Related Party or any of its Subsidiaries in excess of the amounts set forth in the Budget or the Business Plan.

Section 8.23 Covenant of the Parent Guarantor. Notwithstanding anything to the contrary herein, the Parent Guarantor shall not, at any time, engage in any business or activity, incur any Indebtedness or make any Investment or capital expenditure other than (i) the ownership of all outstanding Stock of, or additional Investments in (to the extent expressly permitted hereunder), the Issuer, (ii) maintaining its corporate existence, (iii) participating in tax,

accounting and other administrative activities of the Issuer Related Parties, (iv) the performance of its obligations under the Note Documents, (v) incurrence of the Guaranteed Obligations, (vi) incurrence of Indebtedness permitted under *Section 8.1(i)* and (vii) necessary activities incidental to the businesses and activities described in clauses *(i)-(v)*.

Section 8.24 Reclamation Claims. No Issuer Related Party shall enter into any agreement to return any of its Inventory to any of its creditors for application against any prepetition Indebtedness, prepetition trade payables or other prepetition claims under Section 546(h) of the Bankruptcy Code or allow any creditor to take any setoff or recoupment against any of its prepetition Indebtedness, prepetition trade payables or other prepetition claims based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise if, after giving effect to any such agreement, setoff or recoupment, the aggregate amount of prepetition Indebtedness, prepetition trade payables and other prepetition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed $2,000,000.

Section 8.25 Perishable Agricultural Commodities Act. No Issuer Related Party shall obtain, attempt to obtain or apply for a license under the Perishable Agricultural Commodities Act.

Section 8.26 Subrogation. No Issuer Related Party shall assert any right of subrogation or contribution against the Issuer or any other Guarantor until all amounts under the Facility are paid in full in cash and the Commitment is terminated.

Section 8.27 Delay or Impediment. No Issuer Related Party shall delay or impede the delivery of any part of the Budget when due.

ARTICLE IX

EVENTS OF DEFAULT

Section 9.1 Events of Default. Each of the following events shall be an Event of Default:

(a) the Issuer shall fail to pay any principal of any Note or any interest payable hereunder or under any other Note Document when the same becomes due and payable; or

(b) the Issuer shall fail to pay any other Obligation (other than one referred to in *clause (a)* above) when due and payable and such failure continues for a period of three (3) Business Days after the due date therefor; or

(c) any representation or warranty made or deemed made by any Issuer Related Party in any Note Document or by any Issuer Related Party (or any of its officers) in connection with any Note Document shall prove to have been incorrect in any material respect when made or deemed made; or

(d) any Issuer Related Party shall fail to perform or observe (i) any term, covenant or agreement contained in *Article V, Sections 6.1, 6.2, 6.13, 7.1, 7.6, 7.7, 7.9, 7.16, 7.18*

or *Article VIII*, or (ii) any other term, covenant or agreement contained in this Agreement or in any other Note Document if such failure under this clause (ii) shall remain unremedied for thirty (30) days after the earlier of (A) the date on which a Responsible Officer of any Issuer Related Party becomes aware of such failure or (B) the date on which written notice thereof shall have been given to the Issuer by the Administrative Agent or any Note Purchaser; or

(e) (i) any Issuer Related Party or any of its Subsidiaries shall fail to make any payment on any Indebtedness (other than the Revolving Loan DIP Facility and the Obligations or any Indebtedness incurred prior to the Petition Date unless such Indebtedness is assumed during the pendency of the Case) of any Issuer Related Party or any such Subsidiary (or any Guaranty Obligation in respect of Indebtedness of any other Person) which failure relates to Indebtedness having a principal amount of $2,000,000 or more, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) after giving effect to any applicable cure periods; or (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness or to require any payment by, or other remedy against, any Issuer Related Party or any of its Subsidiaries after giving effect to any applicable cure periods when such event or condition set forth in this clause (ii) is cured or waived within ten (10) days after the occurrence thereof; or (iii) any such Indebtedness shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(f) the Note Documents and the Orders shall, for any reason, cease to create a valid Lien on any of the Collateral purported to be covered thereby or such Lien shall cease to be a perfected Lien having the priority provided herein pursuant to Section 364 of the Bankruptcy Code or the Orders against each Issuer Related Party, or any Issuer Related Party shall so allege in any pleading filed in any court; or

(g) any Note Document or any provision of any Note Document (including the liens granted thereunder) shall for any reason fail or cease to be in full force and effect or valid and binding on, or enforceable against, any Issuer Related Party party thereto, or any Issuer Related Party shall so allege in any pleading filed in any court or state in writing; or

(h) an ERISA Event (other than as a result of the Case or the termination of any Title IV Plan of the Issuer Related Parties or their ERISA Affiliates during the Case) shall occur and the amount of all liabilities and deficiencies resulting therefrom, whether or not assessed, exceeds $2,000,000 in the aggregate; or

(i) the Case shall be dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of the Case), suspended or converted to a case under chapter 7 of the Bankruptcy Code, or any Issuer Related Party shall file any pleading requesting any such relief; or an application shall be filed by any Issuer Related Party for the approval of, or there shall arise, (i) any other Claim having priority senior to or *pari passu* with the claims of the Secured Parties under the Note Documents and the Orders or any other claim having priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code (other than the Carve-Out or under the Revolving Loan DIP Facility) or (ii) any Lien on

the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except as expressly provided herein; or

(j) any Issuer Related Party shall file a motion, pleading or proceeding seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition Claim other than a Permitted Prepetition Claim Payment, (ii) approving First Day Orders not approved by the Requisite Note Purchasers, (iii) granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to any creditor or party in interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) or enforcement on any assets of the Issuer or any Guarantor (other than up to $250,000 of such assets in the aggregate during the Case), or (iv) except to the extent the same would constitute a Default under any of the previous clauses, approving any settlement or other stipulation with any creditor of any Issuer Related Party, other than the Administrative Agent and the Note Purchasers, or otherwise providing for payments as adequate protection (other than Adequate Protection Obligations to the extent permitted under the Orders and hereunder), or (v) approving payment of or granting any adequate protection with respect to pre-petition Indebtedness (other than Permitted Prepetition Claim Payments and Adequate Protection Obligations, in each case, that are permitted under the Orders, or otherwise as approved by the Note Purchasers in their sole discretion, *provided, however*, that any extension or replacement, without the approval of the Requisite Note Purchasers in their sole discretion, of any adequate protection or budget approval rights granted pursuant to such orders of the Bankruptcy Court made on or prior to the Closing Date shall in any event constitute an Event of Default); or

(k) the consummation of any sale of all or substantially all of the assets of any of the Issuer Related Parties pursuant to Section 363 of the Bankruptcy Code; or

(l) (i) the Interim Order shall cease to be in full force and effect in any respect and the Final Order shall not have been entered prior to such cessation, (ii) the Final Order shall not have been entered by the Bankruptcy Court on or before the 35th day following the Interim Order Entry Date, (iii) from and after the date of entry thereof, the Final Order shall cease to be in full force and effect, (iv) any Issuer Related Party shall fail to comply with the terms of the Interim Order or the Final Order, or (v) the Interim Order or the Final Order or any other order of the Bankruptcy Court relating to the Facility shall be amended, supplemented, stayed for a period of five (5) days or more, reversed, vacated or otherwise modified (or any of the Issuer Related Parties shall apply for authority to do so) without the prior written consent of the Requisite Note Purchasers; or

(m) a trustee, receiver, interim receiver or receiver and manager shall be appointed in the Case or a responsible officer or an examiner with powers beyond the duty to investigate and report, as set forth in section 1106(a)(3) and (4) of the Bankruptcy Code shall be appointed, in the Case; or

(n) one or more of the Issuer Related Parties shall have entered into one or more consent or settlement decrees or agreements or similar arrangements with a Governmental Authority, or one or more judgments, orders, decrees or similar actions shall have been entered (to the extent execution thereof is not effectively stayed by operation of law, the rules or orders of a court with jurisdiction over the matter or by consent of the party litigants) against one or

more of the Issuer Related Parties or their Subsidiaries, which consent or settlement decrees, agreements and similar arrangements, judgments, orders, decrees and similar actions could reasonably be expected to have a Material Adverse Effect; or

(o) there shall occur a Change of Control (it being understood that any event which with the passing of time or the giving of notice or both would become a Change of Control is not deemed to be an Event of Default until such time has passed, such notice is give or both, as the case may be); or

(p) a plan of reorganization shall be confirmed in the Case that does not provide for termination of the Commitments and the indefeasible payment in full in cash and satisfaction of the Obligations on or prior to the effective date of such plan of reorganization or liquidation, any order shall be entered which dismisses the Case and which order does not provide for termination of the Commitments and the indefeasible payment in full in cash and satisfaction of the Obligations, or any of the Issuer Related Parties shall seek, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order;

(q) any challenge to the validity of claims held by the Prepetition Senior Indenture Trustee or the Prepetition Senior Noteholders is brought by any Issuer Related Party except to the extent explicitly authorized in the Orders; or

(r) loss of exclusivity by the Issuer and the Guarantors;

(s) any of the Debtors (A) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), in respect of the Revolving Loan DIP Facility, or (B) fails to observe or perform any other agreement or condition relating to the indebtedness under the Revolving Loan DIP Facility, or any other event occurs, the effect of which default or other event 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 or beneficiary or beneficiaries) to cause, with the giving of notice if required or the lapse of time or both, such indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise) prior to its stated maturity, unless such default or event set forth in this clause (B) is cured or waived within ten (10) days after the occurrence of such default or event; or

(t) any Issuer Related Party shall have adopted, entered into, established, sponsored, or amended, or committed to adopt, enter into, establish, sponsor or amend, or the Bankruptcy Court shall have approved or ordered any of the foregoing with respect to, any plan, program, policy or agreement providing for annual, short- or long- term, incentive, retention, or performance compensation, equity award or bonus, to senior management and/or key employees of the Parent Guarantor, the Issuer or the Issuer Related Parties, other than (i) any obligations under any such plan program, policy or agreement in effect at least thirty (30) days prior to the Petition Date, unless consented to in writing by the Requisite Note Purchasers or (ii) where the obligations under any such plan program, policy or agreement would not exceed $1,000,000 in the aggregate; or

(u) any judgments which are in the aggregate in excess of $1,000,000 as to any post-petition obligation shall be rendered against the Debtors and the enforcement thereof shall not be stayed (by operation of law, the rules or orders of a court with jurisdiction over the matter or by consent of the party litigants); or there shall be rendered against the Debtors a non-monetary judgment with respect to a post-petition event which could reasonably be expected to have a Material Adverse Effect; or

(v) the Chief Restructuring Officer shall cease to be employed by the Issuer, unless replaced by an individual reasonably acceptable to the Requisite Note Purchasers within ten (10) days after such cessation or the Chief Restructuring Officer shall be hindered at any time in any material respect from performing his or her duties by any Issuer Related Party or Affiliate thereof.

