

**LOWENSTEIN SANDLER PC**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

THE NEWARK GROUP, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 10-\_\_\_\_\_ (\_\_\_\_)

Joint Administration Requested

Hearing Date: June [\_\_\_\_], 2010

**MOTION OF DEBTORS FOR AN ORDER (I) AUTHORIZING DEBTORS TO  
OBTAIN INTERIM POST-PETITION FINANCING; (II) GRANTING  
SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE  
EXPENSE STATUS PURSUANT TO 11 U.S.C. §§ 363, 364(c) AND 364(d); (III)  
MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362; (IV)  
AUTHORIZING DEBTORS TO ENTER INTO DIP ABL AGREEMENT WITH  
WELLS FARGO BANK, N.A. AS AGENT; (V) AUTHORIZING DEBTORS TO  
ENTER INTO DIP TERM LOAN AGREEMENT WITH ORIX FINANCE CORP.  
AS AGENT; (VI) AUTHORIZING REPAYMENT OF PREPETITION SECURED  
DEBT OWING TO WELLS FARGO BANK, N.A., AS EXISTING AGENT  
UNDER THE PREPETITION ABL AGREEMENT PURSUANT TO 11 U.S.C. §  
363; (VII) AUTHORIZING REPAYMENT OF PREPETITION SECURED DEBT  
OWING TO WACHOVIA BANK, N.A., AS EXISTING AGENT UNDER THE  
PREPETITION TERM LOAN AGREEMENT PURSUANT TO 11 U.S.C. § 363;  
AND (VIII) SCHEDULING A FINAL HEARING PURSUANT TO FEDERAL  
RULE OF BANKRUPTCY PROCEDURE 4001**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: The Newark Group, Inc. (4844); Jackson Drive Corp. (4573); and NP Cogen, Inc. (9626).



The Newark Group, Inc., *et al.*, as debtors and debtors-in-possession in the above-captioned Chapter 11 Cases<sup>2</sup> (collectively, the “**Debtors**”), by and through their proposed undersigned counsel, hereby submit this motion (the “**Motion**”) pursuant to 11 U.S.C. §§ 105(a), 361, 362, 363, 364(c) and 364(d), and Federal Rules of Bankruptcy Procedure 2002, 4001, 6004, 9014, and 9034(f), for entry of an interim order, substantially in the form attached hereto as Exhibit A (the “**Interim DIP Order**”), and a final order (the “**Final DIP Order**” and together with the Interim DIP Order, the “**DIP Orders**”): (I) authorizing certain of the Debtors to obtain interim post-petition financing as follows: (a) the debtor-in-possession credit facility (the “**DIP ABL Facility**”) with Wells Fargo Bank, National Association, as administrative agent and collateral agent (in such capacity, the “**DIP ABL Agent**”) and certain other financial institutions party to the DIP ABL Loan Agreement (as defined below) and (b) the debtor-in-possession credit facility (the “**ORIX DIP Facility**”) with ORIX Finance Corp. as administrative agent and collateral agent (in such capacity, the “**ORIX DIP Facility Agent**”), and certain other financial institutions party to the ORIX DIP Facility Credit Agreement (as defined below); (II) granting security interests and superpriority administrative expense status in connection with the DIP ABL Facility pursuant to 11 U.S.C. §§ 363 and 364(c), and granting security interests and superpriority administrative expense status in connection with the ORIX DIP Facility pursuant to 11 U.S.C. §§ 363 and 364(c) and (d); (III) modifying the automatic stay pursuant to 11 U.S.C. § 362; (IV) authorizing certain of the Debtors to enter into the DIP ABL Loan Agreement with Wells Fargo Bank, N.A. as agent; (V) authorizing Debtors to enter into the ORIX DIP Facility Credit Agreement with ORIX Finance Corp. as agent; (VI) authorizing repayment of prepetition secured debt owing to Wells Fargo Bank, N.A., as existing agent under the Existing ABL Loan Agreement (as defined below) pursuant to 11 U.S.C. § 363; (VII) authorizing repayment of prepetition secured debt owing to Wells Fargo Bank, N.A., a successor by merger to Wachovia

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<sup>2</sup> Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Joint Prepackaged Plan of Reorganization of The Newark Group, Inc., *et al.*, dated May 7, 2010.

Bank, N.A., as existing agent under the Prepetition CL Credit Agreement (as defined below) pursuant to 11 U.S.C. § 363; and (VIII) scheduling a final hearing pursuant to Federal Rule of Bankruptcy Procedure 4001. In support of the Motion, the Debtors respectfully represent as follows:

**STATEMENT OF THE RELIEF REQUESTED AND MATERIAL TERMS OF THE PROPOSED CREDIT AGREEMENTS PURSUANT TO BANKRUPTCY RULE 4001**

1. The Debtors require the immediate interim approval of the post-petition financing proposed herein on an expedited basis in order to avoid immediate and irreparable harm to their estates and their creditors pending a final hearing. Absent approval of the proposed financing, the Debtors will be unable to pay for any goods or services that are necessary for the uninterrupted operation of their businesses, including, but not limited to, employee wages and related obligations, inventory, utility charges and insurance.

2. Significantly, the two DIP facilities proposed herein - the DIP ABL Facility and the ORIX DIP Facility (together, the “**DIP Facilities**”) - as well as the ABL Exit Facility (as defined below) and the ORIX Exit Facility (as defined below) that are contemplated under the Joint Prepackaged Plan of Reorganization of The Newark Group, Inc., *et al.*, dated May 7, 2010 (the “**Plan**”) that has been approved by all impaired classes entitled to vote on the Plan, are contingent upon, *inter alia*, specific orders being entered by the Court by certain dates. Most importantly, the commitment that binds the lenders under the ORIX DIP Facility and the ORIX Exit Facility expires on June 11, 2010, and is contingent upon this Court’s entry of an Interim DIP Order approving the ORIX DIP Facility before that loan can be consummated. Therefore, if the Interim DIP Order is not entered on Thursday, June 10, 2010, in time to close the ORIX DIP Facility by June 11, 2010, the Debtors will not have the financing necessary to preserve and maximize the value of their businesses and assets. Without the proposed financing, the Debtors cannot operate and will be forced to cease operations, to the detriment of their estates, their creditors, their employees, and all other stakeholders.

3. The failure to approve the DIP Facilities will also derail and immediately and irreparably impair the Debtors' ability to confirm their prepackaged Plan, which was approved overwhelmingly by the Debtors' impaired classes of creditors and equity holders, and which provides for the Debtors' trade creditors to be paid in full.

4. Accordingly, it is imperative that the relief requested by this Motion be granted on an expedited basis.

### **The DIP ABL Facility**

5. The following are the material provisions of the DIP ABL Loan Agreement<sup>3</sup> as required by Federal Rule of Bankruptcy Procedure 4001(c)(1)(B)(i)-(xi)<sup>4</sup>:

<b>DIP ABL LOAN AGREEMENT</b>	
<b><u>Borrowers</u></b>	The Newark Group, Inc. (" <b><u>The Newark Group</u></b> " or " <b><u>Company</u></b> "), and Newark Group International, B.V. (" <b><u>NGI</u></b> "), (together, the " <b><u>DIP ABL Borrowers</u></b> "). (DIP ABL Loan Agreement, § 1.17.)
<b><u>Guarantor</u></b>	NP Cogen, Inc. (" <b><u>Cogen</u></b> " or the " <b><u>DIP ABL Guarantor</u></b> "). (DIP ABL Loan Agreement, § 1.105.)
<b><u>Administrative Agent and Collateral Agent</u></b>	Wells Fargo Bank, National Association (" <b><u>Wells</u></b> "), as successor by merger to Wachovia Bank, National Association, as DIP ABL Agent. (DIP ABL Loan Agreement, § 1.4.)
<b><u>DIP ABL Lenders</u></b>	Various banks, financial institutions, and other entities (collectively, the " <b><u>DIP ABL Lenders</u></b> "). (DIP ABL Loan Agreement, first paragraph.)
<b><u>Borrowing Limits</u></b>	\$50 million, consisting of a revolving loan subject to a borrowing base and other terms, including up to \$15 million for letters of credit and a swingline subfacility of up to \$7.5 million. (DIP ABL Loan Agreement, §§ 1.126, 1.135, 1.189; §§ 2.1 – 2.5.)
<b><u>NGI Revolving Loan Limit</u></b>	NGI is subject to a borrowing limit under the revolving loan equal to (a) the lesser of (i) €15 million or (ii) \$50 million <u>minus</u> (b) the aggregate dollar amount of any outstanding investments, loans or

<sup>3</sup> The description of the terms of the DIP ABL Loan Agreement set forth herein is intended solely to provide the Court and interested parties with a brief overview of the significant terms thereof. For a complete description of the terms and conditions of the DIP ABL Loan Agreement, reference should be made to the DIP ABL Loan Agreement, which is attached hereto as Exhibit B. This summary is qualified in its entirety by reference to the provisions of the DIP ABL Loan Agreement. In the event of any conflict or inconsistency between the provisions stated in this Motion and the DIP ABL Loan Agreement, the DIP ABL Loan Agreement shall control in all respects.

<sup>4</sup> Given that this Motion seeks Court approval of two separate DIP credit facilities, the concise statement of the relief requested exceeds the five page limit contained in Federal Rule of Bankruptcy Procedure 4001(c)(1)(B).

	advances made by any DIP ABL Borrower or DIP ABL Guarantor to foreign subsidiaries (other than Newark Paperboard Products, Ltd.), excluding (i) certain intercompany loans made by The Newark Group to NGI, and (ii) any investment, loan or advance made by The Newark Group to NGI from the proceeds of the revolving loan and the swingline subfacility in order to repay outstanding indebtedness of NGI on the closing date. (DIP ABL Loan Agreement, § 1.65.)
<b><u>Borrowing Base</u></b>	<p>Availability under the DIP ABL Facility will be subject to a borrowing base (the “<b><u>Borrowing Base</u></b>”) which will be calculated as follows:</p> <ul style="list-style-type: none"> <li>i. 85% of the eligible accounts of The Newark Group, plus</li> <li>ii. the lesser of: (a) 50% multiplied by the value of the Eligible Inventory<sup>5</sup> of The Newark Group consisting of raw materials or (b) 85% of the Net Recovery Percentage of such Eligible Inventory multiplied by the value thereof; plus</li> <li>iii. the lesser of: (a) 65% multiplied by the value of the Eligible Inventory of The Newark Group consisting of finished goods or (b) 85% of the Net Recovery Percentage of such Eligible Inventory times the value thereof, minus</li> <li>iv. the applicable reserves established by the DIP ABL Agent.</li> </ul> <p>(DIP ABL Loan Agreement, § 1.200.)</p>
<b><u>Term</u></b>	The DIP ABL Loan Agreement will terminate on the earliest of: (i) 180 days after the commencement of the Chapter 11 Cases, (ii) 60 days after the entry of the Interim DIP Order if the Final DIP Order has not been entered prior to the expiration of such 60-day period, (iii) the substantial consummation of a confirmed plan of reorganization, but no later than the Effective Date of the Plan, and (iv) the date of confirmation of a plan of reorganization or liquidation for the Company or the DIP ABL Guarantor in the Chapter 11 Cases unless such confirmation order is in form and substance satisfactory to DIP ABL Agent; and (v) the date of confirmation of a plan of reorganization or liquidation. (DIP ABL Loan Agreement, § 1.193.)
<b><u>Interest</u></b>	<p>For Prime Rate Loans: 4% per annum in excess of the greatest of (a) the prime rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1%, and (c) 2%.</p> <p>For Eurodollar Rate Loans: 5% in excess of the greatest of (a) the rate per annum determined by dividing (i) LIBOR by (ii) a percentage equal to (A) 1 minus (B) the percentage that is in effect for that day under regulation D of the Board of Governors of the Federal Reserve System or (b) 2%. (DIP ABL Loan Agreement, § 1.115.)</p>
<b><u>Default Rate</u></b>	2% above the otherwise applicable interest rate in effect. (DIP ABL Loan Agreement, § 1.115(b).)
<b><u>Fees</u></b>	<b><u>Unused Line Fee:</u></b> 1% per annum calculated on the average daily

<sup>5</sup> Capitalized terms used in this table and not otherwise defined herein shall have the meanings ascribed to them in the DIP ABL Loan Agreement.

	<p>unused portion of the maximum credit available during the immediately preceding month.</p> <p><u>Letter of Credit Fee:</u> 5% per annum on the average daily maximum amount available to be drawn under all Letters of Credit for the immediately preceding month.</p> <p><u>Additional Letter of Credit Fee:</u> 0.5% per annum shall be paid to the issuing bank on the average daily maximum amount available to be drawn under each letter of credit issued.</p> <p>At the DIP ABL Agent's option, The Newark Group shall pay an additional 2% for (i) the period from the termination of the DIP ABL Facility until full payment of all obligations due thereunder have been received and (ii) the period from the occurrence of an Event of Default for as long as such Event of Default is continuing.</p> <p>(DIP ABL Loan Agreement, § 1.90.)<sup>6</sup></p>
<b><u>Budget</u></b>	<p>Borrowers will deliver on the Tuesday of each week: (1) an updated 13 week Budget (as defined below); and 2 a weekly Budget variance report for the prior week and the prior trailing 4 week period. (DIP ABL Loan Agreement, § 8.31.)</p>
<b><u>Covenants</u></b>	<p>Compliance with affirmative and negative covenants are usual and customary for DIP financings, including, among other things: (a) delivery of monthly, quarterly and annual financial statements and compliance certificates; (b) limitations on liens, debt, restricted payments, fundamental changes, asset sales, investments, acquisitions, capital expenditures, affiliate transactions and payments relating to prepetition obligations (with baskets for certain covenants to be mutually agreed upon), and (c) minimum consolidated EBITDA and excess availability requirements.</p> <p>(DIP ABL Loan Agreement, §§ 9.1 – 9.34.)</p>
<b><u>Liens, Priorities, and Collateral</u></b>	<p>A first priority security interest in accounts receivable, inventory, and other Priority Collateral, as defined in the DIP ABL Loan Agreement; a second priority security interest in other personal property of The Newark Group and Cogen, including certain property recovered pursuant to Chapter 5 of the Bankruptcy Code (as defined below); and all products and proceeds of the foregoing. (DIP ABL Loan Agreement, § 5.1.)</p>
<b><u>Carve-Out</u></b>	<p>The security interests are subordinate to the payment of the following (such amounts being the "<b><u>Carve-Out</u></b>"): (i) fees to be paid to the Clerk of the Bankruptcy Court, and (ii) claims of professionals retained pursuant to Sections 327 and 1103 <u>provided, that</u>, (A) such allowed fees and expenses incurred after an Event of Default shall not exceed \$2,000,000 in the aggregate. (DIP ABL Loan Agreement, § 5.5(c).)</p>

<sup>6</sup> Pursuant to a confidentiality agreement, the Debtors are not herein disclosing certain fees payable to the DIP ABL Agent and the DIP ABL Lenders.

<b><u>Use of Proceeds</u></b>	Satisfaction of existing obligations, including costs, fees, and expenses arising under the Existing ABL Loan Agreement; costs, fees, and expenses arising under the DIP ABL Loan Agreement and in connection with the Debtors' chapter 11 cases (the " <b><u>Chapter 11 Cases</u></b> "); payment of prepetition claims in the ordinary course of business pursuant to the Budget; and post-petition working capital and other general corporate purposes pursuant to the Budget. (DIP ABL Loan Agreement, § 6.7.)
<b><u>Events of Default</u></b>	<p>The DIP ABL Loan Agreement contains events of default that are usual and customary for debtor-in-possession financing, including, among other things:</p> <ul style="list-style-type: none"> <li>v. failure to make principal or interest payments when due;</li> <li>vi. failure to perform any term or covenant contained in the DIP ABL Loan Agreement, subject to cure periods in certain instances;</li> <li>vii. material misrepresentations made in the DIP ABL Facility documents;</li> <li>viii. any assignment for the benefit of creditors;</li> <li>ix. an involuntary bankruptcy case is filed against an DIP ABL Borrower or an DIP ABL Guarantor and not dismissed within 60 days;</li> <li>x. other than with respect to the within Chapter 11 Cases, a DIP ABL Borrower or a DIP ABL Guarantor files a bankruptcy proceeding;</li> <li>xi. any uncured default with respect to any indebtedness of any DIP ABL Borrower or DIP ABL Guarantor in excess of \$2,500,000;</li> <li>xii. any material provision of any of the documents comprising the DIP ABL Loan Agreement shall cease to be valid, binding and enforceable;</li> <li>xiii. any Change of Control;</li> <li>xiv. conversion of any of the Chapter 11 Cases to a chapter 7 case;</li> <li>xv. dismissal of any of the Chapter 11 Cases or any subsequent chapter 7 case either voluntarily or involuntarily;</li> <li>xvi. the Interim DIP Order shall be modified, reversed, revoked, remanded, stayed, rescinded, vacated or amended on appeal or by the Bankruptcy Court without the prior written consent of the DIP ABL Agent;</li> <li>xvii. the appointment of a trustee pursuant to §§ 1104(a)(1) or 1104(a)(2);</li> <li>xviii. the appointment of an examiner with special powers pursuant to § 1104(a);</li> <li>xix. the filing or confirmation of a plan of reorganization or liquidation by or on behalf of any DIP ABL Borrower or DIP ABL Guarantor, to which the DIP ABL Agent has not consented in writing, which does not provide for the payment in full of all Obligations on the effective date thereof in accordance with the terms and conditions contained herein.</li> </ul>

	(DIP ABL Loan Agreement, § 10.1.)
<b><u>Waivers</u></b>	<p>Each DIP ABL Borrower and DIP ABL Guarantor waives demand and notice with respect to the Obligations, the Collateral and the DIP ABL Loan Agreement, except as such are expressly provided for therein. (DIP ABL Loan Agreement, § 11.2.)</p> <p>Each DIP ABL Borrower and DIP ABL Guarantor waives all rights to interpose any claims, deductions, setoffs or counterclaims (other than compulsory counterclaims) in any action or proceeding with respect to the DIP ABL Loan Agreement, the Obligations, the Collateral or any matter arising therefrom. (DIP ABL Loan Agreement, § 11.4.)</p>
<b><u>Indemnification</u></b>	Each DIP ABL Borrower and DIP ABL Guarantor shall indemnify and hold DIP ABL Agent, each DIP ABL Lender, the Arranger and Issuing Bank, (each such person being an “ <b><u>Indemnitee</u></b> ”), harmless from and against any and all losses, liabilities, costs or expenses (including attorneys’ fees and expenses) in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the DIP ABL Loan Agreement, other than resulting from the gross negligence or willful misconduct of the Indemnitee. (DIP ABL Loan Agreement, § 11.5.)
<b><u>Conditions to Borrowing</u></b>	The initial borrowing under the DIP ABL Facility is subject to customary conditions to borrowing, including without limitation, (i) no material adverse change in the businesses shall have occurred since March 2, 2010, (ii) excess availability shall not be less than \$12.5 million after giving effect to the initial loans under the DIP ABL Facility and the ORIX DIP Facility; and (iii) consolidated EBITDA for the most recently ended trailing 12 fiscal month period shall be not less than \$44 million. (DIP ABL Loan Agreement, § 4.1.)
<b><u>Liens on Causes of Action Under Chapters 5 of the Bankruptcy Code</u></b>	A security interest in, a lien upon, and a right of set off against all property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to Chapter 5 of the Bankruptcy Code. (DIP ABL Loan Agreement, § 5.1.)

6. The provisions described in Rule 4001(c)(1)(B)(i)-(xi) of the Federal Rules of Bankruptcy Procedure are set out at the following sections of the Interim DIP Order and the DIP ABL Loan Agreements:

- a. A grant of priority or a lien on property of the estate under § 364(c). Interim DIP Order ¶¶ 2.2-2.4; DIP ABL Loan Agreement § 5.1.
- b. The providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim. Interim DIP Order ¶ 2.7; DIP ABL Loan Agreement § 6.7.

- c. A determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim. Interim DIP Order N/A (Debtor acknowledgement only); DIP ABL Loan Agreement N/A.
- d. A waiver or modification of Code provisions or applicable rules relating to the automatic stay. Interim DIP Order ¶¶ 3.3, 3.4; DIP ABL Loan Agreement N/A.
- e. A waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364. Interim DIP Order ¶ 4.2; DIP ABL Loan Agreement § 9.30(f).
- f. The establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order. Interim DIP Order N/A; DIP ABL Loan Agreement § 1.193.
- g. A waiver or modification of the applicability of non-bankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien. Interim DIP Order N/A; DIP ABL Loan Agreement N/A.
- h. A release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action. Interim DIP Order ¶ 4.2; DIP ABL Loan Agreement §§ 9.30, 16.1,.
- i. The indemnification of any entity. Interim DIP Order N/A; DIP ABL Loan Agreement § 11.5.
- j. A release, waiver, or limitation of any right under § 506(c). Interim DIP Order ¶ 4.3; DIP ABL Loan Agreement § 9.30.
- k. The granting of a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a). Interim DIP Order ¶¶ 2.1.1, 2.1.2; DIP ABL Loan Agreement § 5.1.

7. Pursuant to this Court's General Order Adopting Guidelines for Financing Requests, the Debtors call the Court's attention to the following material provisions in the attached proposed Interim DIP Order:

- a. Cross-Collateralization. Interim DIP Order ¶ 2.1.
- b. Rollups. Interim DIP Order ¶¶ 1.4, 1.7.
- c. Waivers and Concessions as to Validity of Prepetition Debt. Interim DIP Order N/A (Debtor Acknowledgement only.)

- d. Waivers. Interim DIP Order ¶ 4.2.
- e. Section 506(c) Waivers: Interim DIP Order ¶ 4.3.
- f. Liens on Avoidance Actions: Interim DIP Order ¶¶ 2.1.1, 2.1.2.
- g. Carve-outs: Interim DIP Order ¶ 2.4.
- h. Termination; Default; Remedies: Interim DIP Order ¶¶ 3.1-3.1, 5.1.

### **The ORIX DIP Facility**

8. The following are the material provisions of the ORIX DIP Facility Credit Agreement<sup>7</sup>, as required by Bankruptcy Rule 4001(c)(1)(B)(i)-(xi)<sup>8</sup>:

<b>ORIX DIP FACILITY CREDIT AGREEMENT</b>	
<b><u>Borrower</u></b>	The Newark Group (ORIX DIP Facility Credit Agreement, § 1.1.)
<b><u>Guarantor</u></b>	Cogen (ORIX DIP Facility Credit Agreement, § 1.1.)
<b><u>Administrative Agent and Collateral Agent</u></b>	ORIX Finance Corp., in its capacity as administrative agent, collateral agent and as a control agent for the ORIX DIP Lenders (as defined below). (ORIX DIP Facility Credit Agreement, § 1.1.)
<b><u>ORIX DIP Lenders</u></b>	Various banks, financial institutions, and other entities and lenders from time to time party to the ORIX DIP Facility Credit Agreement (collectively, the “ <b><u>ORIX DIP Lenders</u></b> ”). (ORIX DIP Facility Credit Agreement, § 1.1.)
<b><u>ORIX DIP Commitment</u></b>	\$110 million term loan, which shall be made available to The Newark Group upon the closing of the ORIX DIP Facility Credit Agreement. (ORIX DIP Facility Credit Agreement, Sch. A.)
<b><u>Term</u></b>	The ORIX DIP Facility has the same term as the DIP ABL Facility. (ORIX DIP Facility Credit Agreement, § 1.1.)
<b><u>Interest</u></b>	The applicable rate for Prime Rate Loans shall be a rate per annum equal to 8.5% plus the greater of (a) the rate of interest which is identified as the "Prime Rate" and normally published in the Money Rates section of <u>The Wall Street Journal</u> and (b) one percentage point plus the three-month Adjusted Eurodollar Rate. The Adjusted

<sup>7</sup> The description of the terms of the ORIX DIP Facility Credit Agreement set forth herein is intended solely to provide the Court and interested parties with a brief overview of the significant terms thereof. For a complete description of the terms and conditions of the ORIX DIP Credit Agreement, reference should be made to the ORIX DIP Facility Credit Agreement, which is attached hereto as Exhibit E. This summary is qualified in its entirety by reference to the provisions of the ORIX DIP Facility Credit Agreement. In the event of any conflict or inconsistency between the provisions of this Motion and the ORIX DIP Facility Credit Agreement, the ORIX DIP Facility Credit Agreement shall control in all respects.

<sup>8</sup> Capitalized terms used in this section of the Motion and not otherwise defined herein shall have the meanings ascribed to such terms in the ORIX DIP Facility Credit Agreement.

	<p>Eurodollar Rate is, with respect to each one, two or three month period, the greater of (x) 3% per annum and (y) the offered rate per annum for deposits of dollars for the applicable period that appears on Reuters Screen LIBO Page as of 11:00 A.M. (London, England time) 2 business days prior to the first day in such period.</p> <p>The applicable rate pursuant to Eurodollar Rate Loans shall be a rate per annum equal to 9.5% plus the Adjusted Eurodollar Rate.</p> <p>The term loan shall initially be a Prime Rate Loan, subject to conversion to a Eurodollar Rate Loan upon request by The Newark Group pursuant to Section 3.1(b) of the ORIX DIP Facility Credit Agreement.</p> <p>(ORIX DIP Facility Credit Agreement, § 1.1.)</p>
<b><u>Default Rate</u></b>	2% above the otherwise applicable interest rate in effect. (ORIX DIP Facility Credit Agreement, § 1.1.)
<b><u>Fees</u></b>	<b><u>Commitment Fee:</u></b> \$1,100,000. (ORIX DIP Facility Credit Agreement, § 3.2(b).) <sup>9</sup>
<b><u>Budget</u></b>	Expenses must be in accordance with the Budget submitted each week to the ORIX DIP Facility Administrative Agent (subject to agreed-upon variances). (ORIX DIP Facility Credit Agreement, § 8.32.)
<b><u>Covenants</u></b>	Substantially the same as those set forth in the DIP ABL Loan Agreement. (ORIX DIP Facility Credit Agreement, Art. IX.)
<b><u>Liens, Priorities, and Collateral</u></b>	<p>Pursuant to the ORIX DIP Facility, The Newark Group will grant the ORIX DIP Facility Agent, on behalf of the ORIX DIP Lenders, a first priority lien on all present and after-acquired personal property (excluding the DIP ABL Priority Collateral (as defined below), including, but not limited to, certain real property; the outstanding capital stock of certain direct subsidiaries of The Newark Group (limited to a pledge of 65% of the voting equity and 100% of the non-voting equity of each first tier foreign subsidiary) and a second priority lien on the DIP ABL Priority Collateral.</p> <p>The priority of liens being granted pursuant to the ORIX DIP Facility Credit Agreement will be subject to the terms of the Intercreditor Agreement (as defined below).</p> <p>(ORIX DIP Facility Credit Agreement, §§ 5.1 - 5.2.)</p>
<b><u>Carve-Out</u></b>	The security interests and liens of the ORIX DIP Facility Agent will be subordinate to the same "Carve-Out" applicable to the DIP ABL Facility as described above. (ORIX DIP Facility Credit Agreement, § 5.5(c).)
<b><u>Use of Proceeds</u></b>	The proceeds of the term loan will be used by The Newark Group: (a) to pay an amount equal to, and used to refinance, all amounts due

<sup>9</sup> Pursuant to a confidentiality agreement, the Debtors are not herein disclosing certain fees payable to the ORIX DIP Facility Agent and the ORIX DIP Lenders.

	and owing under the Prepetition CL Credit Agreement and to repay outstanding revolving loans under the DIP ABL Loan Agreement, (b) to pay any costs, fees and expenses associated with the ORIX DIP Facility Credit Agreement and related agreements, (c) to pay professional costs, expenses and fees in connection with the Chapter 11 Cases, and (d) for working capital and other general corporate purposes of The Newark Group, Cogen and NGI (not otherwise prohibited under the ORIX DIP Facility Credit Agreement) relating to post-petition operations of such parties. (ORIX DIP Facility Credit Agreement, § 6.7.)
<b><u>Events of Default</u></b>	Substantially the same as those set forth in the DIP ABL Loan Agreement. (ORIX DIP Facility Credit Agreement, § 10.1.)
<b><u>Waivers</u></b>	Substantially the same as those set forth in the DIP ABL Loan Agreement. (ORIX DIP Facility Credit Agreement, §§ 11.2, 11.4.)
<b><u>Indemnification</u></b>	Substantially the same as those set forth in the DIP ABL Loan Agreement. (ORIX DIP Facility Credit Agreement, §§ 11.5.)
<b><u>Conditions to Borrowing</u></b>	Substantially similar to the conditions to the initial borrowing under the DIP ABL Loan Agreement, provided that the material adverse change conditions relate back to January 31, 2010. (ORIX DIP Facility Credit Agreement, § 4.1.)
<b><u>Liens on Causes of Action Under Chapters 5 of the Bankruptcy Code</u></b>	A security interest in, a lien upon, and a right of set off against certain property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to Chapter 5 of the Bankruptcy Code. (ORIX DIP Facility Credit Agreement, § 5.1.)