Section 9.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, without further order of, application to, or action by, the Bankruptcy Court, the Administrative Agent (a) may, and shall at the request of the Requisite Note Purchasers, by notice to the Issuer, declare that all or any portion of the Commitments be terminated, whereupon the obligation of each Note Purchaser to purchase any Note shall immediately terminate, and/or (b) may, and shall at the request of the Requisite Note Purchasers, by notice to the Issuer, declare the Notes, all interest thereon and all other amounts and Obligations payable under this Agreement to be forthwith due and payable, whereupon the Notes, all such interest and all such amounts and Obligations shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Issuer Related Parties. In addition, subject solely to any requirement of the giving of notice by the terms of the Interim Order or the Final Order, the automatic stay provided in section 362 of the Bankruptcy Code shall be deemed automatically vacated or lifted, as applicable, without further action or order of the Bankruptcy Court and the Administrative Agent and the Note Purchasers shall be entitled to exercise all of their respective rights and remedies under the Note Documents and applicable law, including, without limitation, all rights and remedies with respect to the Collateral and the Guarantors; *provided, however*, that notwithstanding anything herein to the contrary, prior to exercising any remedies with respect to the Collateral (other than setoff remedies, terminating the Issuer's right to use of cash collateral, exercising any rights to freeze monies or balances in the Issuer Related Parties' Accounts or sweeping any or all funds contained in the DIP Collateral Account), the Administrative Agent shall be required to provide five (5) Business Days written notice to the Issuer (with a copy to the Issuer's bankruptcy counsel), counsel to the Committee, counsel to the Prepetition Senior Noteholders and the U.S. Trustee. Upon written notice to the landlord of any leased premises that an Event of Default, the Administrative Agent, at the direction of the Requisite Note Purchasers, may, subject to any separate agreement by and between such landlord and the Administrative Agent (a "*Separate Agreement*"), enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to Collateral located thereon and, subject to such Separate Agreement, shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from such landlord; *provided*, that, subject to such Separate Agreement, the Administrative Agent, at the direction of the Requisite Note Purchasers, shall only pay, to the extent funds for such payment are first received by the Administrative Agent from the Note Purchasers, rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the Administrative

Agent, calculated on a per diem basis. Nothing herein shall require the Administrative Agent to assume any lease as a condition to the rights afforded to the Administrative Agent in this paragraph or impair the Debtors' rights under the lease except as contemplated by the preceding sentence or under section 365 of the Bankruptcy Code

Section 9.3 Rescission. If at any time after termination of the Commitments and/or acceleration of the maturity of the Notes, the Issuer shall pay all arrears of interest and all payments on account of principal of the Notes which shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by law, on overdue interest, at the rates specified herein) and all Events of Default and Defaults (other than non-payment of principal of and accrued interest on the Notes due and payable solely by virtue of acceleration) shall be remedied or waived pursuant to *Section 13.1*, then upon the written consent of the Requisite Note Purchasers and written notice to the Issuer, the termination of the Commitments and/or the acceleration and their consequences may be rescinded and annulled; *provided, however*, that such action shall not affect any subsequent Event of Default or Default or impair any right or remedy consequent thereon. The provisions of the preceding sentence are intended merely to bind the Note Purchasers to a decision which may be made at the election of the Requisite Note Purchasers and they are not intended to benefit the Issuer and do not give the Issuer the right to require the Note Purchasers to rescind or annul any acceleration hereunder, even if the conditions set forth herein are met.

Section 9.4 Waiver of Certain Rights. The Issuer and the Guarantors hereby waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the Administrative Agent and the Note Purchasers set forth herein, in the Note Documents or in the Orders. In the event any party requests a hearing seeking to prevent the Administrative Agent or the Note Purchasers from exercising any of their rights and remedies that arise upon the occurrence or during the continuation of an Event of Default, the sole issue before the Bankruptcy Court at such hearing shall be whether an Event of Default has occurred and has not been cured. No other issue or argument shall be relevant to any opposition to enforcement of the Administrative Agent's and the Note Purchasers' rights.

ARTICLE X

GUARANTY

Section 10.1 The Guaranty. In order to induce the Administrative Agent and the Note Purchasers to enter into this Agreement and to purchase the Notes hereunder and in recognition of the direct benefits to be received by each Guarantor from the proceeds of the Notes, each Guarantor hereby agrees with the Administrative Agent and the Note Purchasers that such Guarantor hereby unconditionally and irrevocably, jointly and severally, guarantees as primary obligor and not merely as surety the full and prompt payment and performance by the Issuer when due, whether upon maturity, by acceleration or otherwise, of any and all of the Obligations of the Issuer and the other Guarantors (collectively, the "*Guaranteed Obligations*"). If any or all of the Guaranteed Obligations become due and payable hereunder, each Guarantor, jointly and severally, unconditionally promises to pay such Guaranteed Obligations to the Note Purchasers,

or order, on demand, together with any and all reasonable expenses which may be incurred by the Administrative Agent or the Note Purchasers in collecting any of the Guaranteed Obligations.

Section 10.2 Nature of Liability. The liability of each Guarantor hereunder is exclusive and independent of any security for or other guaranty of the Guaranteed Obligations of the Issuer whether executed by such Guarantor, any other guarantor or by any other party, and the liability of each Guarantor hereunder shall not be affected or impaired by (a) any direction as to application of payment by the Issuer or by any other party, or (b) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the Guaranteed Obligations of the Issuer, or (c) any payment on or in reduction of any such other guaranty or undertaking, or (d) any dissolution, termination or increase, decrease or change in personnel by the Issuer, or (e) any payment made to the Administrative Agent or the Note Purchasers on the Indebtedness which the Administrative Agent or such Note Purchasers repay to the Issuer pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

Section 10.3 Independent Obligation. The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor, any other guarantor or the Issuer, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against any other Guarantor, any other guarantor or the Issuer and whether or not any other Guarantor, any other guarantor or the Issuer be joined in any such action or actions. Each Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by the Issuer or other circumstance which operates to toll any statute of limitations as to the Issuer shall operate to toll the statute of limitations as to the Guarantor.

Section 10.4 Authorization. Each Guarantor authorizes the Administrative Agent and the Note Purchasers without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time to:

(a) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew, increase, accelerate or alter, any of the Guaranteed Obligations (including any increase or decrease in the rate of interest thereon), any security therefor, or any liability incurred directly or indirectly in respect thereof, and the Guaranty herein made shall apply to the Guaranteed Obligations as so changed, extended, renewed or altered;

(b) take and hold security for the payment of the Guaranteed Obligations and sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against;

(c) exercise or refrain from exercising any rights against the Issuer or others or otherwise act or refrain from acting;

(d) release or substitute any one or more endorsers, guarantors (including the Guarantors), the Issuer or other obligors;

(e) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, or subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Issuer to its creditors;

(f) apply, subject to the other provisions of this Agreement, any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Issuer to the Note Purchasers regardless of what liability or liabilities of such Guarantor or the Issuer remain unpaid; and/or

(g) consent to or waive any breach of, or any act, omission or default under, this Agreement, any Note Document or any of the instruments or agreements referred to herein or therein, or otherwise amend, modify or supplement this Agreement, any Note Document or any of such other instruments or agreements or therein.

Section 10.5 Reliance. It is not necessary for the Administrative Agent or the Note Purchasers to inquire into the capacity or powers of the Issuer or its Subsidiaries or the officers, directors, partners or agents acting or purporting to act on its behalf, and any Guaranteed Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

Section 10.6 Subordination. Any of the Indebtedness of the Issuer now or hereafter owing to any Guarantor is hereby subordinated to the Obligations of the Issuer; *provided, however*, that payment may be made by the Issuer on any such Indebtedness owing to such Guarantor so long as the same is not prohibited by this Agreement; and *provided, further*, that if the Administrative Agent so requests at a time when an Event of Default exists, all such Indebtedness of the Issuer to such Guarantor shall be collected, enforced and received by such Guarantor as trustee for the Note Purchasers and be paid over to the Administrative Agent on behalf of the Note Purchasers on account of the Obligations of the Issuer to the Note Purchasers, but without affecting or impairing in any manner the liability of such Guarantor under the other provisions of the Guaranty provided herein. Prior to the transfer by any Guarantor of any note or negotiable instrument evidencing any of the Indebtedness of the Issuer to such Guarantor, such Guarantor shall mark such note or negotiable instrument with a legend that the same is subject to this subordination.

Section 10.7 Waiver.

(a) Each Guarantor waives any right (except as shall be required by applicable statute and cannot be waived) to require the Administrative Agent or the Note Purchasers to (i) proceed against the Issuer, any other Guarantor, any other guarantor or any other party, (ii) proceed against or exhaust any security held from the Issuer, any other Guarantor, any other guarantor or any other party or (iii) pursue any other remedy in the Administrative Agent's or the Note Purchasers' power whatsoever. Each Guarantor waives (except as shall be required by applicable statute and cannot be waived) any defense based on or arising out of any defense of

the Issuer, any other Guarantor, any other guarantor or any other party other than payment in full of the Guaranteed Obligations, including, without limitation, any defense based on or arising out of the disability of the Issuer, any other Guarantor, any other guarantor or any other party, or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Issuer other than payment in full of the Guaranteed Obligations. Subject to the giving of prior written notice in accordance with the Orders, the Administrative Agent and the Note Purchasers may, at their election, foreclose on any security held by the Administrative Agent or the Note Purchasers by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), or exercise any other right or remedy the Administrative Agent and the Note Purchasers may have against the Issuer or any other party, or any security, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Guaranteed Obligations have been paid in full. Each Guarantor waives any defense arising out of any such election by the Administrative Agent and the Note Purchasers, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against the Issuer or any other party or any security.

(b) Each Guarantor waives all presentments, demands for performance, protests and notices, including without limitation notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Guaranty, and notices of the existence, creation or incurring of new or additional Obligations. Each Guarantor assumes all responsibility for being and keeping itself informed of the Issuer's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks which such Guarantor assumes and incurs hereunder, and agrees that the Administrative Agent and the Note Purchasers shall have no duty to advise such Guarantor of information known to them regarding such circumstances or risks.

Section 10.8 Limitation on Enforcement. The Note Purchasers agree that this Guaranty may be enforced only by the action of the Administrative Agent, in each case acting upon the instructions of the Requisite Note Purchasers, and that no Note Purchaser shall have any right individually to seek to enforce or to enforce this Guaranty it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent for the benefit of the Note Purchasers upon the terms of this Agreement.

Section 10.9 Subrogation. Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Issuer or any other Issuer Related Party that arise from the existence, payment, performance or enforcement of such Guarantor's Obligations under or in respect of this Guaranty or any other Note Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of any Note Purchaser against the Issuer or any other Issuer Related Party 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 the Issuer, any other Issuer Related Party, 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, unless and until all of the Obligations and all other Guaranteed Obligations payable under this Guaranty shall have been

indefeasibly paid in full in cash. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the latest of (a) the indefeasible payment in full in cash of the Obligations and all Guaranteed Obligations payable under this Guaranty and (b) the Termination Date, such amount shall be received and held in trust for the benefit of the Note Purchasers, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Administrative Agent in the same form as so received (with any necessary endorsement or assignment) 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 Note Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) any Guarantor shall make payment to any Note Purchaser of all or any part of the Guaranteed Obligations, (ii) all of the Obligations and all Guaranteed Obligations payable under this Guaranty shall have been indefeasibly paid in full in cash, and (iii) the Termination Date shall have occurred, the Note Purchasers will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations (including the security interest in the Collateral granted to the Note Purchasers in respect thereof) resulting from such payment made by such Guarantor pursuant to this Guaranty.

ARTICLE XI

SECURITY

Section 11.1 Security.

(a) To induce the Note Purchasers to purchase the Notes, (x) the Issuer hereby grants to the Administrative Agent, for itself and for the ratable benefit of the Secured Parties, as security for the full and prompt payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations and (y) each other Issuer Related Party hereby grants to the Administrative Agent, for itself and for the ratable benefit of the Secured Parties, as security for the full and prompt payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Guaranteed Obligations, in each case, a continuing first priority Lien and security interest (subject only to (A) valid, perfected, enforceable and nonavoidable Liens of record existing immediately prior to the Petition Date in respect of the obligations under the Prepetition Revolving Facility on the Prepetition Revolving Facility Priority Collateral and the Liens described in *Section 4.18(b)(ii)*, (B) the Carve-Out and (C) Liens permitted under *Section 8.2(d)* (unless such Lien is subordinated pursuant to *Section 4.18(b)(iii)* or the Orders), *(e)* and *(i)*) in accordance with sections 364(c)(2) and (3) and 364(d)(1) of the Bankruptcy Code in and to all Collateral of such Issuer Related Party. For purposes of this Agreement, all of the following property, wherever located, now owned or at any time hereafter acquired by an Issuer Related Party or in which an Issuer Related Party now has or at any time in the future may acquire any right, title or interests is collectively referred to as the "*Collateral*":

(i) all Accounts;

(ii) all Accounts Receivable and Accounts Receivable Records;

(iii) all books and Records pertaining to the property described in this *Section 11.1*;

(iv) all Cash Collateral Accounts and other Deposit Accounts;

(v) all Chattel Paper;

(vi) all Commercial Tort Claims described on *Schedule 11.1*;

(vii) all Documents;

(viii) all Equipment;

(ix) all General Intangibles, including all Intellectual Property and that portion of the Pledged Collateral constituting General Intangibles;

(x) all Instruments;

(xi) all Insurance;

(xii) all Inventory;

(xiii) all Investment Property, including all Investment Property held in Securities Accounts;

(xiv) all other Goods and personal property of such Issuer Related Party, whether tangible or intangible, wherever located, including Money, Letter of Credit Rights, including all rights of payment or performance under letters of credit, and any secondary obligation that supports the payment or performance of an Account, Chattel Paper, a Document, a General Intangible, a Payment Intangible, an Instrument, Investment Property, or any other Collateral;

(xv) all Payment Intangibles;

(xvi) all property of any Issuer Related Party held by the Administrative Agent or any Secured Party, including all property of every description, in the possession or custody of or in transit to the Administrative Agent or such Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Issuer Related Party, or as to which such Issuer Related Party may have any right or power;

(xvii) all Real Property;

(xviii) all Vehicles;

(xix) to the extent not otherwise included, all monies and other property of any kind which is, after the Petition Date, received by such Issuer Related Party in

connection with refunds with respect to taxes, assessments and governmental charges imposed on such Issuer Related Party or any of its property or income;

(xx) to the extent not otherwise included, all causes of action and all monies and other property of any kind received therefrom, and all monies and other property of any kind recovered by any Issuer Related Party;

(xxi) to the extent not otherwise included above, all Collateral Support and Supporting Obligations relating to any of the foregoing; and

(xxii) to the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of insurance, indemnity, warranty or guaranty payable to any Issuer Related Party from time to time with respect to any of the foregoing.

Section 11.2 Perfection of Security Interests.

(a) Each Issuer Related Party shall, at its expense, promptly and duly execute and deliver, and have recorded, such agreements, instruments and documents and perform any and all actions reasonably requested by the Administrative Agent at any time and from time to time to perfect, maintain, protect, and enforce the Note Purchasers' security interest in the Collateral of such Issuer Related Party, including, without limitation, (i) executing and filing financing, financing change or continuation statements, and amendments thereof, in form and substance satisfactory to the Administrative Agent, (ii) executing and delivering such documents, agreements and instruments as may be reasonably requested by the Administrative Agent to further evidence and perfect its security interests in all Intellectual Property of each of the Issuer Related Parties, (iii) maintaining complete and accurate stock records, (iv) using its commercially reasonable efforts in delivering to the Administrative Agent negotiable warehouse receipts, if any, and, upon the Administrative Agent's request therefor, non-negotiable warehouse receipts covering any portion of the Collateral located in warehouses and for which warehouse receipts are issued if not required to be delivered to the Revolving Loan DIP Agent, (v) placing notations on such Issuer Related Party's certificates of title to disclose the Administrative Agent's security interest therein, (vi) delivering to the Administrative Agent all documents, certificates and Instruments necessary or desirable to perfect the Administrative Agent's Lien in letters of credit on which such Issuer Related Party is named as beneficiary and all acceptances issued in connection therewith, (vii) after the occurrence and during the continuation of an Event of Default and subject to the DIP Intercreditor Agreement, transferring Inventory maintained in warehouses to other warehouses designated by the Administrative Agent and (viii) taking such other steps as are deemed necessary or desirable to maintain the Administrative Agent's security interest in the Collateral, in each case unless compliance is prohibited by such Issuer Related Party's compliance with the Revolving Loan DIP Facility.

(b) Each Issuer Related Party hereby authorizes the Administrative Agent at any time and from time to time to execute and file financing statements, financing change statements or continuation statements and amendments thereto and other filing or recording documents or instruments with respect to the Collateral without the signature of such Issuer

Related Party in such form and in such offices as the Administrative Agent determines reasonably appropriate to perfect the security interests of the Administrative Agent under this Agreement. Each Issuer Related Party shall pay the costs of, or incidental to, any recording or filing of any financing statements or financing change statements concerning the Collateral. Each Issuer Related Party agrees that a carbon, photographic, photostatic, or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement. If any Collateral of material value is at any time in the possession or control of any warehouseman, bailee or such Issuer Related Party's agents or processors, such Issuer Related Party shall, at the request of the Administrative Agent, notify such warehouseman, bailee, agents or processors of the Administrative Agent's security interest, which notification shall specify that such Person shall hold all such Collateral for the benefit of the Administrative Agent and, upon the occurrence and during the continuance of an Event of Default, hold all such Collateral for the Administrative Agent's account subject to the Administrative Agent's instructions. From time to time, each Issuer Related Party shall, upon the Administrative Agent's request, execute and deliver written instruments pledging to the Administrative Agent the Collateral described in any such instruments or otherwise, but the failure of such Issuer Related Party to execute and deliver such confirmatory instruments shall not affect or limit the Administrative Agent's security interest or other rights in and to the Collateral. Until all Obligations have been fully satisfied and the Commitments shall have been terminated, the Administrative Agent's security interest in the Collateral, and all Proceeds and products thereof, shall continue in full force and effect.

(c) Notwithstanding *subsections (a)* and *(b)* of this *Section 11.2*, or any failure on the part of any Issuer Related Party or the Administrative Agent to take any of the actions set forth in such subsections, the Liens and security interests granted herein shall be deemed valid, enforceable and perfected by entry of the Interim Order and the Final Order, as applicable. No financing statement, notice of lien, mortgage, deed of trust or similar instrument in any jurisdiction or filing office need be filed or any other action taken in order to validate and perfect the Liens and security interests granted by or pursuant to this Agreement, the Interim Order or the Final Order.

Section 11.3 Rights of Note Purchaser; Limitations on Note Purchasers' Obligations.

(a) Subject to each Issuer Related Party's rights and duties under the Bankruptcy Code (including section 365 of the Bankruptcy Code), it is expressly agreed by each Issuer Related Party that, anything herein to the contrary notwithstanding, such Issuer Related Party shall remain liable under its Contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any Contract by reason of or arising out of this Agreement, the Note Documents, or the granting to the Administrative Agent of a security interest therein or the receipt by the Administrative Agent or any Note Purchaser of any payment relating to any Contract pursuant hereto, nor shall the Administrative Agent be required or obligated in any manner to perform or fulfill any of the obligations of any Issuer Related Party under or pursuant to any Contract, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract, or to present or file any claim, or to take any

action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(b) Subject to *Section 11.5* hereof, the Administrative Agent authorizes each Issuer Related Party to collect its Accounts, provided that such collection is performed in accordance with such Issuer Related Party's customary procedures, and the Administrative Agent may, upon the occurrence and during the continuation of any Event of Default and without notice, other than any requirement of notice provided in the Orders, limit or terminate said authority at any time.

(c) Subject to any requirement of notice provided in *Section 9.2* and the Orders and subject to the DIP Intercreditor Agreement, the Administrative Agent may at any time, upon the occurrence and during the continuation of any Event of Default, after first notifying the Issuer of its intention to do so, notify Account Debtors, notify the other parties to the Contracts of the Issuer or any other Issuer Related Party, notify obligors of Instruments and Investment Property of the Issuer or any other Issuer Related Party and notify obligors in respect of Chattel Paper of the Issuer or any other Issuer Related Party that the right, title and interest of the Issuer or such Issuer Related Party in and under such Accounts, such Contracts, such Instruments, such Investment Property and such Chattel Paper have been assigned to the Administrative Agent and that payments shall be made directly to the Administrative Agent. Subject to any requirement of notice provided in the Orders, upon the request of the Administrative Agent, the Issuer or such other Issuer Related Party shall so notify such Account Debtors, such parties to Contracts, obligors of such Instruments and Investment Property and obligors in respect of such Chattel Paper. Subject to any requirement of notice provided in *Section 9.2* and the Orders, upon the occurrence and during the continuation of an Event of Default and subject to the DIP Intercreditor Agreement, the Administrative Agent may in its own name, or in the name of others, communicate with such parties to such Accounts, Contracts, Instruments, Investment Property and Chattel Paper to verify with such Persons to the Administrative Agent's reasonable satisfaction the existence, amount and terms of any such Accounts, Contracts, Instruments, Investment Property or Chattel Paper.

Section 11.4 <u>Covenants of the Issuer Related Parties with Respect to Collateral</u>. Each Issuer Related Party hereby covenants and agrees with the Administrative Agent that from and after the date of this Agreement and until the Obligations are fully satisfied:

(a) *Changes in Locations, Name, Etc*. Such Issuer Related Party shall not, except upon thirty (30) day's prior written notice to the Administrative Agent and delivery to the Administrative Agent of all additional executed financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein (i) change its jurisdiction of organization or the location of its chief executive office or sole place of business, or (ii) change its name, identity, taxpayer identification number, organizational identification number, or organizational structure or form to such an extent that any financing statement filed by the Administrative Agent in connection with this Agreement would become incorrect or misleading.

(b) *Maintenance of Records.* Such Issuer Related Party shall keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral, in all

material respects, including, without limitation, a record of all payments received and all credits granted with respect to the Collateral and all other dealings concerning the Collateral. For the Administrative Agent's further security, each Issuer Related Party agrees that the Administrative Agent shall have a property interest in all of such Issuer Related Party's books and Records pertaining to the Collateral and, upon the occurrence and during the continuation of an Event of Default (subject to *Section 9.2*), such Issuer Related Party shall deliver and turn over any such books and Records to the Administrative Agent or to its representatives at any time on demand of the Administrative Agent.

(c) *Indemnification With Respect to Collateral*. In any suit, proceeding or action brought by the Administrative Agent relating to any Account, Chattel Paper, Contract, General Intangible, Investment Property, Instrument, Intellectual Property or other Collateral for any sum owing thereunder or to enforce any provision of any Account, Chattel Paper, Contract, General Intangible, Investment Property, Instrument, Intellectual Property or other Collateral, such Issuer Related Party shall save, indemnify and keep the Secured Parties harmless from and against all expense, loss or damage suffered by the Secured Parties by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the obligor thereunder, arising out of a breach by such Issuer Related Party of any obligation thereunder or arising out of any other agreement, Indebtedness or liability at any time owing to, or in favor of such obligor or its successors from such Issuer Related Party, and all such obligations of such Issuer Related Party shall be and remain enforceable against and only against such Issuer Related Party and shall not be enforceable against the Administrative Agent.

(d) *Limitation on Liens on Collateral*. Such Issuer Related Party shall not create, permit or suffer to exist, and shall defend the Collateral against and take such other action as is necessary to remove, any Lien on the Collateral except Liens permitted under *Section 8.2* and shall defend the right, title and interest of the Administrative Agent in and to all of such Issuer Related Party's rights under the Collateral and in and to the Proceeds thereof against the claims and demands of all Persons whomsoever other than claims or demands arising out of Liens permitted under *Section 8.2*.

(e) *Notices*. Such Issuer Related Party shall advise the Note Purchasers promptly, in reasonable detail, (i) of any Lien asserted against any of the Collateral other than Liens permitted under *Section 8.2*, and (ii) of the occurrence of any other event which could have a Material Adverse Effect with respect to the aggregate value of the Collateral or on the security interests created hereunder.

(f) *Maintenance of Equipment*. Such Issuer Related Party shall keep and maintain the Equipment in good operating condition sufficient for the continuation of the business conducted by such Issuer Related Party on a basis consistent with past practices, ordinary wear and tear excepted.

(g) *Pledged Collateral*.

(i) Unless compliance is prohibited by such Issuer Related Party's compliance with the Revolving Loan DIP Facility, upon request of the Administrative Agent, such Issuer Related Party shall deliver to the Administrative Agent, all certificates

or Instruments representing or evidencing any Pledged Collateral, whether now arising or hereafter acquired, in suitable form for transfer by delivery or, as applicable, accompanied by such Issuer Related Party's endorsement, where necessary, or duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Administrative Agent, together with a Pledge Amendment, duly executed by the Issuer Related Party, in substantially the form of *Exhibit J* (a "*Pledge Amendment*"), in respect of such Additional Pledged Collateral and authorizes the Administrative Agent to attach each Pledge Amendment to this Agreement. The Administrative Agent shall have the right, at any time in its discretion and without notice to the Issuer Related Party upon the existence of an Event of Default (and subject to *Section 9.2*), (i) to transfer to or to register in its name or in the name of its nominees any or all of the Pledged Collateral or (ii) to exchange certificates or instruments representing or evidencing any of the Pledged Collateral for certificates or instruments of smaller or larger denominations.