9. The provisions described in Fed. R. Bankr. P. 4001(c)(1)(B)(i)-(xi) are set out at the following sections of the Interim DIP Order and the ORIX DIP Facility Credit Agreements:

- a. A grant of priority or a lien on property of the estate under § 364(c) or (d). Interim DIP Order ¶¶ 2.2-2.4; ORIX DIP Facility Credit Agreement § 5.1.
- b. The providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim. Interim DIP Order ¶ 2.7; ORIX DIP Facility Credit Agreement N/A.
- c. A determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim. Interim DIP Order N/A (Debtor acknowledgement only); ORIX DIP Facility Credit Agreement N/A.
- d. A waiver or modification of Code provisions or applicable rules relating to the automatic stay. Interim DIP Order ¶¶ 3.3, 3.4; ORIX DIP Facility Credit Agreement N/A.
- e. A waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan,

request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364. Interim DIP Order ¶ 4.2; ORIX DIP Facility Credit Agreement § 9.30(f).

f. The establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order. Interim DIP Order N/A; ORIX DIP Facility Credit Agreement § 1.1 Definition of “Termination Date.”

g. A waiver or modification of the applicability of non-bankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien. Interim DIP Order N/A; ORIX DIP Facility Credit Agreement N/A.

h. A release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action. Interim DIP Order ¶ 4.2; ORIX DIP Facility Credit Agreement §§ 9.30, 16.1.

i. The indemnification of any entity. Interim DIP Order N/A; ORIX DIP Facility Credit Agreement § 11.5.

j. A release, waiver, or limitation of any right under § 506(c). Interim DIP Order ¶ 4.3; ORIX DIP Facility Credit Agreement § 9.30.

k. The granting of a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a). Interim DIP Order ¶¶ 2.1.1-2.1.2; ORIX DIP Facility Credit Agreement § 5.1.

10. The provisions set forth above are all justified under the relatively unique circumstances of these cases to avoid immediate and irreparable harm to the Debtors’ estates. The Debtors, in consultation with their advisors, attempted to obtain the most advantageous financing available and engaged in extensive and good faith negotiations with the potential lenders. Neither the DIP ABL Lenders nor the ORIX DIP Lenders (together, the “**DIP Lenders**”) would agree to provide the proposed DIP Facilities without the inclusion of such terms, each of which was heavily negotiated between the parties. In addition, the Debtors determined, in the exercise of their sound business judgment, that agreeing to such provisions was appropriate under the circumstances of these cases, which include a prepackaged Plan that will pay all trade creditors in full and which has the support of all impaired classes of claims and interests.

### **JURISDICTION, VENUE AND STATUTORY PREDICATE**

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

13. The statutory predicates for the relief requested herein are §§ 105(a), 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “**Bankruptcy Code**”), and Rules 2002, 4001, 6004, 9014, and 9034(f) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “**Local Rules**”).

### **BACKGROUND**

14. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”).

15. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

16. As of the filing of this Motion, no trustee, examiner or committee has been requested or appointed in any of these Chapter 11 Cases.

17. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these Chapter 11 Cases.

### **The Debtors’ Businesses**

18. The Newark Group, along with its Non-Debtor Affiliates (collectively, “**TNG Global**”), operates as an integrated global producer of 100% recycled paperboard and paperboard products with significant manufacturing and marketing operations in North America and Europe. Jackson Drive Corp. (“**Jackson Drive**”) is a New Jersey corporation and a wholly-owned subsidiary of The Newark Group, which owns the real estate that houses the Company's

executive offices in Cranford, New Jersey. Jackson Drive has no other material assets and its primary liability is a mortgage loan in the approximate amount of \$2.2 million (the “**Jackson Drive Mortgage**”). Cogen, a California corporation, is also a wholly-owned subsidiary of The Newark Group. It owns and operates a cogeneration power plant located on the property of The Newark Group's paper mill in Los Angeles. Cogen provides electricity solely to the Los Angeles mill. The only material asset of Cogen is a generator with an assessed value of approximately \$1.3 million.

19. The Company is primarily a manufacturer of industrial converting grades of paperboard, core-board, and coated and uncoated folding carton board, and is among the largest producers of these grades in North America. The Newark Group is also a major North American producer of tubes, cores and allied products, and, together with its non-debtor European subsidiaries, is a leading producer of laminated products and graphicboard in both North America and Europe. In addition, The Newark Group collects, trades and processes recovered paper in North America and believes that it is among the six largest competitors in this industry. The Newark Group supplies its products to the paper, packaging, stationery, book printing, construction, plastic film, furniture, and game industries.

20. The Company owns or leases 40 active manufacturing and other facilities throughout the United States, including recovered paper plants, paperboard mills, and converting plants.<sup>10</sup> It employs approximately 1920 employees, approximately 39% of whom are members of unions and are covered by 16 collective bargaining agreements. The Non-Debtor Affiliates employ approximately 690 individuals in Canada and Europe, most of whom are covered by labor agreements.

21. For the fiscal year that ended April 30, 2008, TNG Global recorded consolidated revenues of approximately \$1 billion, resulting in a net loss of approximately \$19.7 million. The Newark Group generated approximately 78% of these revenues. In fiscal year 2009, TNG

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<sup>10</sup> In addition to active facilities, the Debtors own seven facilities that were formerly operated as paper mill plants.

Global's revenues decreased to approximately \$808.7 million and its loss increased to approximately \$166.7 million. The Newark Group was responsible for approximately 77% of 2009 revenues. In fiscal year 2010, TNG Global generated approximately \$723 million in revenues, and experienced a net loss of approximately \$32 million. The Newark Group was responsible for approximately 76% of 2010 revenues.

### **The Capital Structure**

22. As of the Petition Date, the Company owed approximately \$42.1 million (excluding approximately \$785,000 million in outstanding letters of credit) under its prepetition secured asset based credit facility dated as of March 9, 2007, as amended (the “**Existing ABL Loan Agreement**”). The Existing ABL Loan Agreement provides for up to \$50 million of revolving credit, subject to a certain borrowing base formula and limitations. All amounts owed under the Existing ABL Loan Agreement are secured by (i) first priority liens on the Company's and Cogen's accounts, inventory and certain other personal property (the “**Existing ABL Priority Collateral**”) and (ii) second priority liens on substantially all of the Company's and Cogen's other assets, except for real property. As of the Petition Date, the Company was in default under the terms of the Existing ABL Loan Agreement. However, the Company has entered into a series of forbearance agreements with the Existing ABL Lenders and the Existing ABL Agent (as defined below) and no action has been taken to accelerate the obligations due under the Existing ABL Loan Agreement.

23. In addition, as of the Petition Date, The Newark Group owed approximately \$73.6 million under its prepetition secured term loan and credit-linked letter of credit facility dated as of March 9, 2007, as amended (the “**Prepetition CL Credit Facility**”, and, with the Existing ABL Loan Agreement, the “**Prepetition Credit Facilities**”)<sup>11</sup>. This amount does not include a

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<sup>11</sup> The Prepetition Credit Facilities and all other material agreements, documents, and instruments executed or delivered with, to, or in favor of the Existing ABL Agent, the Prepetition CL Administrative Agent (as defined below), the Existing ABL Lenders, and the Prepetition CL Lenders, including, without limitation, security agreements, documents and instruments executed and/or delivered in connection with the Prepetition Credit Facilities, as all have been amended, supplemented, modified, extended, renewed, restated or replaced at any time

\$7.1 million standby letter of credit that was issued under the Prepetition CL Credit Facility for the benefit of Liberty Mutual Insurance Company, solely as security to guarantee payment of The Newark Group's workers' compensation obligations (the "**Workers' Compensation Letter of Credit**").<sup>12</sup>

24. All amounts owed under the Prepetition CL Credit Facility are secured by (i) first priority liens on a substantial portion of the Company's and Cogen's assets (excluding accounts receivable and inventory), including, but not limited to, certain real property and equipment, the capital stock of all domestic subsidiaries of The Newark Group that are at least 50% owned or controlled by The Newark Group, 65% of the capital stock of two foreign Non-Debtor Affiliates and certain promissory notes due from a Non-Debtor Affiliate and (ii) a second priority lien on the Existing ABL Priority Collateral. As of the Petition Date, although the Company was in default under the terms of the Prepetition CL Credit Facility, no action has been taken to accelerate the obligations due under the Prepetition CL Credit Facility.

25. The Newark Group also owes, as of the Petition Date, \$175 million in principal and approximately \$29.5 million in interest under certain 9-3/4 % senior unsecured subordinated notes that were issued pursuant to an indenture dated March 12, 2004 (the "**Prepetition 2014 Notes**"). The Prepetition 2014 Notes mature on March 12, 2014. The Company has failed to make the semiannual interest payments on the notes since March 15, 2009. Neither the holders of the notes nor the indenture trustee under the indenture have taken action to accelerate the obligations due under the Prepetition 2014 Notes.

26. As of the Petition Date, in addition to the secured credit facilities and the Prepetition 2014 Notes, the Company's primary fixed liabilities include approximately \$4.8 million owed to Frederick von Zuben ("**Von Zuben**") under the Von Zuben Subordinated

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prior to the Petition Date, are collectively referred to as the "**Prepetition Financing Documents**" and are contained in the **DIP Exhibit Supplement** filed contemporaneously with this Motion. The DIP Exhibit Supplement will be filed with the Bankruptcy Court and available on CM/ECF, but will not be served on all applicable parties due to its large volume. The DIP Exhibit Supplement is also available from the Debtors' counsel, upon request.

<sup>12</sup> The Workers' Compensation Letter of Credit is collateralized by a \$9.2 million deposit provided by the Prepetition CL Lenders.

Unsecured Note (the “**Von Zuben Subordinated Unsecured Note Claim**”) and trade payables of approximately \$57 million. As noted in more detail below, the Debtors' proposed Plan (as defined below) contemplates that all trade and other General Unsecured Claims will “ride through” the Chapter 11 Cases and will be paid in full to the extent not paid prior to the Effective Date of the Plan.

### **THE CHAPTER 11 CASES**

27. The Debtors commenced their Chapter 11 Cases to effectuate a restructuring of their balance sheets pursuant to a prepackaged Plan that, as described in more detail below, has the support of each and every impaired class of claims and interests.

28. Generally, the restructuring was necessitated by liquidity issues resulting from, among other factors, a significant decline in sales that is largely attributable to the dramatic downturn of the economy in late 2008 and 2009, higher costs for freight and energy, and a decrease in the value of the Debtors' waste paper inventories. Although the Company's business has rebounded somewhat from the downturn in the economy, it still does not have the ability to meet its significant debt service obligations under the Prepetition 2014 Notes.

### **THE PROPOSED PREPACKAGED PLAN**

29. Prior to the Petition Date, after more than a year of lengthy discussions and negotiations with various creditor constituencies and prospective lenders, and after considering various alternatives, the Company reached agreements on the terms of the Plan with, among others, holders of more than 80% in amount of the Prepetition 2014 Notes.

30. In essence, the Plan provides for a balance sheet restructuring that will, among other things, eliminate and fully equitize all amounts due under the Prepetition 2014 Notes and result in the immediate reduction of the Company's annual cash interest costs by approximately \$13 million. Furthermore, pursuant to a prepetition settlement between the Company and Von Zuben, the Plan provides for the partial payment, in a combination of cash and notes, of the Von

Zuben Subordinated Unsecured Note Claim. In addition, the Plan provides that former shareholders who currently own approximately 84% of the equity of the Company will receive 1.5% of the New Common Stock of the Reorganized Company plus warrants to acquire up to 15% of the New Common Stock of the Reorganized Company, subject to dilution as set forth in detail in the Plan. Lastly, the Plan provides that The Newark Group Employee Stock Ownership Plan (the “**ESOP**”), which currently owns approximately 16% of the equity of the Company, will receive 2% of the New Common Stock, subject to dilution as described in the Plan.

31. Set forth below is a summary of the classification and treatment provisions of the Plan:<sup>13</sup>

- **Class 1:** Priority Non-Tax Claims will be Unimpaired and paid in full;
- **Class 2:** Other Secured Claims will be Unimpaired and paid in full;
- **Class 3:** Prepetition ABL Claims arising under the Existing ABL Loan Agreement will be paid in full in cash from the proceeds of the DIP ABL Facility which, in turn, will be paid by and replaced with the ABL Exit Facility on the Effective Date;
- **Class 4:** Prepetition CL Claims arising under the Prepetition CL Credit Facility will be paid in full in cash from the proceeds of the ORIX DIP Facility, which, in turn, will be paid by and replaced with the ORIX Exit Facility on the Effective Date;
- **Class 5:** General Unsecured Claims against the Debtors will be Unimpaired and Reinstated and paid in full to the extent such Claims are not paid in the ordinary course of business prior to the Effective Date;
- **Class 6:** Prepetition Notes Claims, consisting of the Claims arising under the Prepetition 2014 Notes and the general unsecured claim of Robert H. Mullen in the approximate aggregate amount of \$210,000, will be exchanged for their Pro Rata share of 96.5% of the New Common Stock of the Reorganized Company to be issued pursuant to the Plan;
- **Class 7:** The holder of the Von Zuben Subordinated Unsecured Note Claim in the approximate amount of \$4.8 million will receive \$250,000 in

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<sup>13</sup> This summary does not contain all relevant Plan provisions. Reference is made to the Plan and the Disclosure Statement dated May 7, 2010 (the “**Disclosure Statement**”), both of which were filed on the Petition Date, for a full and complete description of the Plan, including defined terms as well as the treatment of all Claims and Interests under the Plan.

cash, two subordinated unsecured promissory notes in the aggregate principal amount of \$1,350,000, and up to \$15,000 in cash representing legal fees incurred by Von Zuben in connection with the negotiation of the treatment of his claims under the Plan;

- **Class 8:** Each holder of an Equity Interest (other than ESOP Interests) shall receive its Pro Rata share of 1.5% of the New Common Stock of the Reorganized Company to be issued pursuant to the Plan, plus five year Equity Warrants to purchase up to 15.0% of the fully diluted New Common Stock of the Reorganized Company; and
- **Class 9:** Each holder of an ESOP Interest arising out of the ESOP shall receive its Pro Rata share of 2% of the New Common Stock of the Reorganized Company to be issued pursuant to the Plan, and the ESOP, as amended by the ESOP Plan Amendments, will be assumed by the Reorganized Company.

32. The Debtors commenced solicitation of the Plan and the accompanying Disclosure Statement on May 7, 2010. The solicitation period ended on June 7, 2010 (the “**Voting Deadline**”).

33. As set forth in the Declaration of David M. Sharp of Kurtzman Carson Consultants LLC Regarding Mailing, Voting, and Tabulation of Ballots Accepting the Proposed Joint Prepackaged Plan of Reorganization of The Newark Group, Inc., *et al.* (the “**KCC Declaration**”), filed contemporaneously herewith, the Plan has been accepted by well in excess of the statutory thresholds of impaired claims and interests required by §§ 1126(c) and (d) of the Bankruptcy Code. Specifically, the Class 6 Prepetition Notes Claims, the Class 7 Von Zuben Subordinated Unsecured Note Claim, the Class 8 Equity Interests, and the Class 9 ESOP Interests each voted to accept the Plan.

34. In sum, other than holders of the Prepetition Notes Claims and the Von Zuben Subordinated Unsecured Note Claim in Classes 6 and 7, each class of which voted to accept the Plan, no other creditors are Impaired under the Plan. Moreover, each of the two Impaired classes of equity interests has voted to accept the Plan.

35. The Debtors intend to fund these Chapter 11 Cases through two DIP Facilities that are the subject of this Motion. Upon approval of the DIP Facilities by the Court,

the proceeds of the DIP ABL Facility will repay in full and replace the Existing ABL Loan Agreement, and the proceeds of the ORIX DIP Facility will repay in full and replace the Prepetition CL Credit Facility. The remaining proceeds of the DIP Facilities will fund, among other things, the ongoing operating expenses of the Debtors' businesses and the costs of these Chapter 11 Cases.

36. The Debtors believe that consummation of the consensual financial restructuring transactions proposed under the Plan is necessary to provide the Debtors with a strong balance sheet and capital structure and the liquidity necessary to operate successfully in the future. Indeed, the Debtors believe that the prompt realization of the transactions outlined in the Plan will enable them to exit chapter 11 appropriately capitalized and competitively positioned for success and future growth.

37. A more fully detailed description of the Debtors' businesses, the reasons for commencing these Chapter 11 Cases, the Debtors' prepetition indebtedness, and the relief sought from this Court to allow for a smooth transition into chapter 11 is set forth in the Declaration of Robert H. Mullen in Support of Chapter 11 Petitions and Various First Day Applications and Motions (the "**First Day Declaration**") filed contemporaneously herewith, and is incorporated by reference as though fully set forth herein.

#### **THE DEBTORS' NEED FOR POST-PETITION FINANCING**

38. The Debtors require the immediate approval of the proposed financing to provide working capital in order to avoid irreparable harm and to preserve and maintain their businesses. Without the relief requested within, the Debtors will be unable to, *inter alia*, continue the operation of their businesses, maintain vital business relationships with their existing vendors, suppliers, and customers, make payroll, pay their existing obligations, purchase inventory, pay for utilities, freight, insurance, or satisfy their basic needs for working capital.

39. The Debtors will use the funds available pursuant to the DIP ABL Loan Agreement to repay the obligations due under the Existing ABL Loan Agreement. The Debtors

will use the funds available pursuant to the ORIX DIP Facility to pay in full all obligations due under the Prepetition CL Credit Facility;<sup>14</sup> to pay down part of the DIP ABL Facility, thereby creating additional borrowing availability under the asset-based loans; for expenses associated with the Debtors' operations; and for costs of administration, each in accordance with the 13-week cash flow budget (subject to permitted variances), substantially in the form attached to this Motion as Exhibit C (the "**Budget**").<sup>15</sup>

40. If the Court approves the financing proposed herein, the Debtors fully expect that they can meet the terms of the DIP Facilities, including the Budget, and operate their businesses as going concerns, thereby maximizing the value of their assets until they can confirm the Plan, which, as noted above, will pay virtually all claims in full. The only Impaired classes of Claims under the Plan are the Prepetition Notes Claims and the Von Zuben Subordinated Unsecured Note Claim. Both of these classes have voted to accept the Plan. On the other hand, if the Court does not authorize the Debtors to obtain the proposed post-petition financing, the Debtors will be forced to cease operations; the value of their assets will diminish greatly and rapidly to the detriment of all stakeholders; and the ability of the Debtors to confirm their Plan will be irreparably impaired.

41. Starting in late 2008, The Newark Group, with the assistance of its investment banker, Jefferies & Co., Inc. ("**Jefferies**"), began exploring restructuring and recapitalization alternatives. In January of 2009, The Newark Group enlisted the assistance of AlixPartners, LLP ("**AlixPartners**") as financial advisors, and continued exploring the restructuring and recapitalization options. It soon became apparent, however, that the Debtors would not be able to secure out-of-court financing in the current lending market in the time period available, particularly in light of their liquidity position and their significant leverage. In mid-February

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<sup>14</sup> Simultaneous with the full payoff and termination of the Prepetition CL Credit Facility, and pursuant to an agreement between the Prepetition CL Lenders, the DIP ABL Lenders, and the Company, the Workers' Compensation Letter of Credit in the approximate amount of \$7.1 million, originally issued under the Prepetition CL Credit Facility, will be deemed to be issued under the DIP ABL Facility, and will thereafter be governed by the terms and conditions thereof.

<sup>15</sup> The Budget will be updated on a weekly basis.

2009, therefore, The Newark Group, primarily through Jefferies, commenced efforts to solicit proposals for debtor-in-possession financing in connection with a potential chapter 11 filing.

42. After a thorough analysis of potential lenders, the Debtors, through their advisors, contacted numerous lenders. The lenders contacted represented a targeted list of hedge funds, private equity funds and other distressed lenders that were viewed as potential candidates for financing the Debtors' businesses. A number of the potential lenders contacted requested and received further information describing the Debtors' businesses and historical financial performance. Thereafter, certain potential lenders indicated that they were interested in moving forward with the process and executed confidentiality agreements for the purpose of obtaining additional information.

43. Upon the execution of confidentiality agreements, several lenders that were able to demonstrate an advanced interest in providing the Debtors with financing were granted meetings with the Debtors' senior management, and several potential lenders submitted term sheets to the Debtors.

44. In March 2009, the Newark Group began having discussions with certain holders of the Prepetition 2014 Notes regarding the possible restructuring of the Prepetition 2014 Notes through either an out-of-court restructuring or a chapter 11 reorganization plan. These holders subsequently formed a coalition (the "**Coalition of Prepetition Noteholders**")<sup>16</sup> and retained financial advisors and counsel. The Newark Group and the Coalition of Prepetition Noteholders proceeded to actively negotiate a potential restructuring of the Prepetition 2014 Notes.

45. After reaching an agreement in principle with the Coalition of Prepetition Noteholders, the Company, along with its advisors, commenced efforts to solicit proposals for DIP and exit financing in connection with the prepackaged Plan. Jefferies contacted eleven potential lenders, of which three submitted proposals for asset-based revolvers and term loans, and two submitted proposals solely for asset-based revolvers. The Company decided to pursue

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<sup>16</sup> The Coalition of Prepetition Noteholders represents approximately 84% of the outstanding Prepetition 2014 Notes, measured as a percentage of the face amount of the issuance.

financing proposals from one potential asset-based revolver lender and one term loan lender, in addition to exploring the possibility of financing with their prepetition lenders, the Existing ABL Lenders and the Prepetition CL Lenders.

46. The Company conducted extensive negotiations with the potential asset-based revolver lender and a group consisting of certain of the Existing ABL Lenders. Both lenders conducted full due diligence, and both offered the Company “DIP-to-exit” financing commitments. In addition, both lenders proposed financing facilities that would have repaid and replaced the existing secured credit facilities provided by the Existing ABL Lenders with the new DIP-to-exit facilities. The Company eventually chose Wells, agent for the Existing ABL Lender, based on the more favorable terms offered.

47. At the same time, the potential term loan lender commenced an exploratory syndication process, contacting over 100 potential investors and conducting extensive investor due diligence. As with the proposed asset-based loans, the financing offered by the potential term loan lender would have taken out and replaced the existing term loan held by the Prepetition CL Lenders. Ultimately, however, the Company decided that the terms offered by the Prepetition CL Lenders were more favorable than those that were offered by the new term loan lender.

48. The Company, along with its financial and legal advisors, spent months negotiating the agreements for the new asset-based revolver, the agreements covering the restructuring of the existing Prepetition CL Credit Facility into an exit facility, and the intercreditor agreement that would govern the post-petition relationships between these two lender groups.

49. During these negotiations, an impasse developed between the prepetition lending groups with regard to the intercreditor relationship. In response to the impasse, certain of the Prepetition Noteholders proposed providing term loan financing that would refinance the existing Prepetition CL Credit Facility and provide for an intercreditor agreement acceptable to the Existing ABL Lenders.

50. Although the Company, its advisors, and the three proposed post-petition lenders attempted to work out the details of this arrangement for months, the negotiations broke down due to various intercreditor issues that simply could not be resolved. The Company, with the assistance of its financial advisors, began to explore alternate financing, which ultimately resulted in the DIP Facilities proposed herein.

### **THE PROPOSED DIP FACILITIES**

51. After an extensive re-canvassing of the available financial markets and lenders, the Debtors, along with AlixPartners and Jefferies, decided upon a simpler post-petition financing package that affords them all the benefits of the previously contemplated financing package, but also provides additional funding availability, as described below.

52. The financing package proposed herein consists of:

- a. the DIP ABL Facility - a revolving loan of up to \$50 million which will be used to pay in full the obligations due pursuant to the Existing ABL Loan Agreement on the day the Interim DIP Order is signed;
- b. the ABL Exit Facility – a revolving loan of up to \$50 million, which will be used as follows:
  - (i) to pay in full the remaining obligations due on the Effective Date under the DIP ABL Facility (some of which obligations will have been paid down by the ORIX DIP Facility); and
  - (ii) to finance the Company's working capital needs post-Effective Date;
- c. the ORIX DIP Facility, pursuant to which the Company will be authorized to borrow up to \$110 million, which will be used as follows:
  - (i) to pay in full all obligations due under the Prepetition CL Credit Facility;
  - (ii) to pay down part of the DIP ABL Facility, thereby creating approximately \$22.5 million in additional borrowing availability under the asset-based loans, i.e., the DIP ABL Facility and, on the Effective Date, the ABL Exit Facility; and

d. the ORIX Exit Facility, pursuant to which the Company will be authorized to borrow up to \$110 million, which will be used to pay in full the obligations due under the ORIX DIP Facility on the Effective Date and for general corporate purposes.

53. Prior to the Petition Date, the Company had approximately \$3.5 million of borrowing availability under its Prepetition Credit Facilities. As a result of the DIP Facilities proposed herein, the Company expects to have approximately \$22.5 million of availability immediately upon the closing of the DIP Facilities. This increased availability is critical to the viability and growth of the Company.

54. The Debtors believe that the financing provided pursuant to the proposed DIP Facilities and the increased availability they will realize therefrom will provide them with the necessary liquidity to fund their operating, working capital and capital expenditure needs during the course of these Chapter 11 Cases.

#### **The DIP ABL Facility**

55. The DIP ABL Facility provides for borrowings of up to \$50 million in the aggregate, consisting of (a) a revolving loan subject to a borrowing base and other terms, including up to \$15 million for letters of credit and a swingline subfacility in a principal amount of up to \$7.5 million.