(ii) Except as provided in *Section 11.7*, such Issuer Related Party shall be entitled to receive all cash dividends paid in respect of the Pledged Collateral (other than liquidating or distributing dividends) with respect to the Pledged Collateral. Any sums paid upon or in respect of any of the Pledged Collateral upon the liquidation or dissolution of any issuer of any of the Pledged Collateral, any distribution of capital made on or in respect of any of the Pledged Collateral or any property distributed upon or with respect to any of the Pledged Collateral pursuant to the recapitalization or reclassification of the capital of any issuer of Pledged Collateral or pursuant to the reorganization thereof shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be delivered to the Administrative Agent to be held by it hereunder as additional collateral security for the Obligations. If any sums of money or property so paid or distributed in respect of any of the Pledged Collateral shall be received by such Issuer Related Party, such Issuer Related Party shall, until such money or property is paid or delivered to the Administrative Agent, hold such money or property in trust for the Administrative Agent, segregated from other funds of such Issuer Related Party, as additional security for the Obligations.

(iii) Except as provided in *Section 11.7*, such Issuer Related Party shall be entitled to exercise all voting, consent and corporate rights with respect to the Pledged Collateral; *provided*, *however*, that no vote shall be cast, consent given or right exercised or other action taken by such Issuer Related Party which would impair the Collateral or which would be inconsistent with or result in any violation of any provision of this Agreement, the Orders or any other Note Document or, without prior notice to the Administrative Agent, to enable or take any other action to permit any issuer of Pledged Collateral to issue any stock or other equity securities of any nature or to issue any other securities convertible into or granting the right to purchase or exchange for any stock or other equity securities of any nature of any issuer of Pledged Collateral.

(iv) Such Issuer Related Party shall not grant Control over any Investment Property to any Person other than the Administrative Agent or the Revolving Loan DIP Agent; *provided* that any such granting of Control shall be subject at all times to the DIP Intercreditor Agreement.

(v) In the case of each Issuer Related Party which is an issuer of Pledged Collateral, such Issuer Related Party agrees to be bound by the terms of this Agreement relating to the Pledged Collateral issued by it and shall comply with such terms insofar as such terms are applicable to it. In the case of each Issuer Related Party which is a partner in a Partnership, such Issuer Related Party hereby consents to the extent required by the applicable Partnership Agreement to the pledge by each other Issuer Related Party, pursuant to the terms hereof, of the Pledged Partnership Interests in such Partnership and to the transfer under the terms hereof of such Pledged Partnership Interests to the Administrative Agent or its nominee and to the substitution of the Administrative Agent or its nominee as a substituted partner in such Partnership with all the rights, powers and duties of a general partner or a limited partner, as the case may be. In the case of each Issuer Related Party which is a member of an LLC, such Issuer Related Party hereby consents to the extent required by the applicable LLC Agreement to the pledge by each other Issuer Related Party, pursuant to the terms hereof, of the Pledged LLC Interests in such LLC and to the transfer under the terms hereof of such Pledged LLC Interests to the Administrative Agent or its nominee and to the substitution of the Administrative Agent or its nominee as a substituted member of the LLC with all the rights, powers and duties of a member of the LLC in question.

(vi) Such Issuer Related Party shall not agree to any amendment of any Constituent Documents, an LLC Agreement or Partnership Agreement that in any way adversely affects the perfection of the security interest of the Administrative Agent in the Pledged Partnership Interests or Pledged LLC Interests pledged by such Issuer Related Party hereunder, including electing to treat the membership interest or partnership interest of such Issuer Related Party as a security under Section 8-103 of the UCC.

(vii) In the event of any change in the composition of the Pledged Notes, Pledged Stock, Pledged Partnership Interests, Pledged LLC Interests or any other Investment Property, including by acquisition, disposition or otherwise, the Issuer and the Issuer Related Party that holds such property shall provide the Administrative Agent with ten (10) days' prior written notice of such change, and shall promptly amend *Schedule 4.21(a) or Schedule 4.21(b)*, as applicable.

(h) *Intellectual Property*.

(i) Such Issuer Related Party (either itself or through licensees) shall (i) continue to use each Trademark that is Material Intellectual Property in order to maintain such Trademark in full force and effect with respect to each class of goods for which such Trademark is currently used, free from any claim of abandonment for non-use, (ii) maintain as in the past the quality of products and services offered under such Trademark, (iii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (iv) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Administrative Agent shall obtain a perfected security interest in such mark pursuant to this Agreement and (v) not (and not permit any licensee or sublicense thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way.

(ii) Such Issuer Related Party (either itself or through licensees) shall not do any act, or omit to do any act, whereby any Patent which is Material Intellectual Property may become invalidated, forfeited, abandoned or dedicated to the public.

(iii) Such Issuer Related Party (either itself or through licensees) (i) shall not (and shall not permit any licensee or sublicensee thereof to) do any act or omit to do any act whereby any portion of the Copyrights which is Material Intellectual Property may become invalidated or otherwise impaired and (ii) shall not (either itself or through licensees) do any act whereby any portion of the Copyrights which is Material Intellectual Property may fall into the public domain.

(iv) Such Issuer Related Party (either itself or through licensees) shall not do any act, or omit to do any act, whereby any trade secret which is Material Intellectual Property may become publicly available or otherwise unprotectable.

(v) Such Issuer Related Party (either itself or through licensees) shall not do any act that knowingly infringes upon the Intellectual Property of any other Person.

(vi) Such Issuer Related Party shall notify the Administrative Agent in a manner that provides the Administrative Agent with a reasonably sufficient amount of time to address any potential forfeiture, abandonment, dedication or adverse determination or development concerning Material Intellectual Property, but in no event after more than ten (10) Business Days if it knows, or has reason to know, that any Material Intellectual Property may become forfeited, invalidated, abandoned or dedicated to the public, or of any adverse determination or development (including but not limited to the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office, or any Governmental Authority, court or tribunal in any country) regarding such Issuer Related Party's ownership of, right to use, interest in, or the validity of, any Material Intellectual Property or such Issuer Related Party's right to register the same or to own and maintain the same.

(vii) [intentionally omitted].

(viii) Such Issuer Related Party shall take all reasonable actions necessary or requested by the Administrative Agent, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of any Copyright, Trademark or Patent that is Material Intellectual Property, including filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition and interference and cancellation proceedings.

(ix) In the event that any Material Intellectual Property is infringed upon or misappropriated or diluted by a third party or an Issuer Related Party reasonably believes that another Person may be infringing upon, misappropriating or diluting any

Material Intellectual Property, such Issuer Related Party shall notify the Administrative Agent promptly after such Issuer Related Party learns thereof. Such Issuer Related Party shall take appropriate action in response to such infringement, misappropriation or dilution, including promptly bringing suit for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions may be appropriate in its reasonable judgment under the circumstances to protect such Material Intellectual Property.

(i) *Commercial Tort Claims*. The only Commercial Tort Claims of any Issuer Related Party existing on the date hereof (regardless of whether the amount, defendant or other material facts can be determined) are those listed on *Schedule 11.1*, which sets forth such information separately for each Issuer Related Party. Such Issuer Related Party agrees that, if it shall acquire any interest in any Commercial Tort Claim (whether from another Person or because such Commercial Tort Claim shall have come into existence), (i) such Issuer Related Party shall, promptly following such acquisition, deliver to the Administrative Agent, in each case in form and substance reasonably satisfactory to the Administrative Agent (at the direction of the Requisite Note Purchasers), a notice of the existence and nature of such Commercial Tort Claim and deliver a supplement to *Schedule 11.1* containing a specific description of such Commercial Tort Claim, (ii) the provisions of *Section 11.1* shall apply to such Commercial Tort Claim and (iii) such Issuer Related Party shall execute and deliver to the Administrative Agent, in each case in form and substance reasonably satisfactory to the Administrative Agent (at the direction of the Requisite Note Purchasers), any certificate, agreement and other document, and take all other action, deemed by the Administrative Agent to be reasonably necessary or appropriate for the Administrative Agent to obtain, on behalf of the Secured Parties, a first-priority, perfected security interest in all such Commercial Tort Claims. Any supplement to *Schedule 11.1* delivered pursuant to this *Section 11.4(i)* shall, after the receipt thereof by the Administrative Agent, become part of *Schedule 11.1* for all purposes hereunder other than in respect of representations and warranties made prior to the date of such receipt.

Section 11.5 Performance by Agent of the Issuer Related Parties' Obligations. If any Issuer Related Party fails to perform or comply with any of its agreements contained herein and the Administrative Agent, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement (without any obligation on the Administrative Agent to so perform), the reasonable expenses of the Administrative Agent incurred in connection with such performance or compliance, together with interest thereon at the rate then in effect in respect of the Note, shall be payable by such Issuer Related Party to the Administrative Agent on demand and shall constitute Obligations secured by the Collateral. Performance of such Issuer Related Party's obligations as permitted under this *Section 11.5* shall in no way constitute a violation of the automatic stay provided by section 362 of the Bankruptcy Code, and each Issuer Related Party hereby waives applicability thereof. Moreover, neither the Administrative Agent nor the Note Purchasers shall be responsible for the payment of any costs incurred in connection with preserving or disposing of Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise, and the Collateral may not be charged for the incurrence of any such cost.

Section 11.6 Limitation on Agent's Duty in Respect of Collateral. Neither the Administrative Agent nor any Note Purchaser shall have any duty as to any Collateral in its

possession or control or in the possession or control of any agent or nominee of it or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto, except that the Administrative Agent shall, with respect to the Collateral in its possession or under its control, deal with such Collateral in the same manner as the Administrative Agent deals with similar property for its own account. Upon request of the Issuer, the Administrative Agent shall account for any moneys received by it in respect of any foreclosure on or disposition of the Collateral of any Issuer Related Party.

Section 11.7 Remedies, Rights Upon Default.

(a) If any Event of Default shall occur and be continuing, and subject only to the DIP Intercreditor Agreement, any required notice provided in the Orders and *Section 9.2*, the Administrative Agent may exercise in addition to all other rights and remedies granted to it in this Agreement, the Orders and in any other Note Document, all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, each Issuer Related Party expressly agrees that in any such event the Administrative Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice required by the Interim Order, the Final Order, *Section 9.2* or the notice specified below of time and place of public or private sale) to or upon such Issuer Related Party or any other Person (all and each of which demands, advertisements and/or notices (except any notice required by the Orders) are hereby expressly waived to the maximum extent permitted by the UCC and other applicable law), may: forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of the Administrative Agent's offices or elsewhere at such prices at it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent shall have the right upon any such public sale or sales to purchase the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption each Issuer Related Party hereby releases. Each Issuer Related Party further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Issuer Related Party's premises or elsewhere. Subject to the DIP Intercreditor Agreement, the Administrative Agent shall apply the proceeds of any such collection, recovery, receipt, appropriation, realization or sale (net of all expenses incurred by the Administrative Agent in connection therewith, including, without limitation, attorney's fees and expenses), to the Obligations as set forth in this Agreement, such Issuer Related Party remaining liable for any deficiency remaining unpaid after such application, and only after so paying over such net proceeds and after the payment by the Administrative Agent of any other amount required by any provision of law, including, without limitation, the UCC, shall the Administrative Agent account for and pay over the surplus, if any, to such Issuer Related Party. To the maximum extent permitted by applicable law, each Issuer Related Party waives all claims, damages, and demands against the Administrative Agent and the Note Purchasers arising out of the repossession, retention or sale of the Collateral except such as arise out of the gross negligence or willful misconduct of the Administrative Agent. Each Issuer Related Party agrees that the Administrative Agent need not give more than ten days' notice to the Issuer (which notification shall be deemed given when mailed or delivered on an overnight basis, postage prepaid,

addressed to the Issuer at its address referred to in *Section 13.8*) of the time and place of any public sale of Collateral or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. The Administrative Agent and its agents shall have the right to enter upon any real property owned or leased by any Issuer Related Party to exercise any of its rights or remedies under this Agreement. The Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and any such sale may, without further notice, be made at the time and place to which it was adjourned. The Note Purchasers shall have the right to credit bid all of the amounts outstanding under the Facility and the Note Documents in connection with a sale of the Debtors' assets under section 363 of the Bankruptcy Code or under a plan of reorganization.

(b) Each Issuer Related Party hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

(c) *Pledged Collateral*.