56. The terms and conditions of the DIP ABL Facility are set forth in that certain Amended and Restated Loan and Security Agreement by and among the DIP ABL Borrowers, the DIP ABL Guarantor, the DIP ABL Lenders, and the DIP ABL Agent, substantially in the form attached hereto as Exhibit B (the “**DIP ABL Loan Agreement**”). The proceeds of the DIP ABL Loan Agreement will be used to “take out” and pay off the Existing ABL Loan Agreement.

57. The obligations under the DIP ABL Loan Agreement will be secured by first priority perfected security interests and liens on, primarily, all accounts receivable, inventory, and other Priority Collateral, as defined in the DIP ABL Loan Agreement, of The Newark Group

and Cogen (the “**DIP ABL Priority Collateral**”), and a second priority security interest in all other personal property of The Newark Group and Cogen.

58. The priority of the liens and security interests in the DIP ABL Priority Collateral shall be subject to the terms of that certain intercreditor agreement to be executed simultaneously with the execution of the DIP ABL Loan Agreement and the ORIX DIP Facility Credit Agreement, by and among The Newark Group, NGI, and certain domestic subsidiaries of The Newark Group, as borrowers, certain domestic subsidiaries of The Newark Group as guarantors; the ORIX DIP Facility Agent and the ORIX Exit Facility Agent, and Wells, in its capacity as administrative agent and collateral agent under the DIP ABL Loan Agreement and the ABL Exit Facility Credit Agreement; (the “**Intercreditor Agreement**”), substantially in the form attached hereto as Exhibit D.

59. The significant elements of the DIP ABL Facility are described in detail in paragraphs 4-5 above.

#### **The ORIX DIP Facility**

60. Pursuant to the ORIX DIP Facility, the Company will be authorized to borrow up to \$110 million. The terms and conditions of the ORIX DIP Facility are set forth in that certain Loan and Security Agreement by and among The Newark Group as borrower, certain domestic subsidiaries of The Newark Group as guarantors, the ORIX DIP Facility Lenders, and the ORIX DIP Facility Agent, substantially in the form attached hereto as Exhibit E (the “**ORIX DIP Facility Credit Agreement**”). The proceeds of the ORIX DIP Facility will be used to immediately “take out” and pay off the Prepetition CL Credit Facility

61. The obligations under the ORIX DIP Facility Credit Agreement will be secured by a first priority lien on all present and after-acquired personal property (excluding the DIP ABL Priority Collateral), including, but not limited to, equipment, real property; the outstanding capital stock of certain direct subsidiaries of The Newark Group (limited to a pledge of 65% of the voting equity and 100% of the non-voting equity of each first tier foreign subsidiary) (the

**“ORIX DIP Priority Collateral”**), and a second priority lien on the DIP ABL Priority Collateral.

62. The priority of liens being granted pursuant to the ORIX DIP Facility Credit Agreement will be subject to the terms of the Intercreditor Agreement.

63. The significant elements of the ORIX DIP Facility are described in paragraphs 7-8 above.

64. The Debtors have an urgent need to obtain the proposed financing for, among other things, continuing the operation of their businesses in an orderly manner, maintaining business relationships with vendors, suppliers, and customers, paying employee wages, and satisfying other working capital and operational needs – all of which are necessary to preserve and maximize the assets of the Debtors’ estates, minimize disruption to the Debtors’ businesses operations, and ensure that the Debtors can consummate their balance sheet restructuring embedded in their Plan.

65. Given the existing prepetition liens on the Debtors’ assets, it is impossible to obtain sufficient post-petition unsecured credit in the ordinary course of business, even by offering to grant lenders administrative expense priority.

66. After pursuing extensive, aggressive, and good faith, arms-length negotiations with representatives of numerous lenders, the Debtors determined, given, among other things, the severe credit environment that exists in today’s market, that the DIP Facilities proposed herein offer the best option for financing their businesses. The proposed financing will benefit the Debtors, their creditors, and their estates. Under the circumstances of these cases, which involve a prepackaged chapter 11 Plan that has the overwhelming support of all impaired classes of claims and interests, and which will pay General Unsecured Claims in full, the terms of the DIP Facilities are just, fair, and reasonable and reflect the Debtors’ exercise of their prudent business judgment.

67. Likewise, the various fees and charges required by the lenders under the proposed DIP Facilities were necessary to secure their agreement to provide the financing, given the state of today's capital markets.

68. Finally, the Debtors have prepared an initial Budget, substantially in the form attached hereto as Exhibit C, which is incorporated herein. The Debtors believe the Budget is achievable and will allow them to operate while in Chapter 11 without the accrual of unpaid liabilities.

69. Through the refinancing offered by the DIP Facilities, which will be converted to exit facilities upon confirmation of the Plan, the Debtors intend to restructure their finances, ensure that the Plan remains on course, and emerge from chapter 11 protection with stronger businesses that are better able to compete in the industry in which they operate. Without the immediate approval of the DIP Facilities, the Debtors' estates will suffer immediate and irreparable harm.

### **RELIEF REQUESTED**

70. By this Motion, the Debtors request that this Court enter an order pursuant to §§ 105(a), 361, 362, 363 and 364 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6004, 9014, and 9034(f), for entry of an Interim DIP Order, substantially in the form attached hereto as Exhibit A, and a Final DIP Order:

a. authorizing the Debtors to obtain and enter into the following post-petition financing:

- (i) the DIP ABL Loan Agreement with the DIP ABL Agent and the DIP ABL Lenders, substantially in the form attached hereto as Exhibit B, including, without limitation, security agreements, pledge agreements, notes, guarantees, mortgages, and Uniform Commercial Code ("UCC") financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (collectively, the "DIP ABL Facility Documents").

- (ii) the ORIX DIP Facility Credit Agreement with ORIX Finance Corp. and the ORIX DIP Lenders, substantially in the form attached hereto as Exhibit E, including, without limitation, security agreements, pledge agreements, notes, guarantees, mortgages, and UCC financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (collectively, the “**ORIX DIP Facility Documents**”);
- b. granting liens and security interests and superpriority administrative expense status in connection with the DIP ABL Facility pursuant to 11 U.S.C. §§ 363 and 364(c);
- c. granting security interests and superpriority administrative expense status in connection with the ORIX DIP Facility pursuant to 11 U.S.C. §§ 363 and 364(c) and (d);
- d. modifying the automatic stay pursuant to 11 U.S.C. § 362;
- e. authorizing repayment of the prepetition secured debt owing to Wells, as agent under the Existing ABL Loan Agreement (the “**Existing ABL Agent**”) pursuant to 11 U.S.C. § 363;
- f. authorizing repayment of the prepetition secured debt owing to Wells, as existing agent under the Prepetition CL Credit Facility (the “**Prepetition CL Administrative Agent**”) pursuant to 11 U.S.C. § 363;
- g. scheduling a final hearing pursuant to Bankruptcy Rule 4001 to consider entry of the Final DIP Order granting the relief requested in this Motion on a final basis and approving the form of notice with respect to the final hearing;
- h. authorizing the use of the proceeds of the DIP ABL Facility (net of any amounts used to pay fees, costs and expenses under the DIP ABL Loan Agreement), to pay in full the obligations due pursuant to the Existing ABL Loan

Agreement in a manner consistent with the terms and conditions of the DIP ABL Loan Agreement and in a manner substantially consistent with the Budget;<sup>17</sup>

i. authorizing the use of the proceeds of the ORIX DIP Facility (net of any amounts used to pay fees, costs and expenses under the ORIX DIP Facility Credit Agreement), in a manner consistent with the terms and conditions of the ORIX DIP Facility Credit Agreement and in a manner substantially consistent with the Budget:

- (i) to pay in full all obligations due under the Prepetition CL Credit Facility;
- (ii) to pay down part of the DIP ABL Facility;
- (iii) for working capital, letters of credit and capital expenditures;
- (iv) for other general corporate purposes of the Debtors (including intercompany loans to the extent permitted by the DIP Facilities);
- (v) for payment of any related transaction costs, fees and expenses; and
- (vi) for the costs of administration of the Chapter 11 Cases;

j. waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of the Interim DIP Order; and

k. granting the Debtors such other and further relief as the Court deems necessary, appropriate, proper and consistent with the terms of the DIP Orders.

### **BASIS FOR RELIEF REQUESTED**

71. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under § 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or incur debt with priority over certain administrative expenses, secured by a lien on unencumbered property, or secured by a junior lien on already-encumbered property.

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<sup>17</sup> The Debtors' preliminary 13-week Budget, including cash flow projections, is attached hereto as Exhibit C (the "**Budget**").

72. Section 364(d) of the Bankruptcy Code allows a debtor to obtain credit secured by a senior or equal lien on already-encumbered property provided that the debtor is unable to obtain such credit otherwise and the prior lienholder's interest in the property is adequately protected.

73. For the reasons discussed below, the Debtors satisfy the standards for obtaining post-petition financing on a secured basis pursuant to § 364(c) and § 364(d) of the Bankruptcy Code.

**The Debtors Satisfy the Requirements Necessary to Obtain Post-Petition Financing Pursuant to Section 364(c) of the Bankruptcy Code.**

74. The Debtors propose to obtain secured financing under the DIP Facilities by providing security interests and liens as set forth above pursuant to section 364(c) of the Bankruptcy Code by providing both a senior lien on unencumbered property and a junior lien on encumbered property, both of which would be entitled to superpriority administrative expense status. Specifically, § 364(c) provides:

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

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or, 507(b) of 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.

75. To obtain post-petition credit under § 364(c), a Debtor first must show that it is “unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense.” 11 U.S.C. § 364(c). See also In re Garland Corp., 6 B.R. 456,

461 n.11 (1<sup>st</sup> Cir. BAP 1980) (secured credit under § 364(c) is authorized, after notice and a hearing, upon showing that unsecured credit cannot be obtained).

76. To determine whether a debtor may obtain financing under section 364(c) of the Bankruptcy Code, the courts have articulated a three-part test:

(1) the debtor is unable to obtain unsecured credit under section 364(b) (i.e., by granting a lender administrative expense priority);

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

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

In re Ames Dept. Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made a reasonable effort to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code); see also In re St. Mary Hospital, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa.), modified on other grounds, 75 B.R. 553 (1987) (debtor seeking unsecured credit under section 364(c) of the Bankruptcy Code must prove that it was unable to obtain unsecured credit pursuant to section 364(b) of the Bankruptcy Code).

77. A debtor seeking financing under § 364(c) of the Bankruptcy Code must make reasonable efforts to seek other sources of unsecured credit, but is granted deference in acting in accordance with its business judgment and, indeed, is not required to seek credit from every possible source. See, e.g., In re Ames, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders); see also In re: Snowshoe Co., 789 F.2d 1085, 1088 (4<sup>th</sup> Cir. 1986) (stating that “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”).

78. As discussed above, the Debtors attempted to identify all reasonable sources of post-petition financing on the best possible terms while they were in the process of soliciting a financing facility. Based on current capital market conditions and discussions with numerous potential lenders, however, the Debtors, in consultation with their professional advisors, determined that post-petition financing on an unsecured, administrative claim basis or on a junior lien priority basis would be unobtainable.

79. Moreover, the proposed financing is necessary to preserve the assets of the Debtors' estates. Without post-petition financing, the Debtors would be unable to operate their businesses as going concerns, which would significantly impair the value of the Debtors' assets and limit their ability to repay their debts and liabilities. Indeed, the Debtors' ability to continue operating their businesses and complete the proposed financial restructuring hinges upon their being able to access post-petition financing.

80. Finally, given the Debtors' circumstances and the volatile conditions and lack of liquidity in the capital markets, the Debtors believe the terms of the proposed DIP Facilities are fair, reasonable, and adequate.

81. Therefore, the Debtors meet the requirements to obtain post-petition financing pursuant to § 364(c) of the Bankruptcy Code.

**The Debtors Satisfy the Requirements Necessary to Obtain Post-Petition Financing Pursuant to Section 364(d) of the Bankruptcy Code and Rule 4001(d).**

82. In addition to obtaining post-petition financing pursuant to § 364(c), the Debtors propose to obtain financing pursuant to § 364(d) and Rule 4001(d) of the Bankruptcy Code.

83. Section 364(d) provides that the court may authorize the debtor to obtain secured financing, as follows:

- (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if -

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d).

84. Bankruptcy Rule 4001(d) provides, in pertinent part, that the Court may enter an order approving “an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity’s lien or interest in such property.” Fed. R. Bankr. P. 4001(d)(1)(A)(5).

85. The ORIX DIP Lenders propose to take a senior position to any existing liens on the collateral that currently secures the Prepetition CL Credit Facility (the “**DIP TL Priority Collateral**”), and have refused to provide financing without obtaining a lien of equal priority to that which secures the obligations under the Prepetition CL Credit Facility.

86. Moreover, the Debtors have been unable to obtain financing to replace the Prepetition CL Lenders without granting similar liens.

87. The Existing ABL Lenders and the DIP ABL Lenders have agreed, as allowed by Rule 4001(d)(1)(A)(v), that their liens on the DIP TL Priority Collateral shall be junior and subordinate to the liens granted under the ORIX DIP Facility, pursuant to the terms of the Interim DIP Order and the Intercreditor Agreement.

88. The Debtors are unaware of any other liens on the DIP TL Priority Collateral. However, the ORIX DIP Lenders have indicated that they are unwilling to provide the ORIX DIP Facility unless they are assured that their liens in that collateral will be first priority liens. The proposed priority, while technically might be considered “priming,” will not impair the rights of any potential existing lienholder, because such lienholder would find itself in essentially the same position that it currently maintains – in second position behind the existing term loan lenders. Vis-à-vis any existing lienholder, the proposed ORIX DIP Facility will simply take the

place of the Prepetition CL Credit Facility. Accordingly, the interests of any potential existing lienholder are not being impaired in any way by the Court's authorization of the proposed post-petition financing.