(i) During the continuance of an Event of Default, subject to the DIP Intercreditor Agreement and *Section 9.2*, if the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Issuer Related Party or Issuer Related Parties, (i) the Administrative Agent shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Pledged Collateral and make application thereof to the Obligations in the order set forth herein, and (ii) the Administrative Agent or its nominee may exercise (A) all voting, consent, corporate and other rights pertaining to the Pledged Collateral at any meeting of shareholders, partners or members, as the case may be, of the relevant issuer or issuers of Pledged Collateral or otherwise and (B) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to the Pledged Collateral as if it were the absolute owner thereof (including the right to exchange at its discretion any and all of the Pledged Collateral upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate structure of any issuer of Pledged Collateral, the right to deposit and deliver any and all of the Pledged Collateral with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Issuer Related Party to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(ii) In order to permit the Administrative Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder, (i) each Issuer Related Party shall promptly execute and deliver (or cause to be executed and delivered) to the Administrative Agent all such proxies, dividend payment orders and other instruments as the Administrative Agent may from time to time reasonably request and (ii) without limiting the effect of *clause (i)* above, such Issuer

Related Party hereby grants to the Administrative Agent an irrevocable proxy to vote all or any part of the Pledged Collateral and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Collateral would be entitled (including giving or withholding written consents of shareholders, partners or members, as the case may be, calling special meetings of shareholders, partners or members, as the case may be, and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Collateral on the record books of the issuer thereof) by any other Person (including the issuer of such Pledged Collateral or any officer or agent thereof) during the continuance of an Event of Default and which proxy shall only terminate upon the payment in full of the Obligations.

(iii) Subject to the DIP Intercreditor Agreement, each Issuer Related Party hereby expressly authorizes and instructs each issuer of any Pledged Collateral pledged hereunder by such Issuer Related Party to (i) comply with any instruction received by it from the Administrative Agent in writing that (A) states that an Event of Default has occurred and is continuing and (B) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Issuer Related Party, and each Issuer Related Party agrees that such issuer shall be fully protected in so complying and (ii) during the continuance of an Event of Default, unless otherwise expressly permitted hereby, pay any dividends or other payments with respect to the Pledged Collateral directly to the Administrative Agent.

Section 11.8 The Administrative Agent's Appointment as Attorney-in-Fact.

(a) Upon the occurrence and during the continuation of an Event of Default (and subject to *Section 9.2*), each Issuer Related Party hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its and its Subsidiaries true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Issuer Related Party and in the name of such Issuer Related Party, or in its own name, from time to time in the Administrative Agent's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary and desirable to accomplish the purposes of this Agreement and the transactions contemplated hereby, and, without limiting the generality of the foregoing, hereby give the Administrative Agent the power and right, on behalf of such Issuer Related Party, without notice to or assent by such Issuer Related Party to do the following:

(i) to ask, demand, collect, receive and give a quittances and receipts for any and all moneys due and to become due under any Collateral and, in the name of such Issuer Related Party, its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other Instruments for the payment of moneys due under any Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Collateral whenever payable and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the

Administrative Agent for the purpose of collecting any and all such moneys due under any Collateral whenever payable;

(ii) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Agreement and to pay all or any part of the premiums therefor and the costs thereof; and

(iii) (A) to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due, and to become due thereunder, directly to the Administrative Agent or as the Administrative Agent shall direct; (B) to receive payment of and receipt for any and all moneys, claims and other amounts due, and to become due at any time, in respect of or arising out of any Collateral; (C) to sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts and other documents constituting or relating to the Collateral; (D) to commence and prosecute any suits, actions or proceedings at law or equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (E) to defend any suit, action or proceeding brought against any Issuer Related Party with respect to any Collateral of such Issuer Related Party; (F) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Administrative Agent may deem appropriate; (G) to license or, to the extent permitted by an applicable license, sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any Intellectual Property, throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine; (H) to take any reasonable action including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of any Copyright, Trademark or Patent; and (I) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and to do, at the Administrative Agent's option and such Issuer Related Party's expense, at any time, or from time to time, all acts and things which the Administrative Agent reasonably deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's Lien therein, in order to effect the intent of this Agreement, all as fully and effectively as such Issuer Related Party might do.

(b) The Administrative Agent agrees that it shall forbear from exercising the power of attorney or any rights granted to the Administrative Agent pursuant to this *Section 11.8*, except upon the occurrence or during the continuation of an Event of Default and subject to *Section 9.2*. The Issuer Related Parties hereby ratify, to the extent permitted by law, all that said attorneys shall lawfully do or cause to be done by virtue hereof. Exercise by the Administrative Agent of the powers granted hereunder is not a violation of the automatic stay provided by section 362 of the Bankruptcy Code and each Issuer Related Party waives applicability thereof.

The power of attorney granted pursuant to this *Section 11.8* is a power coupled with an interest and shall be irrevocable until the Obligations are indefeasibly paid in full.

(c) The powers conferred on the Administrative Agent hereunder are solely to protect the Administrative Agent's and the Note Purchasers' interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Administrative Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to any Issuer Related Party for any act or failure to act, except for its own gross negligence or willful misconduct.

(d) Each Issuer Related Party also authorizes the Administrative Agent, at any time and from time to time upon the occurrence and during the continuation of any Event of Default or as otherwise expressly permitted by this Agreement, (i) to communicate in its own name or the name of its Subsidiaries with any party to any Contract with regard to the assignment of the right, title and interest of such Issuer Related Party in and under the Contracts hereunder and other matters relating thereto and (ii) to execute any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(e) All Obligations shall constitute, in accordance with section 364(c)(1) of the Bankruptcy Code, claims against each Issuer Related Party in its Case, which are administrative expense claims having priority over any all administrative expenses, or claims of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code.

Section 11.9 Modifications.

(a) The Liens, lien priority, administrative priorities and other rights and remedies granted to the Administrative Agent for the benefit of the Note Purchasers pursuant to this Agreement, the Interim Order and/or the Final Order (specifically, including, but not limited to, the existence, perfection and priority of the Liens provided herein and therein and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by any of the Issuer Related Parties (pursuant to section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Case, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(i) except for the Carve-Out, having priority over the Obligations, no costs or expenses of administration which have been or may be incurred in the Case or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of the Administrative Agent or the Note Purchasers against the Issuer Related Parties in respect of any Obligation;

(ii) the Liens and security interests granted herein shall constitute valid and perfected first priority Liens and security interests (subject only to (A) the Carve-Out, (B) valid, perfected, enforceable and nonavoidable Liens of record existing immediately prior to the Petition Date in respect of (x) the Prepetition Revolving Facility on the

Prepetition Revolving Facility Priority Collateral, (y) the Revolving Loan DIP Facility on the Revolving DIP Priority Collateral and (z) other prior Liens permitted under *Section 4.18(b)(ii)*, and (C) Liens permitted under *Section 8.2(e)*) in accordance with sections 364(c)(2) and (3) and 364(d)(1) of the Bankruptcy Code, and shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever; and

(iii) the Liens and security interests granted hereunder shall continue to be valid and perfected without the necessity that financing statements be filed or that any other action be taken under applicable non-bankruptcy law.

(b) Notwithstanding any failure on the part of any Issuer Related Party or the Administrative Agent or the Note Purchasers to perfect, maintain, protect or enforce the Liens and security interests in the Collateral granted hereunder, the Interim Order and the Final Order (when entered) shall automatically, and without further action by any Person, perfect such Liens and security interests against the Collateral.

ARTICLE XII

THE ADMINISTRATIVE AGENT

Section 12.1 Authorization and Action.

(a) Each Note Purchaser hereby appoints Wilmington Trust FSB as the Administrative Agent hereunder and each Note Purchaser authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Note Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Note Purchaser hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Note Documents to which the Administrative Agent is a party and to exercise all rights, powers and remedies that the Administrative Agent may have under such Note Documents or the Orders and that under such Note Documents the Administrative Agent is acting as agent for the Note Purchasers and the other Secured Parties.

(b) As to any matters not expressly provided for by this Agreement and the other Note Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Note Purchasers, and such instructions shall be binding upon all Note Purchasers; *provided*, *however*, that the Administrative Agent shall not be required to take any action which (i) the Administrative Agent in good faith believes exposes it to personal liability unless the Administrative Agent receives an indemnification satisfactory to it from the Note Purchasers with respect to such action or (ii) is contrary to this Agreement or applicable law. The Administrative Agent agrees to give to each Note Purchaser prompt notice of each notice given to it by any Issuer Related Party pursuant to the terms of this Agreement or the other Note Documents.

(c) In performing its functions and duties hereunder and under the other Note Documents, the Administrative Agent is acting solely on behalf of the Note Purchasers and its duties are entirely administrative in nature. The Administrative Agent does not assume and shall not be deemed to have assumed any obligation other than as expressly set forth herein and in the other Note Documents or any other relationship as the Administrative Agent, fiduciary or trustee of or for any Note Purchaser or holder of any other Obligation. The Administrative Agent may perform any of its duties under any of the Note Documents by or through its agents, employees or delegees. The Administrative Agent may refrain from taking any action if the Administrative Agent believes in good faith that it needs instruction or clarification from the Note Purchasers until it receives such instruction or clarification.

Section 12.2 Agent's Reliance, Etc. Neither the Administrative Agent nor any of its Affiliates or any of the respective directors, officers, agents, employees or delegees of the Administrative Agent or any such Affiliate shall be liable for any action taken or omitted to be taken by it, him, her or them under or in connection with this Agreement or the other Note Documents, except for its, his, her or their own gross negligence or willful misconduct. Without limiting the foregoing, the Administrative Agent (a) may treat the payee of any Note as its holder until such Note has been assigned in accordance with *Section 13.2*; (b) may rely on the Register to the extent set forth in *Section 13.2(c)*; (c) may consult with legal counsel (including counsel to the Issuer or any other Issuer Related Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (d) makes no warranty or representation to any Note Purchaser and shall not be responsible to any Note Purchaser for any statements, warranties or representations made by or on behalf of the Parent Guarantor or any of its Subsidiaries in or in connection with this Agreement or any of the other Note Documents; (e) shall not have any duty to ascertain or to inquire either as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any of the other Note Documents or the financial condition of any Issuer Related Party, or the existence or possible existence of any Default or Event of Default; (f) shall not be responsible to any Note Purchaser for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Note Documents or any other instrument or document furnished pursuant hereto or thereto; and (g) shall incur no liability under or in respect of this Agreement or any of the other Note Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopy or electronic mail) or any telephone message believed by it to be genuine and signed or sent by the proper party or parties.

Section 12.3 The Administrative Agent Individually. Wilmington Trust FSB and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with any Issuer Related Party as if it were not acting as the Administrative Agent.

Section 12.4 Note Purchaser Credit Decision. Each Note Purchaser acknowledges that it shall, independently and without reliance upon the Administrative Agent or any other Note Purchaser conduct its own independent investigation of the financial condition and affairs of the Issuer and each other Issuer Related Party in connection with the making and continuance of the Notes. Each Note Purchaser also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Note Purchaser and based on such documents and

information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and other Note Documents.

Section 12.5 Indemnification. Each Note Purchaser agrees to indemnify the Administrative Agent and each of its Affiliates, and each of their respective directors, officers, employees, agents, delegees and advisors (to the extent not reimbursed by the Issuer), from and against such Note Purchaser's aggregate Pro Rata Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements (including fees and disbursements of legal counsel) of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against, the Administrative Agent or any of its Affiliates, directors, officers, employees, agents and advisors in any way relating to or arising out of this Agreement, the Orders or the other Note Documents or any action taken or omitted by the Administrative Agent under this Agreement, the Orders or the other Note Documents; *provided, however*, that no Note Purchaser shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or such Affiliate's gross negligence or willful misconduct. Without limiting the foregoing, each Note Purchaser agrees to reimburse the Administrative Agent promptly upon demand for its ratable share of any out-of-pocket expenses (including fees and disbursements of legal counsel) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of or legal advice in respect of its rights or responsibilities under, this Agreement, the Orders or the other Note Documents, to the extent that the Administrative Agent is not reimbursed for such expenses by the Issuer or another Issuer Related Party.