89. Moreover, the interests of any other potential lienholders will not be impaired in any way by the Court's authorization of the proposed post-petition financing, as such potential lienholders are adequately protected by the value of the large equity cushion in the collateral.

90. Section 361 of the Bankruptcy Code states, in pertinent part, that when adequate protection is required pursuant to § 364, "such adequate protection may be provided by" (1) cash payment(s), to the extent that the grant of the § 364 lien results in a decrease in the value of the existing lienholder's interest in the property; (2) an additional or replacement lien to the extent that the grant of the § 364 lien results in a decrease in the value of the existing lienholder's interest in the property; or (3) other relief that will result in the "indubitable equivalent" of the existing lienholder's interest in the property, other than an administrative expense claim under § 503(b)(1). 11 U.S.C. § 361.

91. Section 361 does not set forth the *only* methods of adequate protection that are available to the Court, as evidenced by the Legislature's use of the permissive "may" in the first phrase of the section. It merely illustrates the means by which adequate protection may be provided, and provides general contours of the concept. See House Report No. 95-595, 95th Cong. 1st Sess. 338-40 (1977); see also 1 Alan N. Resnick & Henry J. Sommer, Collier Pamphlet Edition 2010, p. 219 (Matthew Bender).

92. Courts have held that a meaningful equity cushion can obviate the need for any other forms of adequate protection. In re Mellor, 734 F.2d 1396 (9th Cir. 1984); In re Cardell, 88 B.R. 627 (Bankr. D.N.J. 1988). See also In re McGowan, 6 B.R. 241, 243 (Bankr. E.D. Pa. 1980) (holding that a 10% cushion is sufficient to be adequate protection).

93. "Equity cushion" has been defined as "the surplus of value remaining after the amount of indebtedness is subtracted from the fair market value of the collateral."

Commonwealth of Pa. State Employees Retirement Fund v. Roane, 14 B.R. 542, 545 (E.D. Pa. 1981). Here, the substantial equity cushion provided by the value of the collateral provides sufficient adequate protection to any lienholder that may subsequently be discovered.

94. The appraised value of the DIP TL Priority Collateral is well over \$158 million. In March, 2009, the machinery and equipment located at five (5) of the Debtors' U.S. locations was appraised at approximately \$87 million, and just a portion of the Debtors' real estate holdings were appraised at approximately \$71 million, for a total of \$158 million.

95. Moreover, the value of only part of the ABL Priority collateral securitizing that loan was approximately \$97.2 million, consisting of approximately \$60.6 million in gross accounts receivable and approximately \$36 million in gross inventory.

96. Accordingly, the aggregate maximum amount of the obligations pursuant to the DIP Facilities will be a total of approximately \$160 million, while the value of the collateral securing those obligations is approximately \$254.6 million, leaving an equity cushion of no less than \$94.6 million, or over 59%. This is more than sufficient to provide an adequate equity cushion to any potential lienholders.

### **Take-Out Transactions**

97. The DIP ABL Lenders were willing to extend post-petition financing to the Debtors on the terms described herein on the condition that the proceeds of the DIP ABL Facility be used to repay in full the obligations due pursuant to the Existing ABL Loan Agreement.

98. Paying in full the obligations due pursuant to the Existing ABL Loan Agreement will, among other things, obviate the need to segregate and separately account for post-closing collections, avoid additional intercreditor issues and an unnecessary priming fight, as well as avoid the accrual of interest payments under the Existing ABL Loan Agreement (potentially at default rates) pursuant to § 506(b) of the Bankruptcy Code.

99. Moreover, the Existing ABL Loan Agreement is fully and validly secured,<sup>18</sup> and the obligations due thereunder must be paid in full. The Debtors submit, therefore, that the proposed refinancing with the provision to pay off, in full, the Existing ABL Loan Agreement upon the entry of the Interim DIP Order will not prejudice the Debtors' estates – it merely pays off one facility which has been in default for over a year, and replaces it with another facility that, in combination with the ORIX DIP Facility, will provide approximately \$24 million in additional borrowing availability and will enable the Debtors to smoothly navigate the chapter 11 process and emerge stronger and better positioned to keep themselves competitive in this rapidly changing economic environment.

100. Similarly, the ORIX DIP Lenders extended their post-petition financing package to the Debtors on the terms described herein on the condition that the proceeds of the ORIX DIP Facility be used to repay in full the obligations due under the Prepetition CL Credit Facility. As noted above, the value of the collateral securing the Prepetition CL Credit Facility is well in excess of the claim amount.

101. Refinancing on the terms proposed herein and satisfying the obligations due under the Prepetition CL Credit Facility will not prejudice the Debtors' estates because the obligations due pursuant to the Prepetition CL Credit Facility must be repaid in full upon consummation of any plan and, in fact, the prepackaged Plan expressly provides for the satisfaction of the Prepetition CL Credit Facility from the proceeds of the ORIX DIP Facility. Moreover, no one can reasonably expect the ORIX DIP Lenders, or any other lender, to provide new financing if the collateral securing the debt is already encumbered by the obligations due under the Prepetition CL Credit Facility. Furthermore, the ORIX DIP Facility will allow the Debtors to increase their availability under the DIP ABL Facility by approximately \$22.5 million. This is a significant benefit to the estates and their creditors.

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<sup>18</sup> As of the Petition Date, the balance due pursuant to the Existing ABL Loan Agreement was approximately \$42.1 million (excluding approximately \$785,000 in outstanding letters of credit), while the value of only part of the collateral securing that loan was approximately \$70 million, consisting of approximately **[\$58 million]** in gross accounts receivable and approximately **[\$12 million]** in eligible inventory.

102. Significantly, all classes of impaired creditors have voted to accept the Plan – a Plan that provides for a full recovery to, among others, the Existing ABL Lenders (through the DIP ABL Loan Agreement) and the Prepetition CL Lenders (through the ORIX DIP Facility), and to General Unsecured Creditors.

103. Courts in this circuit have approved financing facilities that, like the DIP Facilities proposed herein, provide for the repayment in full of prepetition financing facilities. See, e.g., In re U.S. Concrete, Inc., Case No. 10-11407 (Bankr. D. Del. April 29, 2010) (DIP facility take-out of \$40 million prepetition facility on interim order basis); In re ACG Holdings, Inc., Case No. 08-11467 (Bankr. D. Del. July 16, 2008).

**Approval of the DIP Facilities Is In the Best Interests of the Debtors' Estates.**

104. The Debtors have made a concerted, good-faith effort to obtain credit on the most favorable terms available, consistent with their goal of confirming their chapter 11 Plan on an expedited basis. The proposed DIP Facilities are fair, reasonable and adequate given the circumstances of these cases in particular, and the severe credit crisis that exists in today's market in general.

105. Bankruptcy courts consistently defer to a debtor's business judgment on most business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. See In re Trans World Airlines, Inc., 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that an interim loan, a receivables facility and an asset-based facility were approved because they "reflect[ed] sound and prudent business judgment . . . [, were] reasonable under the circumstances and in the best interest of [the debtor] and its creditors"); In re Simasko Prod. Co., 47 B.R. 444, 449 (D. Colo. 1985) ("[b]usiness judgments should be left to the board room and not to this Court."). In fact, "[m]ore exacting scrutiny [of the debtor's business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d

1303, 1311 (5th Cir. 1985). Consistent with this authority, the Debtors respectfully submit that the Court should approve the Debtors' decision to accept and enter into the proposed DIP Facilities.

106. A denial of the requested relief will cause immediate and irreparable harm to the Debtors and their estates. Absent immediate approval of the DIP Facilities, the Debtors would have no ability to meet their ongoing obligations to suppliers, vendors, employees and other creditors. If the Debtors are unable to pay their ongoing obligations, they will not be able to operate. Moreover, and of particular significance, if the DIP Facilities are not approved immediately, the Debtors' ability to confirm and implement the prepackaged Plan will be irreparably harmed to the severe detriment of their creditors, employees, and all other stakeholders. In contrast, the Debtors' immediate access to the DIP Facilities will ensure that the "going concern" value of their assets are preserved – a value that is substantially greater than the value which would be realized from a piecemeal liquidation of those assets if the Debtors were forced to cease operations immediately – and will permit the Debtors to move forward with the prompt confirmation of their prepackaged Plan.

107. The Debtors submit for all these reasons that ample justification exists for the relief requested herein.

#### **REQUEST FOR INTERIM RELIEF**

108. Bankruptcy Rule 4001(c) permits a court to approve a debtor's request for authority to obtain financing during the 14-day period following the filing of a motion for authority to obtain such financing, "to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(c)(2). In examining such requests under Bankruptcy Rule 4001, courts apply the same business judgment standard as is applicable to other business decisions. See, e.g., In re Ames, 115 B.R. at 38. The Debtors submit that, for the reasons set forth herein, authority to obtain post-petition financing on an

interim basis as requested in this Motion is necessary to avert immediate and irreparable harm to the Debtors' businesses.

### **REQUEST FOR FINAL HEARING**

109. Pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2), the Debtors respectfully request that the Court set a date for the Final Hearing that is no later than thirty (30) days following the Petition Date.

### **WAIVER OF MEMORANDUM OF LAW**

110. Because the legal points and authorities upon which this Motion relies are incorporated herein and do not raise any novel issues of law, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law pursuant to Local Rule 9013-2 be deemed waived.

### **NOTICE**

111. Notice of this Motion will be provided by facsimile, electronic transmission, overnight delivery or hand delivery to:

- a. Creditors (or their counsel, if known) holding the twenty (20) largest unsecured claims against the Debtors, on a consolidated basis;
- b. Counsel to the Coalition of Prepetition Noteholders;
- c. Counsel to the DIP ABL Agent;
- d. Counsel to the ABL Exit Facility Administrative Agent;
- e. Counsel to the ORIX DIP Facility Agent;
- f. Counsel to the ORIX Exit Facility Agent;
- g. Counsel to the Existing ABL Agent;
- h. Counsel to the Prepetition CL Administrative Agent;

- i. Counsel to the Prepetition Indenture Trustee
- j. Von Zuben and his counsel;
- k. The ESOP Trustees;
- l. The ESOP Independent Fiduciary and its counsel;
- m. The Office of the United States Trustee for the District of New Jersey;
- n. The Office of the United States Attorney for the District of New Jersey;
- o. The Internal Revenue Service;
- p. All known lienholders;
- q. All landlords; and
- r. Any entity that has filed a notice of appearance in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

112. In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

**NO PRIOR REQUEST**

113. No prior request for the relief sought herein has been made by the Debtors to this Court or to any other court.

**(Remainder of page intentionally left blank.)**

**WHEREFORE**, the Debtors respectfully request that this Court: (a) enter an Order, in the form submitted herewith, granting the relief requested herein; and (b) grant to the Debtors such other and further relief as the Court may deem proper.

Dated: June 9, 2010

**LOWENSTEIN SANDLER PC**

By: /s/ Kenneth A. Rosen  
Kenneth A. Rosen (KR 4963)  
Paul Kizel (PK 4176)  
Jeffrey D. Prol (JP 7454)  
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65 Livingston Avenue  
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Proposed Counsel to the Debtors and Debtors-in-Possession

## **EXHIBIT A**

Interim DIP Order

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c)	
<b>LOWENSTEIN SANDLER PC</b> Kenneth A. Rosen (KR 4963) Paul Kizel (PK 4176) Jeffrey D. Prol (JP 7454) Suzanne Iazzetta (SI 2116) 65 Livingston Avenue Roseland, New Jersey 07068 Tel: (973) 597-2500 Fax: (973) 597-2400  Proposed Counsel to Debtors and Debtors in Possession	
In re:	Chapter 11
THE NEWARK GROUP, INC., et al.	Case No. 10-_____(____)
Debtors.	Joint Administration Requested

**INTERIM ORDER (A) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION FINANCING AND GRANT SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. §§ 105 AND 364(c) and (d); (B) MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362; (C) AUTHORIZING DEBTORS TO ENTER INTO DIP ABL AGREEMENTS WITH WELLS FARGO BANK, N.A., AS AGENT; (D) AUTHORIZING DEBTORS TO ENTER INTO DIP TERM LOAN AGREEMENTS WITH ORIX FINANCE CORP., AS AGENT; (E) AUTHORIZING REPAYMENT OF PRE-PETITION SECURED DEBT OWING TO WELLS FARGO BANK, N.A., AS EXISTING AGENT; (F) AUTHORIZING REPAYMENT OF PRE-PETITION SECURED DEBT OWING TO WACHOVIA BANK, N.A., AS EXISTING AGENT FOR PRE-PETITION TERM LOAN LENDERS; AND (G) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

The relief set forth on the following pages, numbered two (2) through sixty-one (61), is hereby **ORDERED**

Page: 2  
Debtor: THE NEWARK GROUP, INC.  
Case No: 10-\_\_\_\_\_(\_\_\_\_)  
Caption: Order (A) Authorizing Debtors to Obtain Interim Post-Petition Financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105 and 364(c); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; (C) Authorizing Debtors to Enter into Agreements with Wachovia Bank, N.A., as Agent; (D) Authorizing Debtors to use Pre-Petition Cash Collateral and Grant Pre-Petition Term Loan Lenders Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363; (E) Authorizing Debtors to Enter into Agreements with Wilmington Trust FSB as Agent for Certain Holders of DIP Floating Rate Senior Secured Notes; (F) Authorizing Repayment of Pre-Petition Secured Debt Owning to Wachovia Bank, N.A. as Existing Agent; and (G) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001

Upon the motion (the “**Motion**”), dated June \_\_, 2010, of The Newark Group, Inc., (“**Debtor Borrower**”), and NP Cogen, Inc. (“**Cogen**”, “**Debtor Guarantor**”), each as a Debtor and Debtor-in-Possession in the above-captioned Chapter 11 cases (collectively, the “**Cases**”), pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2) and 364(d) of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”) and Rules 2002, 4001(b) and (c), and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking, among other things:

(1) authorization pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code for Debtor Borrower and Non-Debtor Borrower (as defined below) to obtain post-petition loans, advances and other financial accommodations on an interim basis for the period through and including the date of the Final Hearing (as defined below) from Wells Fargo Bank, National Association, (“Wells Fargo”), in its capacity as administrative and collateral agent (in such capacity, “**DIP ABL Agent**”), acting for itself and on behalf of the other financial institutions from time to time party to the DIP ABL Loan Agreement (as defined below) as lenders (collectively with DIP ABL Agent, the “**DIP ABL Lenders**”) in accordance with all of the lending formulae, sublimits, terms and conditions set forth in the DIP ABL Loan Agreement, and in accordance with this Order, secured by security interests in and liens upon all of the DIP ABL Collateral (as defined below);

(2) authorization for Debtor Borrower and Debtor Guarantor (collectively, the “**Debtors**”) to enter into the Amended and Restated Loan and Security Agreement, dated of even date herewith, by and among Debtors, Non- Debtor Borrower, DIP ABL Agent and DIP ABL Lenders (the “**DIP ABL Loan Agreement**,” a copy of which is

Page: 3  
Debtor: THE NEWARK GROUP, INC.  
Case No: 10-\_\_\_\_\_(\_\_\_\_)  
Caption: Order (A) Authorizing Debtors to Obtain Interim Post-Petition Financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105 and 364(c); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; (C) Authorizing Debtors to Enter into Agreements with Wachovia Bank, N.A., as Agent; (D) Authorizing Debtors to use Pre-Petition Cash Collateral and Grant Pre-Petition Term Loan Lenders Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363; (E) Authorizing Debtors to Enter into Agreements with Wilmington Trust FSB as Agent for Certain Holders of DIP Floating Rate Senior Secured Notes; (F) Authorizing Repayment of Pre-Petition Secured Debt Owning to Wachovia Bank, N.A. as Existing Agent; and (G) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001

annexed to the Exhibit Supplement (as defined below) hereto as Exhibit A-1 and is incorporated herein), which amends and restates the Existing ABL Loan Agreement (as defined below) and the other Existing ABL Financing Agreements (as defined below), together with the other DIP Financing Agreements (as defined below);

(3) the grant to DIP ABL Agent, for the benefit of itself, the other DIP ABL Lenders and the other Secured Parties (as defined in the DIP ABL Loan Agreement), certain priority liens and security interests, pursuant to Sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code, in and upon the Collateral (as defined in the DIP ABL Loan Agreement), the Intercreditor Agreement (as defined below) and this Order;

(4) the grant to DIP ABL Agent, for the benefit of itself and the other DIP ABL Lenders, of superpriority administrative claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in respect of all DIP ABL Obligations (as defined below);

(5) authorization pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code for Debtors to obtain post-petition term loans on an interim basis from ORIX Finance Corp., in its capacity as administrative and collateral agent (“DIP TL Agent”), acting for itself and on behalf of the other financial institutions from time to time party to the DIP TL Agreement (as defined below) as lenders (collectively with DIP TL Agent, the “DIP TL Lenders”) in accordance with the terms and conditions set forth in the DIP TL Agreement and in accordance with this Order, secured by security interests in liens and upon all of the TL Collateral (as defined below);

(6) authorization for Debtors to enter into the DIP TL Agreement, a copy of which is annexed to the Exhibit Supplement hereto as Exhibit [B-1] and is incorporated

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herein by reference, and to execute and deliver (and cause the non-Debtor subsidiaries to execute and deliver to the extent necessary) the other Financing Agreements (as defined in the DIP TL Agreement) (herein, the “DIP TL Documents”);

(7) the grant to the DIP TL Agent, for the benefit of itself and the DIP TL Lenders, pursuant to Sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code, certain priority liens and security interests in and upon the Collateral (as defined below) as set forth in the DIP TL Agreement, the Intercreditor Agreement, and this Order;

(8) the grant to the DIP TL Agent, for the benefit of itself and the DIP TL Lenders, pursuant to Sections 364(d) of the Bankruptcy Code, first priority liens and security interests in and upon the DIP TL Priority Collateral (as defined below) subject only to the Permitted Term Loan Encumbrances (as defined below) constituting Permitted Liens (as defined in the DIP TL Agreement);

(9) the grant to DIP TL Agent, for the benefit of itself and the other DIP TL Lenders, of superpriority administrative claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in respect of all DIP TL Obligations (as defined below);

(10) modification of the automatic stay to the extent hereinafter set forth;

(11) authority for Debtor Borrower, Non-Debtor Borrower and Debtor Guarantor to pay all amounts owing, or asserted to be owing, from Debtor Borrower, Non-Debtor Borrower and Debtor Guarantor to the Existing ABL Agent (as defined below) and Existing ABL Lenders (as defined below), under the Existing ABL Loan Agreement (as defined below) and the other Existing ABL Financing Agreements as fully secured pre-petition claims,

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subject to such terms and conditions as set forth below;

(12) authority for Debtor Borrower, Non-Debtor Borrower and Debtor Guarantor to pay all amounts owing, or asserted to be owing from Debtor Borrower, and Debtor Guarantor to the Pre-Petition Term Loan Agent (as defined below), and each of the Pre-Petition Term Loan Lenders (as defined below), under the Pre-Petition Term Loan Agreements (as defined below) as fully secured pre-petition claims, subject to such terms and conditions as set forth below; and

(13) the setting of a Final Hearing on the Motion.

It appearing that due and appropriate notice of the Motion, the relief requested therein, and the Interim hearing on the Motion (the “**Interim Hearing**”) (collectively, the “**Notice**”) having been served by the Debtors in accordance with Rule 4001(c) on the following parties or their counsel (i) the DIP ABL Agent, (ii) the DIP ABL Lenders, (iii) the DIP TL Agent, (iv) the DIP TL Lenders, (v) the Pre-Petition Term Loan Agent, (vi) the United States Trustee for the District of New Jersey (the “**U.S. Trustee**”), (vii) the holders of the twenty (20) largest unsecured claims against each of the Debtors' estates on a consolidated basis (the “**20 Largest Unsecured Creditors**”), (viii) The Bank of New York, as Indenture Trustee (the “Pre-Petition Indenture Trustee”) for the holders of the Debtors’ Senior Subordinated Notes, (ix) counsel to the Coalition of Prepetition Purchasers (as defined below), (x) the Internal Revenue Service, (xi) Wachovia Bank, N.A. (“Wachovia”) and PNC Bank (“PNC”) (collectively, the “**Blocked Account Banks**”), (xii) all appropriate state taxing authorities, (xiii) all landlords, owners, consignees, and/or operators of premises at which Debtors’ inventory and/ or equipment is located, (xiv) each other known holder of a lien or claim against the DIP TL Priority Collateral (as defined below), and

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(xv) certain other parties identified in the certificate of service filed with the Court, including, without limitation, all creditors who have filed or recorded pre-petition liens or security interests against any of the Debtors' assets (collectively, the “*Noticed Parties*”).

Upon the record made by the Debtors at the Interim Hearing, including the Motion, and the filings and pleadings in the Cases, and good and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Petition. On June [9,] 2010 (the “*Petition Date*”), each Debtor filed a voluntary petition (the “*Petition*”) under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. The Court has jurisdiction of this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Motion is a "core" proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A), (D) and (M). Venue of the Cases and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. Under the circumstances, the Notice given by the Debtors of the Motion, the Interim Hearing and the relief granted under this Order constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(c).

D. Debtors' Acknowledgments and Agreements. The Debtors admit, stipulate, acknowledge and agree that:

(i) *Pre-Petition ABL Financing Agreements*. Prior to the commencement of the Cases, Wells Fargo, as successor by merger to Wachovia Bank, National

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Association, in its capacity as administrative agent and collateral agent (in such capacity, the “**Existing ABL Agent**”) and the financial institutions from time to time party to the Existing ABL Loan Agreement (as defined below) as lenders thereto, the “**Existing ABL Lenders**”) made loans, advances and provided other financial accommodations to Borrowers (as defined below) pursuant to the terms and conditions set forth in: (1) the Loan and Security Agreement, dated March 9, 2007, by and among Debtor Borrower, Newark Group International B.V. (“**Non-Debtor Borrower**”, together with Debtor Borrower, each individually, a “**Borrower**” and collectively, the “**Borrowers**”), Guarantor, Ridge Finance Corp., as guarantor (which entity has since been merged into Debtor Borrower), and the Existing ABL Agent, acting for itself and on behalf of the Existing ABL Lenders (as the same has heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, the “**Existing ABL Loan Agreement**”), and (2) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of Existing ABL Agent or any Existing ABL Lender, including, without limitation, all other security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements, and all other related agreements, documents and instruments executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Existing ABL Loan Agreement, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, collectively, the “**Existing ABL Financing Agreements**”). Copies of the Existing ABL Loan Agreement and the other material operative Existing ABL Financing Agreements are contained in the Exhibit Supplement to the Motion (the “**Exhibit Supplement**”), as Exhibit A-\_\_.

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(ii) *Pre-Petition ABL Obligations Amount.* As of the Petition Date, the aggregate amount of all Pre-Petition Revolving Loans, Pre-Petition Letters of Credit and other Pre-Petition ABL Obligations (as defined below) owing by Borrowers to Existing ABL Agent and Existing ABL Lenders under and in connection with the Existing ABL Financing Agreements is, as of June 9, 2010, in the amount of \$\_\_\_\_\_, consisting of Revolving Loans in the amount of \$\_\_\_\_\_ and Letters of Credit in the amount of \$\_\_\_\_\_, plus all interest accrued and accruing thereon, with all costs, fees, expenses (including attorneys' fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto, including without limitation, all Bank Product Debt (as defined in the Existing ABL Loan Agreement) (collectively, and as such term is more fully defined in the DIP ABL Loan Agreement, the "***Pre-Petition ABL Obligations***"). The Pre-Petition ABL Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of Debtors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtors do not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Pre-Petition ABL Obligations.

(iii) *Pre-Petition ABL Collateral.* As of the Petition Date, the Pre-Petition ABL Obligations were fully secured pursuant to the Pre-Petition ABL Financing Agreements by valid, perfected, enforceable and non-avoidable first priority security interests and liens granted by Debtors to Existing ABL Agent, for the benefit of itself and the other Existing ABL Lenders, upon (a) all of the pre-petition Priority Collateral (as defined in the

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Existing ABL Loan Agreement, the “***Pre-Petition ABL Priority Collateral***”), subject only to the liens specifically listed on Schedule 8.4 of the Existing ABL Loan Agreement or permitted under Section 9.8 of the Existing ABL Loan Agreement to the extent that such security interests, liens or encumbrances are (A) valid, perfected and non-avoidable security interests, liens or encumbrances existing as of the Petition Date, and (B) senior to and have not been or are subject to being subordinated to Existing ABL Agent's and Existing ABL Lenders' liens on and security interests in the Pre-Petition ABL Priority Collateral or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding (hereinafter referred to as the “***Permitted ABL Encumbrances***”), and (b) junior and subordinate liens and security interests upon the Pre-Petition Term Loan Priority Collateral (as defined below). The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of Existing ABL Agent's and Existing ABL Lenders' liens, claims or security interests in the Pre-Petition ABL Collateral (as defined below). The Pre-Petition ABL Priority Collateral and the Pre-Petition Term Loan Collateral (excluding the pre-petition Working Capital Excluded Collateral) (as defined in the Existing Intercreditor Agreement) are collectively referred to herein as (the “***Pre-Petition ABL Collateral***”).

(iv) *Proof of Claim.* The acknowledgment by Debtors of the Pre-Petition ABL Obligations and the liens, rights, priorities and protections granted to or in favor of Existing ABL Agent and Existing ABL Lenders as set forth herein and in the Pre-Petition ABL Financing Agreements shall be deemed a timely filed proof of claim on behalf of Existing ABL Agent and Existing ABL Lenders in these Cases.

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(v) *Pre-Petition Term Loans.* Prior to the commencement of the Cases, Wachovia Bank, National Association, in its capacity as Administrative Agent and Collateral Agent (in such capacity the “*Pre-Petition Term Loan Agent*”) and the lenders party to the Pre-Petition Term Loan Credit Agreement (as defined below) as lenders thereto (the “*Pre-Petition Term Loan Lenders*”) made loans, advances and provided other financial accommodations to Debtor Borrower pursuant to the terms and conditions set forth in: (1) the Loan and Security Agreement, dated March 9, 2007, by and among Debtor Borrower, Debtor Guarantor, Ridge Finance Corp., as guarantor, Pre-Petition Term Loan Agent and Pre-Petition Term Loan Lenders (as the same has heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, the “*Pre-Petition Term Loan Agreement*”), and (2) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of Pre-Petition Term Loan Agent or any Pre-Petition Term Loan Lender, including, without limitation, all other security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Pre-Petition Term Loan Agreement, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, collectively, the “*Pre-Petition Term Loan Documents*”). Copies of the Pre-Petition Term Loan Agreement and the other material operative Pre-Petition Term Loan Documents are contained as Exhibits \_\_\_\_ in the Exhibit Supplement to the Motion.