Section 12.6 Successor Administrative Agent. The Administrative Agent may resign at any time by giving written notice thereof to the Note Purchasers and the Issuer. Upon any such resignation, the Requisite Note Purchasers shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Requisite Note Purchasers, and shall have accepted such appointment, within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Note Purchasers, appoint a successor Administrative Agent, selected from among the Note Purchasers. If no such successor shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the Administrative Agent shall notify the Issuer and the Note Purchasers that no Note Purchaser has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Note Documents (except that, in the case of any collateral security held by the Administrative Agent on behalf of the Note Purchasers under any of the Note Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Note Purchaser directly, until such time as the Requisite Note Purchasers appoint a successor Administrative Agent as provided for above in this paragraph. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers,

privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Note Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Note Documents, and (ii) take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Note Documents, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. Such appointment by the Administrative Agent shall be subject to the prior written approval of the Issuer (which approval may not be unreasonably withheld, delayed or conditioned and shall not be required upon the occurrence and during the continuance of an Event of Default). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Note Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Note Documents. After such resignation, the retiring Administrative Agent shall continue to have the benefit of this *Article XII*, *Section 13.3* and *Section 13.4* as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement, the Orders and the other Note Documents.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Amendments, Waivers, Etc.

(a) No amendment or waiver of any provision of this Agreement, the Orders or any other Note Document nor consent to any departure by any Issuer Related Party therefrom shall in any event be effective unless the same shall be in writing and signed by the Requisite Note Purchasers (or the Administrative Agent, with the written consent of the Requisite Note Purchasers), and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no amendment, waiver or consent shall, unless in writing and signed by each Note Purchaser, do any of the following:

(i) waive any of the conditions specified in *Section 3.1* or *3.2* except with respect to a condition based upon another provision hereof, the waiver of which requires only the concurrence of the Requisite Note Purchasers;

(ii) increase the Commitments of the Note Purchasers or subject the Note Purchasers to any additional obligations;

(iii) extend the scheduled final maturity of any Note, or waive, reduce or postpone any scheduled date fixed for the payment or reduction of principal (it being

understood that *Section 2.5(b)* does not provide for scheduled dates fixed for payment) or of the Commitments;

(iv) reduce the principal amount of any Note (other than by the payment, redemption or prepayment thereof);

(v) reduce the rate of interest on any Note or any fee payable hereunder or under the Note Purchaser Fee Letter;

(vi) postpone any scheduled date fixed for payment of such interest or fees (other than a waiver of default interest);

(vii) other than in connection with a reduction in a Note Purchaser's Commitment pursuant to the Syndication Procedures, change the Pro Rata Share of any Note Purchaser, or change the aggregate Pro Rata Shares of the Note Purchasers which shall be required for the Note Purchasers or any of them to take any action hereunder;

(viii) release all or substantially all of the Collateral except as provided in *Section 11.7(a)* or release any Guarantor from its obligations under the Guaranty except in connection with any sale or other disposition permitted by this Agreement (or permitted pursuant to a waiver or consent of a transaction otherwise prohibited by this Agreement);

(ix) modify the priority or the security described in *Section 4.18*; or

(x) amend *Section 11.7(a)* or this *Section 13.1* or the definition of the terms "Requisite Note Purchasers", "Pro Rata Share" "Oversubscription Commitment", "Special Allocation Amount", "Special Redemption Amount", "Eligible Share", "Eligible Holder", "Commitment Reduction Amount" or "Pro Rate Percentage";

and *provided, further*, (A) that any modification of the application of payments to the Notes pursuant to *Section 2.5(b)* shall require the consent of the Requisite Note Purchasers and the Administrative Agent and (B) that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Note Purchasers required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement, the Orders or the other Note Documents.

The Note Purchasers agree that any amendment to *Section 7.18* shall require the consent of the Requisite Note Purchasers, which consent shall not be withheld if the request is based on a delay in the Issuer's realization of the milestones set forth in such *Section 7.18* and the sole cause of the delay is that the Note Purchasers did not review the documents connected thereto in a timely fashion.

(b) The Administrative Agent may, but shall have no obligation to, with the written concurrence of any Note Purchaser, execute amendments, modifications, waivers or consents on behalf of that Note Purchaser. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on

the Issuer in any case shall entitle the Issuer to any other or further notice or demand in similar or other circumstances.

Section 13.2 Assignments and Participations.

(a) After the Final Issuance Date, each Note Purchaser may sell, transfer, negotiate or assign to one or more Eligible Assignees all or a portion of its rights and obligations hereunder (including all of its rights and obligations with respect to the Notes); *provided*, *however*, that (i) if any such assignment shall not be all of the assigning Note Purchaser's aggregate outstanding principal amount of Notes, such assignment shall cover the same percentage of such Note Purchaser's aggregate outstanding principal amount of Notes, (ii) any such assignment shall be in an aggregate principal amount not less than $500,000 and (iii) no consent or approval of any Person shall be required except to the extend provided in *clause (d)* of the definition of Eligible Assignee to a Person described in such *clause (d)*. On or before the Final Issuance Date, no Note Purchaser may, without the consent of the Issuer and each other Note Purchaser, sell, transfer, negotiate or assign its rights and obligations hereunder (including all of its rights and obligations with respect to the Notes) unless such sale, transfer, negotiation or assignment is to an Eligible Holder in accordance with the Syndication Procedures, in which case no consent or approval of any Person shall be required.

(b) The parties to each assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording, an Assignment and Acceptance, together with any Note subject to such assignment. Upon such execution, delivery, acceptance and recording and the receipt by the Administrative Agent from the assignee of an assignment fee in the amount of $3,500 from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Note Documents have been assigned to such assignee pursuant to such Assignment and Acceptance, have the rights and obligations of a Note Purchaser, and (ii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except those which survive the payment in full of the Obligations) and be released from its obligations under the Note Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Note Purchaser's rights and obligations under the Note Documents, such Note Purchaser shall cease to be a party hereto).

(c) The Administrative Agent shall maintain at its address referred to in *Section 13.8* a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recording of the names and addresses of the Note Purchasers and the Commitments of and principal amount of the Notes owing to each Note Purchaser from time to time (the "*Register*"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Issuer Related Parties, the Administrative Agent and the Note Purchasers may treat each Person whose name is recorded in the Register as a Note Purchaser for all purposes of this Agreement. The Register shall be available for inspection by the Issuer, the Administrative Agent or any Note Purchaser at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of an Assignment and Acceptance executed by an assigning Note Purchaser and an assignee, the Administrative Agent shall, if such Assignment and Acceptance has been completed, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Issuer. Within five (5) Business Days after its receipt of such notice, the Issuer, at its own expense, shall, if requested by such assignee, execute and deliver to the Administrative Agent, new Notes to the order of such assignee in an amount equal to such Note Purchaser's Total Exposure assumed by it pursuant to such Assignment and Acceptance and, if the assigning Note Purchaser has surrendered any Note for exchange in connection with the assignment and has retained Commitments hereunder, new Notes to the order of the assigning Note Purchaser in an amount equal to the Total Exposure retained by it hereunder. Such new Notes shall be dated the same date as the surrendered Notes and be in substantially the form of *Exhibit F* hereto, as applicable.

(e) In addition to the other assignment rights provided in this *Section 13.2*, each Note Purchaser may assign, as collateral or otherwise, any of its rights under this Agreement (including rights to payments of principal or interest on the Notes) to (i) any Federal Reserve Bank pursuant to Regulation A of the Federal Reserve Board without notice to or consent of the Issuer or the Administrative Agent and (ii) any trustee for the benefit of the holders of such Note Purchaser's Securities; *provided, however*, that no such assignment shall release the assigning Note Purchaser from any of its obligations hereunder.

(f) Each Note Purchaser may sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Note Documents (including all its rights and obligations with respect to the Notes). The terms of such participation shall not, in any event, require the participant's consent to any amendments, waivers or other modifications of any provision of any Note Documents, the consent to any departure by any Issuer Related Party therefrom, or to the exercising or refraining from exercising any powers or rights which such Note Purchaser may have under or in respect of the Note Documents (including the right to enforce the obligations of the Issuer Related Parties), except if any such amendment, waiver or other modification or consent would require the consent of each Note Purchaser in accordance with *Section 13.1(a)* hereof. In the event of the sale of any participation by any Note Purchaser, (A) such Note Purchaser's obligations under the Note Documents shall remain unchanged, (B) such Note Purchaser shall remain solely responsible to the other parties for the performance of such obligations, (C) such Note Purchaser shall remain the holder of such Obligations for all purposes of this Agreement, and (D) the Issuer, the Administrative Agent and the other Note Purchasers shall continue to deal solely and directly with such Note Purchaser in connection with such Note Purchaser's rights and obligations under this Agreement. Each participant shall be entitled to the benefits of *Sections 2.8, 2.11(c), 2.12* and *2.14* as if it were a Note Purchaser; *provided, however*, that anything herein to the contrary notwithstanding, the Issuer shall not, at any time, be obligated to pay to any participant of any interest of any Note Purchaser, under *Section 2.8, 2.11(c), 2.12* or *2.14*, any sum in excess of the sum which the Issuer would have been obligated to pay to such Note Purchaser in respect of such interest had such participation not been sold.

Section 13.3 Costs and Expenses. The Issuer and each Guarantor shall jointly and severally pay promptly after receipt of an invoice from the Administrative Agent, the Note Purchasers or counsel to the Note Purchasers, all reasonable fees and out-of-pocket costs and

expenses of the Administrative Agent and the Note Purchasers as follows: (a) (i) other than with respect to the fees and out-of-pocket costs and expenses of counsel and financial advisors to the Administrative Agent and the Note Purchasers, all reasonable and out-of-pocket costs and expenses of the Administrative Agent and the Note Purchasers and (ii) with respect to the fees and out-of-pocket costs and expenses of counsel and financial advisors to the Administrative Agent and the Note Purchasers, reasonable fees and out-of-pocket costs and expenses of the following: (u) one counsel and local counsel to the Administrative Agent, (v) Stroock & Stroock & Lavan LLP and its local counsel, (w) Munger, Tolles & Olson LLP and its local counsel, if any, (x) Akin Gump Strauss Hauer & Feld LLP, (y) Moelis & Company (excluding any success fees) and (z) other professional advisors hired by any of the foregoing counsel named or referenced above (all of the foregoing professionals, collectively, "*DIP Professionals*"), in each case, in connection with the preparation, execution and delivery of the Note Documents and the consummation of the transactions contemplated under the Note Documents and the administration of the Facility, including, without limitation, all due diligence, syndication (including printing, distribution and bank meeting), transportation, computer, duplication, messenger, audit, insurance, appraisal, valuation and consultant costs and expenses, and all search, filing and recording fees, incurred or sustained by the Administrative Agent and the Note Purchasers in connection with the Facility, the Note Documents or the transactions contemplated thereby, the administration of the Facility and any amendment or waiver of any provision of the Note Documents; and (b) out-of-pocket costs and expenses of the Administrative Agent and the Note Purchasers (including fees, expenses and disbursements of the DIP Professionals) incurred in connection with (i) enforcing any Note Document or Order or Obligation or any security therefor or exercising or enforcing any other right or remedy available by reason of an Event of Default; (ii) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or in any insolvency or bankruptcy proceeding; (iii) commencing, defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to the Obligations, any Issuer Related Party, any of the Parent Guarantor's Subsidiaries and related to or arising out of the transactions contemplated hereby or by any of the other Note Documents or the Orders; and (iv) taking any other action in or with respect to any suit or proceeding (bankruptcy or otherwise) described in *clauses (i)* through *(iii)* above.

Section 13.4 <u>Indemnities</u>.

(a) The Issuer and each Guarantor shall jointly and severally indemnify and hold harmless the Administrative Agent, each Note Purchaser and each of their respective Affiliates, and each of the officers, directors, employees, controlling persons, agents, advisors, attorneys and representatives of any of the foregoing (including those retained in connection with the satisfaction or attempted satisfaction of any of the conditions set forth in *Article III*) (each such Person being an "*Indemnified Party*") from and against any and all claims, damages, losses, liabilities, obligations, penalties, actions, judgments, suits, costs, disbursements and expenses of any kind or nature (including fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto, whether or not any such Indemnified Party is a party thereto, arising out of or in connection with or relating to the Facility, the Note Documents or the transactions contemplated thereby, or any use made or proposed to be made with the proceeds of

the Facility, whether or not such investigation, litigation or proceeding is brought by any Issuer Related Party or any of its Subsidiaries, or any of their respective shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise party thereto and whether or not the transactions contemplated herein hereby or under the Note Documents are consummated (collectively, the "*Indemnified Matters*"), except to the extent such Indemnified Matter is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. Without limiting the foregoing, Indemnified Matters include (i) all Environmental Liabilities and Costs arising from or connected with the past, present or future operations of the Parent Guarantor or any of its Subsidiaries involving any property subject to a Note Document or the Orders, or damage to real or personal property or natural resources or harm or injury alleged to have resulted from any Release of Contaminants on, upon or into such property or any contiguous real estate; (ii) any costs or liabilities incurred in connection with any Remedial Action concerning the Parent Guarantor or any of its Subsidiaries; (iii) any costs or liabilities incurred in connection with any Environmental Lien; (iv) any costs or liabilities incurred in connection with any other matter under any Environmental Law, including CERCLA and applicable state property transfer laws, whether, with respect to any of such matters, such Indemnified Party is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor in interest to the Parent Guarantor or any of its Subsidiaries, or the owner, lessee or operator of any property of the Parent Guarantor or any of its Subsidiaries by virtue of foreclosure, except, with respect to those matters referred to in clauses (i), (ii), (iii) and (iv) above, to the extent incurred following (A) foreclosure by the Administrative Agent or any Note Purchaser, or the Administrative Agent or any Note Purchaser having become the successor in interest to the Parent Guarantor or any of its Subsidiaries, and (B) attributable solely to acts of the Administrative Agent or such Note Purchaser or any agent on behalf of the Administrative Agent or such Note Purchaser.

(b) The Issuer and each Guarantor shall jointly and severally indemnify the Administrative Agent and the Note Purchasers for, and hold the Administrative Agent and the Note Purchasers harmless from and against, any and all claims for brokerage commissions, fees and other compensation made against the Administrative Agent and the Note Purchasers for any broker, finder or consultant with respect to any agreement, arrangement or understanding made by or on behalf of any Issuer Related Party or any of its Subsidiaries in connection with the transactions contemplated by this Agreement.

(c) The Administrative Agent and each Note Purchaser agree that in the event that any such investigation, litigation or proceeding set forth in subparagraph (b) above is asserted or threatened in writing or instituted against it or any other Indemnified Party, or any Remedial Action, is requested of it or any of its officers, directors, Administrative Agents and employees, for which any Indemnified Party may desire indemnity or defense hereunder, such Indemnified Party shall promptly notify the Issuer in writing.

(d) The Issuer, at the request of any Indemnified Party, shall have the obligation to defend against such investigation, litigation or proceeding or requested Remedial Action against or with respect to any Indemnified Party and the Issuer, in any event, may participate in the defense thereof with legal counsel of the Issuer's choice. In the event that such Indemnified Party requests the Issuer to defend against such investigation, litigation or proceeding or requested Remedial Action, the Issuer shall promptly do so and such Indemnified

Party shall have the right to have legal counsel of its choice participate in such defense. No action taken by legal counsel chosen by such Indemnified Party in defending against any such investigation, litigation or proceeding or requested Remedial Action, shall vitiate or in any way impair the Issuer's obligation and duty hereunder to indemnify and hold harmless such Indemnified Party.

(e) The Issuer and each Guarantor agrees that any indemnification or other protection provided to any Indemnified Party pursuant to this Agreement (including pursuant to this *Section 13.4*), the Orders or any other Note Document shall (i) survive payment in full of the Obligations and (ii) inure to the benefit of any Person who was at any time an Indemnified Party under this Agreement, the Orders or any other Note Document, regardless of whether such Indemnified Party is a party to this Agreement.

Section 13.5 Limitation of Liability. The Issuer and each Guarantor agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Issuer Related Party or any of their respective Subsidiaries or any of their respective equity holders or creditors for or in connection with the transactions contemplated hereby and in the other Note Documents and the Orders, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. In no event, however, shall any Indemnified Party be liable on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business, or anticipated savings) and the Issuer and each Issuer Related Party hereby waive, release and agree (for themselves and on behalf of their respective Subsidiaries) not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. No Indemnified Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Note Documents or the transactions contemplated hereby or thereby.

Section 13.6 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default and subject to *Section 9.2*, each Note Purchaser and each Affiliate of a Note Purchaser is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Note Purchaser or its Affiliates to or for the credit or the account of the Issuer or any other Issuer Related Party against any and all of the Obligations now or hereafter existing whether or not such Note Purchaser shall have made any demand under this Agreement or any other Note Document and although such Obligations may be unmatured. Each Note Purchaser agrees promptly to notify the Issuer after any such set-off and application made by such Note Purchaser or its Affiliates; *provided, however*, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Note Purchaser under this *Section 13.6* are in addition to the other rights and remedies (including other rights of set-off) which such Note Purchaser may have.

Section 13.7 Sharing of Payments, Etc.

(a) If any Note Purchaser shall receive any payment (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) of the Notes owing to it, any interest thereon, fees in respect thereof or amounts due pursuant to *Section 13.3* or *13.4* (other than payments pursuant to *Section 2.8*, *2.12* or *2.14*) in excess of its Pro Rata Share of all payments of such Obligations obtained by all the Note Purchasers, such Note Purchaser (a "*Purchasing Note Purchaser*") shall forthwith purchase from the other Note Purchasers (each, a "*Selling Note Purchaser*") such participations in their Notes or other Obligations as shall be necessary to cause such Purchasing Note Purchaser to share the excess payment ratably with each of them.

(b) If all or any portion of any payment received by a Purchasing Note Purchaser is thereafter recovered from such Purchasing Note Purchaser, such purchase from each Selling Note Purchaser shall be rescinded and such Selling Note Purchaser shall repay to the Purchasing Note Purchaser the purchase price to the extent of such recovery together with an amount equal to such Selling Note Purchaser's ratable share (according to the proportion of (i) the amount of such Selling Note Purchaser's required repayment to (ii) the total amount so recovered from the Purchasing Note Purchaser) of any interest or other amount paid or payable by the Purchasing Note Purchaser in respect of the total amount so recovered.

(c) The Issuer agrees that any Purchasing Note Purchaser so purchasing a participation from a Selling Note Purchaser pursuant to this *Section 13.7* may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Note Purchaser were the direct creditor of the Issuer in the amount of such participation.

Section 13.8 Notices, Etc. All notices, demands, requests and other communications provided for in this Agreement shall be given in writing, or by any telecommunication device capable of creating a written record, and addressed to the party to be notified as follows:

(a) if to the Issuer:

Harry and David
2500 South Pacific Highway
Medford, OR 97501

Telecopy No.:

with a copy to:

Jones Day
77 West Wacker
Chicago, IL 60601
Attention: Brad Erens
Telecopy No.: (312) 739-8585

with a concurrent copy to:

Jones Day
1755 Embarcadero Road
Palo Alto, CA 94303
Attention: Stephen E. Hall
Telecopy No.: (650) 739-3900

(b) if to any Note Purchaser, at its address specified opposite its name on *Schedule II* or on the signature page of any applicable Assignment and Acceptance; and

(c) if to the Administrative Agent:

Wilmington Trust FSB
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Joshua G. James
Telecopy No.: (612) 217-5651

with a copy to:

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038
Attention: Scott Welkis
Telecopy No: (212) 806-2582

with a concurrent copy to:

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Attention: Benjamin L. Schneider
Telecopy No: (212) 596-9090

or at such other address as shall be notified in writing (i) in the case of the Issuer and the Administrative Agent, to the other parties and (ii) in the case of all other parties, to the Issuer and the Administrative Agent. All such notices and communications shall be effective upon personal delivery (if delivered by hand, including any overnight courier service), when deposited in the mails (if sent by mail), or when properly transmitted (if sent by a telecommunications device); *provided*, *however*, that notices and communications to the Administrative Agent pursuant to *Article II* or *X* shall not be effective until received by the Administrative Agent.

Section 13.9 No Waiver; Remedies. No failure on the part of any Note Purchaser or the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 13.10 Binding Effect. This Agreement shall become effective upon entry of the Orders and when it shall have been executed by the Issuer and the Administrative Agent and when the Administrative Agent shall have been notified by each Note Purchaser that such Note Purchaser has executed it and thereafter shall be binding upon and inure to the benefit of the Issuer, the Administrative Agent and each Note Purchaser and their respective successors and assigns, except that the Issuer shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Note Purchasers.

Section 13.11 Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York, including, without limitation, Sections 5-1401 and 5-1402 of the New York General Obligations Law, and, to the extent applicable, the Bankruptcy Code.

Section 13.12 Submission to Jurisdiction; Service of Process.

(a) Any legal action or proceeding with respect to this Agreement, the Orders or any other Note Document shall be brought in the Bankruptcy Court and, by execution and delivery of this Agreement, each Issuer Related Party hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions.

(b) Each Issuer Related Party hereby irrevocably consents to the service of any and all legal process, summons, notices and documents in any suit, action or proceeding brought in the United States of America arising out of or in connection with this Agreement, the Orders or any of the other Note Documents by the mailing (by registered or certified mail, postage prepaid) or delivering of a copy of such process to such Issuer Related Party at its address specified in *Section 13.8*. Each Issuer Related Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Nothing contained in this *Section 13.12* shall affect the right of the Administrative Agent or any Note Purchaser to serve process in any other manner permitted by law or commence legal proceedings or otherwise proceed against the Issuer or any other Issuer Related Party in any other jurisdiction.

(d) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars (the "*Original Currency*") into another currency (the "*Other Currency*"), the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the Original Currency with such Other Currency at the spot rate of exchange quoted by the Administrative Agent at 11:00 A.M. (New York time) on the Business Day preceding that on which final judgment is given, for the purchase of the Original Currency, for delivery two (2) Business Days thereafter. The obligations of the Issuer Related Parties in respect of any sum due to the Administrative Agent or any Note Purchaser hereunder shall, notwithstanding any judgment in such Other Currency, be

discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Note Purchaser (as the case may be) of any sum adjudged to be so due in the Other Currency, the Administrative Agent or such Note Purchaser (as the case may be) may in accordance with normal banking procedures purchase the Original Currency with the Other Currency. If the Original Currency so purchased is less than the sum originally due to the Administrative Agent or such Note Purchaser in the Original Currency, the Issuer Related Parties agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Note Purchaser (as the case may be) against such loss.

Section 13.13 WAIVER OF JURY TRIAL. EACH OF THE ADMINISTRATIVE AGENT, THE NOTE PURCHASERS, THE ISSUER AND THE SUBSIDIARY GUARANTORS IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT, THE ORDERS OR ANY OTHER LOAN DOCUMENT.

Section 13.14 Marshaling; Payments Set Aside. None of the Administrative Agent or any Note Purchaser shall be under any obligation to marshal any assets in favor of the Issuer or any other party or against or in payment of any or all of the Obligations. To the extent that the Issuer makes a payment or payments to the Administrative Agent or the Note Purchasers or any such Person receives payment from the proceeds of the Collateral or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, right and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

Section 13.15 Section Titles. The Section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

Section 13.16 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed signature of this Agreement in portable document format (.pdf) or by facsimile transmission shall be as effective as delivery of a manually signed counterpart hereof.

Section 13.17 Entire Agreement. This Agreement, together with the Orders and all of the other Note Documents and all certificates and documents delivered hereunder or thereunder, embodies the entire agreement of the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. A set of the copies of this Agreement signed by all parties shall be lodged with the Issuer and the Administrative Agent.

Section 13.18 Severability. Any provision of this Agreement or any other Note Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 13.19 Limited Disclosure. Each Note Purchaser and the Administrative Agent agree to use all reasonable efforts to keep information obtained by it pursuant hereto and the other Note Documents confidential in accordance with such Note Purchaser's or the Administrative Agent's, as the case may be, customary practices and agrees that it shall only use such information in connection with the transactions contemplated by this Agreement and not disclose any such information other than (a) to such Note Purchaser's or the Administrative Agent's, as the case may be, employees, representatives, advisors and agents that are or are expected to be involved in the evaluation of such information in connection with the transactions contemplated by this Agreement and are advised of the confidential nature of such information, (b) to the extent such information presently is or hereafter becomes available to such Note Purchaser or the Administrative Agent, as the case may be, on a non-confidential basis from a source other than the Issuer, any other Issuer Related Party or any Subsidiary, (c) to the extent disclosure is required by law, regulation or judicial order or requested or required by bank regulators or auditors or (d) to current or prospective assignees and participants, contractual counterparties in any Hedging Contract and to their respective legal or financial advisors, in each case and to the extent such assignees, participants, grantees or counterparties agree to be bound by, and to cause their advisors to comply with, the provisions of this *Section 13.19*.

Section 13.20 Representations and Warranties of Note Purchasers. Each Note Purchaser represents and warrants (i) that it has been furnished with all information that it has requested for the purpose of evaluating such Note Purchaser's proposed acquisition of the Notes to be issued to such Purchaser pursuant hereto, (ii) that (a) it is either (a) a qualified institutional buyer as defined in Rule 144A of the Securities Act of 1933, as amended (the "*Securities Act*"), (b) an institutional accredited investor (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act (the "Rules")) or (c) it is an entity in which all of the equity owners are institutional accredited investors as defined in the Rules; and (iii) that any securities purchased or received in connection herewith cannot be resold absent an exemption to the Securities Act or registration of such securities under the Securities Act. The acquisition of such Notes by each Note Purchaser at the Initial Issuance Date (or if Wasserstein elects not to purchase Notes on the Initial Issuance Date, on the date Wasserstein purchases Notes) or on the Final Issuance Date shall constitute such Note Purchaser's confirmation of the foregoing representations and warranties. Each Note Purchaser, and each assignee by its acceptance of a Note, understands that such Notes are being sold to such Purchaser in a transaction which is exempt from the registration requirements of the Securities Act, and that, in making the representations and warranties contained in this *Section 13.20*, the Issuer Related Parties are relying, to the extent applicable, upon such Note Purchaser's representations and warranties contained herein.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

HARRY AND DAVID,
as Issuer

By: _____
Name:
Title:

HARRY & DAVID HOLDINGS, INC.,
as a Guarantor

By: _____
Name:
Title:

as a Guarantor

By: _____
Name:
Title:

WILMINGTON TRUST FSB,
as Administrative Agent

By: _____
Name:
Title:

Note Purchasers

WASSERSTEIN PARTNERS, LP, as a Note Purchaser as a Note Purchaser

By:

By: _____
Name:
Title:

CC ARBITRAGE, LTD., as a Note Purchaser
By: Castle Creek Arbitrage LLC, its Investment Manager

By:

By: _____
Name:
Title:

CC ARB SIF I, LTD., as a Note Purchaser
By: Castle Creek Arbitrage LLC, its Investment Manager

By:

By: _____
Name:
Title:

OPPENHEIMER DISTRESSED OPPORTUNITIES, LP, as a Note Purchaser

By:

By: _____
Name:
Title:

LC CAPITAL MASTER FUND, LTD, as a Note Purchaser

By:

By: _____
Name:
Title:

LITESPEED MASTER FUND LTD, as a Note Purchaser
By: Litespeed Management LLC

By:

By: _____
Name:
Title:

LLOYD I. MILLER TRUST A-4, as a Note Purchaser

By:

By: _____
Name:
Title:

NEWPORT GLOBAL CREDIT FUND (MASTER) LP, as a Note Purchaser

By:

By: _____
Name:
Title:

NORTHEAST INVESTORS TRUST, as a Note Purchaser

By:

By: _____
Name:
Title:

SCOGGIN CAPITAL MANAGEMENT II LLC, as a Note Purchaser
By: Scoggin LLC, its Investment Manager

By:

By: _____
Name:
Title:

SCOGGIN WORLDWIDE FUND, LTD., as a Note Purchaser
By: Old Bellows Partners its Investment Manager
By: Old Bell Associates LLC its General Partner

By:

By: _____
Name:
Title:

SCOGGIN INTERNATIONAL FUND, LTD., as a Note Purchaser
By: Scoggin LLC, its Investment Manager

By:

By: _____
Name:
Title:

SINGER CHILDREN'S MANAGEMENT TRUST, as a Note Purchaser

By:

By: _____
Name:
Title:

UBS SECURITIES, LLC, as a Note Purchaser

By:

By: _____
Name:
Title:

2B LLC, as a Note Purchaser

By:

By: _____
Name:
Title:

INVESTIN PRO FMBA DALTON DISTRESSED DEBT, as a Note Purchaser

By:

By: _____
Name:
Title:

By:

By: _____
Name:
Title:

Schedule III
Syndication Procedures

These Syndication Procedures (the "*Syndication Procedures*") are the Syndication Procedures referenced in, and are hereby made a part of, the Junior Secured Super-Priority Debtor-In-Possession Note Purchase Agreement, dated as of March [__], 2011 (as amended, restated, supplemented or otherwise modified from time to time, the "*Note Purchase Agreement*"), by and among Harry and David (the "*Issuer*"), Harry and David Holdings, Inc. (the "*Parent Guarantor*"), those certain Subsidiaries of the Parent Guarantor from time to time party thereto, as guarantors, the Note Purchasers from time to time party thereto, and Wilmington Trust FSB, as Administrative Agent. Capitalized terms used and not defined herein have the meanings assigned to them in the Note Purchase Agreement.

Each Eligible Holder, that is known to the Issuer to be an Eligible Holder and is not an Initial Note Purchaser, will be afforded the right to commit to purchase Notes on the Final Issuance Date in an aggregate principal amount not to exceed its Eligible Share of the Aggregate Commitment by (a) prior to the Syndication Deadline, providing the Administrative Agent with written evidence, upon which the Administrative Agent may conclusively rely without independent investigation, demonstrating (i) its beneficial ownership of the Prepetition Senior Notes (which shall include proof of holdings as reflected in a broker dealer medallion-stamped statement to be provided by the beneficial holder), and (ii) that it is an accredited investor or qualified institutional buyer, as such terms are defined in Rules 501 and 144A promulgated under the Securities Act, respectively, and (b) on or prior to the Syndication Deadline but not before it has complied with *clause (a)*, submitting to the Administrative Agent at the address set forth in the Note Purchase Agreement written notice of its intent to purchase on the Final Issuance Date Notes in the principal amount set forth in such notice (such notice, an "*Eligible Holder Commitment*") (which amount shall not exceed its Eligible Share of the Aggregate Commitment). Each Eligible Holder Commitment shall state that it is, and shall be, a binding and irrevocable commitment of the applicable Eligible Holder to (a) enter into a Joinder Agreement and become bound to the Note Purchase Agreement on the Final Issuance Date and (b) purchase a Note having a principal amount equal to its Special Allocation Amount as set forth in Section 2.1 of the Note Purchase Agreement. Each Eligible Holder that submits an Eligible Holder Commitment shall be deemed to have consented to the form and substance of the Note Documents, the DIP Intercreditor Agreement, the Revolving Loan DIP Documents, the Orders, the Budget and the related weekly Variance Reports (to the extent delivered prior to Syndication Deadline), as a condition to its purchase of the Notes.

EXHIBIT D

INITIAL BUDGET

Harry and David
Initial DIP Budget
13 Week Cash Flow Forecast
$'s in 000s

Fiscal Month	March	April				May				June					
Fiscal Week	39	40	41	42	43	44	45	46	47	48	49	50	51	52	
	Informational	*Week 1*	*Week 2*	*Week 3*	*Week 4*	*Week 5*	*Week 6*	*Week 7*	*Week 8*	*Week 9*	*Week 10*	*Week 11*	*Week 12*	*Week 13*	
Week Ending	26-Mar	2-Apr	9-Apr	16-Apr	23-Apr	30-Apr	7-May	14-May	21-May	28-May	4-Jun	11-Jun	18-Jun	25-Jun	Total
Cash Flows															
Receipts	$ 2,448	$ 2,801	$ 2,748	$ 2,750	$ 3,133	$ 3,364	$ 4,537	$ 2,700	$ 1,796	$ 2,017	$ 2,201	$ 2,626	$ 3,248	$ 2,535	$ 36,456
Operating Disbursements															
Merchandise Payments	319	1,410	1,382	1,296	1,234	992	976	1,086	1,189	1,035	998	975	1,053	1,016	14,643
Payroll & Benefits	491	3,098	551	3,294	345	3,098	545	3,284	345	3,089	443	3,364	536	3,191	25,183
Occupancy	21	969	-	-	440	969	-	-	-	969	-	-	-	969	4,318
Operating Expenditures	1,858	1,879	2,527	1,472	1,492	1,654	2,087	2,211	2,299	1,497	1,788	1,412	1,260	1,785	23,363
Capital Expenditures	-	-	188	188	188	141	141	141	141	113	113	113	113	113	1,688
Total Operating Disbursements	**2,689**	**7,356**	**4,647**	**6,250**	**3,699**	**6,853**	**3,748**	**6,722**	**3,974**	**6,703**	**3,342**	**5,863**	**2,962**	**7,075**	**69,194**
Recapitalization Related Disbursements															
Professionals															
Debtor Professionals	1,055	-	-	-	297	409	629	99	99	399	234	84	84	1,336	3,670
DIP/Seasonal ABL	732	300	-	-	-	425	-	-	-	425	-	-	-	425	1,575
Bondholders	974	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Creditors Committee	-	-	-	-	-	-	-	-	-	-	-	-	-	120	120
Total Case Professionals	2,761	300	-	-	297	834	629	99	99	824	234	84	84	1,881	5,365
Recapitalization Financing Expenses															
1st Lien DIP - Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2nd Lien DIP - Interest	-	-	-	-	-	300	-	-	-	-	688	-	-	-	988
Financing Fees	-	3,400	-	-	-	-	688	-	-	-	-	-	-	-	4,088
Total Recapitalization Financing Expenses	-	3,400	-	-	-	300	688	-	-	-	688	-	-	-	5,075
Other Expenses															-
Utility Deposits	-	225	300	-	-	-	-	-	-	-	-	-	-	-	525
Critical Vendor Payments	-	1,500	1,500	1,500	1,500	-	-	-	-	-	-	-	-	-	6,000
503b9 Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Other Expenses	**-**	**1,725**	**1,800**	**1,500**	**1,500**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**6,525**
Total Recapitalization Related Disbursements	2,761	5,425	1,800	1,500	1,797	1,134	1,317	99	99	824	922	84	84	1,881	16,965
Disbursements Total	**5,450**	**12,781**	**6,447**	**7,750**	**5,496**	**7,987**	**5,064**	**6,821**	**4,073**	**7,527**	**4,264**	**5,947**	**3,046**	**8,956**	**86,159**
Net Cash Flow	$ (3,003)	$ (9,981)	$ (3,699)	$ (5,000)	$ (2,363)	$ (4,623)	$ (527)	$ (4,121)	$ (2,277)	$ (5,510)	$ (2,062)	$ (3,321)	$ 202	$ (6,421)	$ (49,703)
Beginning "Book" Cash Balance	7,368	4,366	24,385	20,686	15,686	13,323	8,700	33,172	29,052	26,775	21,265	19,202	15,881	16,083	4,366
Net Cash Flow	(3,003)	(9,981)	(3,699)	(5,000)	(2,363)	(4,623)	(527)	(4,121)	(2,277)	(5,510)	(2,062)	(3,321)	202	(6,421)	(49,703)
1st Lien DIP Proceeds (Repayments)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2nd Lien DIP Proceeds / (Repayments)	-	30,000	-	-	-	-	25,000	-	-	-	-	-	-	-	55,000
Ending "Book" Cash Balance	4,366	24,385	20,686	15,686	13,323	8,700	33,172	29,052	26,775	21,265	19,202	15,881	16,083	9,663	9,663
Net CF Less Financing Exp and Pro Fees	(242)	(6,281)	(3,699)	(5,000)	(2,066)	(3,489)	789	(4,022)	(2,178)	(4,686)	(1,141)	(3,237)	286	(4,540)	(39,263)
Cum. Net CF Less Financing Exp and Pro Fees		*(6,281)*	*(9,979)*	*(14,980)*	*(17,046)*	*(20,535)*	*(19,746)*	*(23,767)*	*(25,945)*	*(30,631)*	*(31,772)*	*(35,010)*	*(34,723)*	*(39,263)*	*(39,263)*