(vi) *Pre-Petition Term Loan Obligations Amount.* As of the Petition

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Date, the aggregate amount of all Term Loans, Letters of Credit and other Pre-Petition Term Loan Obligations owing by Debtor Borrower and Subsidiary Loan Parties (as defined in the Pre-Petition Term Loan Agreement) to Pre-Petition Term Loan Agent and Pre-Petition Term Loan Lenders under and in connection with the Pre-Petition Term Loan Documents is, as of June 9, 2010, in the amount of \$\_\_\_\_\_, consisting of term loans in the amount of \$\_\_\_\_\_ [and letters of credit in the amount of \$\_\_\_\_\_,] plus interest accrued and accruing thereon, together with all costs, fees, expenses (including attorneys' fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto (collectively, the “***Pre-Petition Term Loan Obligations***”). The Pre-Petition Term Loan Obligations constitute allowed legal, valid, binding, enforceable and nonavoidable obligations of Debtors and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law and Debtors do not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in anyway affect the validity, enforceability and non-avoidability of any of the Pre-Petition Term Loan Obligations.

(vii) *Pre-Petition Term Loan Collateral* As of the Petition Date, the Pre-Petition Term Loan Obligations were fully secured pursuant to the Pre-Petition Term Loan Documents by valid, perfected, enforceable and non-avoidable security interests and liens granted by Debtors to Pre-Petition Term Loan Agent, for the benefit of itself and the other Pre-Petition Term Loan Lenders, upon (a) all of the Collateral (as defined in the Pre-Petition Term Loan Agreement), and, as used herein, the “Pre-Petition Term Loan Collateral”), subject only to the liens specifically listed on Schedule 8.4 of the Pre-Petition Term Loan Documents or

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permitted under Section 9.8 of the Pre-Petition Term Loan Agreement to the extent that such security interests, liens or encumbrances are (a) valid, perfected and non-avoidable security interests, liens or encumbrances existing as of the Petition Date, and (b) senior to and have not been or are subject to being subordinated to the Pre-Petition Term Loan Agent's liens on and security interests in the Pre-Petition Term Loan Collateral or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding (hereinafter referred to as the “*Permitted Term Loan Encumbrances*”) and (b) junior and subordinate liens and security interests in the Pre-Petition ABL Priority Collateral granted in favor of Existing ABL Agent and Existing ABL Lenders. The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of Pre-Petition Term Loan Agent's and Pre-Petition Term Loan Lenders' liens, claims or security interests in the Pre-Petition Term Loan Collateral.

(viii) *Proof of Claim.* The acknowledgment by Debtors of the Pre-Petition Term Loan Obligations and the rights, priorities and protections granted to or in favor of the Pre-Petition Term Loan Agent and in the Pre-Petition Term Loan Documents shall be deemed a timely filed proof of claim on behalf of Pre-Petition Term Loan Agent and Pre-Petition Term Loan Lenders in these Cases.

(ix) *Intercreditor Agreement.* Existing ABL Agent, on behalf of itself and the other Existing ABL Lenders, and in its capacity as collateral agent, and the Pre-Petition Term Loan Agent, in its capacity as collateral agent for the Pre-Petition Term Loan Lenders, entered into the Intercreditor Agreement (the “*Existing Intercreditor Agreement*”), dated as of

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March 9, 2007, which sets forth, inter alia, (a) the respective rights, obligations and priorities of the claims and interest of the Existing ABL Agent, Existing ABL Lenders, the Pre-Petition Term Loan Agent, and the Pre-Petition Term Loan Lenders and specifically provides, inter alia, that all liens and security interests with respect to all Pre-Petition ABL Priority Collateral securing all Pre-Petition Term Loan Obligations are subordinated, in all respects, to all liens and security interests with respect to the Pre-Petition ABL Priority Collateral securing all Pre-Petition ABL Obligations, and (b) the respective rights, obligations and priorities of the claims and interests of the Existing ABL Agent, Existing ABL Lenders, the Pre-Petition Term Loan Agent, and the Pre-Petition Term Loan Lenders and specifically provides, inter alia, that all liens and security interests with respect to all Pre-Petition Term Loan Priority Collateral (defined in the Intercreditor Agreement as “Term Loan Priority Collateral”) securing all Pre-Petition ABL Obligations are subordinated, in all respects, to all liens and security interests with respect to the Pre-Petition Term Loan Priority Collateral securing all Pre-Petition Term Loan Obligations.

(x) *Pre-Petition Notes.* Prior to the commencement of the Cases, the Debtor Borrower, as issuer (in such capacity, the “***Pre-Petition Notes Issuer***”), issued certain unsecured senior subordinated notes (the “***Pre-Petition Notes***”) with a maturity date of March 12, 2014 in the aggregate principal amount of \$175.0 million, accruing interest at 9.75%, to certain purchasers, together with their successors and assigns (the “***Pre-Petition Notes Purchasers***”), pursuant to the Indenture, dated as of March 12, 2004 (the “***Pre-Petition Notes Indenture***”), among the Pre-Petition Notes Issuer, certain guarantors, and The Bank of New York, as trustee (the “***Pre-Petition Notes Trustee***”). Certain of the Pre-Petition Notes Purchasers formed a coalition, which has been involved in negotiating terms and conditions of the Joint Plan

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(the “Coalition of the Pre-Petition Notes Purchasers”).

(xi) *Pre-Petition Notes Obligations Amount.* As of the Petition Date, the aggregate amount of all Pre-Petition Notes and other pre-petition obligations owing by the Pre-Petition Notes Issuer and the guarantors under the Pre-Petition Notes Indenture to the Pre-Petition Notes Purchasers under and in connection with the Pre-Petition Notes is in the amount of \$175,000,000, plus interest accrued and accruing thereon, together with all costs, fees, expenses (including attorneys’ fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto (collectively, the “***Pre-Petition Notes Obligations***”). The Pre-Petition Notes Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of Debtors and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or, except as expressly set forth in the Pre-Petition Notes Indenture, subordination pursuant to the Bankruptcy Code or any other applicable law and Debtors do not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in anyway affect the validity, enforceability and non-avoidability of any of the Pre-Petition Notes Obligations.

(xii) *Proof of Claim.* The acknowledgment by Debtors of the Pre-Petition Notes Obligations and the rights, priorities and protections granted to or in favor of the Pre-Petition Notes Trustee and in the Pre-Petition Notes Indenture shall be deemed a timely filed proof of claim on behalf of the Pre-Petition Notes Trustee and the Pre-Petition Notes Purchasers in these Cases and to the extent necessary such deemed filing shall satisfy Bankruptcy Rule 3003(c)(2).

(xiii) *Pre-Packaged Plan of Reorganization.* On or about May 7, 2010,

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Debtors distributed the Disclosure Statement for the Joint Pre-Packaged Plan of Reorganization of the Newark Group, Inc. (the “Disclosure Statement”) and commenced solicitation of, inter alia, the Pre-Petition Notes Purchasers to the terms and conditions of the Debtors’ Joint Pre-Packaged Plan of Reorganization of the Newark Group, Inc., et al., dated May 7, 2010 (the “Joint Plan”), which proposes, inter alia, to convert the Pre-Petition Notes into substantially all of the equity of the Reorganized Company (as defined in the Joint Plan).

E. Findings Regarding the Postpetition Financing.

(i) *Post-Petition Financing.* The Debtors have requested from each of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent, and DIP TL Lenders, and each of DIP Agent, DIP ABL Lenders, DIP TL Agent, and DIP TL Lenders are willing to extend, certain loans, advances and other financial accommodations on the terms and conditions set forth, in this Interim Order, the DIP ABL Loan Agreement (as defined below), DIP ABL Financing Agreements (as defined below), the DIP TL Agreement and the DIP TL Documents.

(ii) *Need for Post-Petition Financing and the Pay-Off of the Pre-Petition Secured Loans.* The Debtors do not have sufficient available sources of working capital, including cash collateral, to operate their businesses in the ordinary course of their businesses without the financing requested under the Motion. The Debtors' ability to maintain business relationships with their vendors, suppliers and customers, to pay their employees, and to otherwise fund their operations is essential to the Debtors' continued viability as the Debtors seek to maximize the value of the assets of the Estates (as defined below) for the benefit of all creditors of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed post-petition financing arrangements with DIP ABL Agent, DIP

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ABL Lenders, DIP TL Agent and DIP TL Lenders as set forth in this Interim Order, the DIP ABL Loan Agreement, DIP ABL Financing Agreements, the DIP TL Agreement and the other DIP TL Documents is vital to the preservation and maintenance of the going concern values of the Debtors. The Debtors have an immediate need to obtain the post-petition financing, in order to, among other things, permit the orderly continuation of the operation of their businesses, minimize the disruption of their business operations, and preserve and maximize the value of the assets of the Debtors' bankruptcy estates (as defined under Section 541 of the Bankruptcy Code, the "*Estates*") in order to maximize the recovery to all creditors of the Estates, in accordance with the terms of the Joint Plan. The Debtors will suffer immediate and irreparable harm if the requested financing is not granted at the Interim Hearing because absent such relief the Debtors will not be able to (a) continue the orderly operation of their businesses, (b) maintain critical business relationships with vendors, suppliers and customers (c) make payroll, (d) repay in full the Pre-Petition ABL Obligations and the Pre-Petition Term Loan Obligations and (e) satisfy other working capital needs. The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed financing is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors. Accordingly, the relief requested in the Motion is necessary, essential and appropriate.

(iii) *No Credit Available on More Favorable Terms.* The Debtors are unable to procure financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, as an administrative expense under Section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority pursuant to Section 364(c)(1) of the Bankruptcy Code, without the grant of liens on assets. The Debtors

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have been unable to procure the necessary financing on terms more favorable than the financing offered by DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders pursuant to the DIP ABL Financing Agreements and the DIP TL Documents.

(iv) *Budget.* The Debtors have prepared and delivered to DIP ABL Agent, DIP ABL Lenders, the DIP TL Agent, the DIP TL Lender, and counsel for the Pre-Petition Notes Purchasers, an initial Budget (as defined in the DIP ABL Loan Agreement and the DIP TL Agreement, a copy of which is annexed hereto as Exhibit 1 and is incorporated herein). Such Budget has been thoroughly reviewed by the Debtors and their management and sets forth, among other things, the Projected Information for the periods covered thereby. The Debtors represent that the Debtors believe the Budget is achievable in accordance with the terms of the DIP ABL Financing Agreements, the DIP TL Documents and this Order and will allow the Debtors to operate at all times during these Cases without the accrual of unpaid administrative expenses. Each of DIP ABL Agent and DIP ABL Lenders, the DIP TL Agent and DIP TL Lenders are relying upon the Debtors' compliance with the Budget in accordance with Section 8.31 of the DIP ABL Loan Agreement, the other DIP ABL Financing Agreements and this Order in determining to enter into the post-petition financing arrangements. To the extent delivery to DIP ABL Agent and DIP TL Agent is required under each of the DIP ABL Loan Agreement and the DIP TL Agreement, Debtors will also deliver to counsel for the Pre-Petition Notes Purchasers any supplements, amendments or subsequent Budgets.

(v) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms of the DIP ABL Agreement, the DIP ABL Financing Agreements, the DIP TL Loan Agreement, the DIP TL Documents and this Interim Order are fair, just and reasonable under the

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circumstances, are ordinary and appropriate for secured financing to debtors-in-possession, reflect the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The terms and conditions of the DIP ABL Loan Agreement, the DIP ABL Financing Agreements, the DIP Loan Agreement, the DIP Term Documents and this Interim Order have been negotiated in good faith and at arms' length by and among the Debtors, on one hand, and each of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders, on the other hand, with all parties being represented by counsel. Any credit extended by DIP ABL Agent and DIP ABL Lenders under the terms of this Order shall be deemed to have been extended in good faith as that term is used in Section 364(e) of the Bankruptcy Code. Any credit extended under the terms of this Order by DIP TL Agent and DIP TL Lenders shall be deemed to have been extended in good faith as that term is used in Section 364(e) of the Bankruptcy Code.

(vi) *Good Cause.* The relief requested in the Motion is necessary, essential and appropriate, and is in the best interest of and will benefit the Debtors, their creditors and their Estates, as its implementation will, among other things, provide the Debtors with the necessary liquidity to (a) minimize disruption to the Debtors' businesses and on-going operations, (b) preserve and maximize the value of the Debtors' Estates for the benefit of all the Debtors' creditors, (c) avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets, and (d) repay in full the Pre-Petition ABL Obligations and the Pre-Petition Term Loan Obligations.

(vii) *Immediate Entry.* Sufficient cause exists for immediate entry of this Order pursuant to Bankruptcy Rule 4001(c)(2). No party appearing in the Cases has filed or

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made an objection to the relief sought in the Motion or the entry of this Order, or any objections that were made (to the extent such objections have not been withdrawn) are hereby overruled.

(viii) *Committee*. As of the date hereof, the Office of the United States Trustee has not appointed an official committee of unsecured creditors.

(ix) *Adequate Protection*. The liens granted under 364(d) in favor of the DIP TL Agent and DIP TL Lenders are limited to priority over liens existing as of the Petition Date in the DIP TL Priority Collateral (a) in favor of the Pre-Petition Term Loan Agent and Pre-Petition Term Loan Lenders, if any, to the extent such liens have not been discharged and satisfied in full, (b) in favor of the Existing ABL Agent and the Existing ABL Lenders to the extent such liens have not been assigned to and assumed by DIP ABL Agent and DIP ABL Lenders, which are junior and subordinated to liens in favor of DIP TL Agent and DIP TL Lenders in accordance with the terms of this Interim Order and the Intercreditor Agreement, (c) in favor of any other person or entity to the extent that such lien is junior or subordinated to any of the liens of the Pre-Petition Term Loan Agent, Pre-Petition Term Loan Lenders, Pre-Petition ABL Agent or Pre-Petition ABL Lenders or is otherwise avoidable or subject to subordination under applicable law (the “Junior TL Liens”), to the extent, if any, that holders of liens under clauses (a) through (c) are entitled to adequate protection, such lien holders shall be deemed to be adequately protected by reason of (x) the repayment provisions of this Order with respect to the debt secured by the liens described in clauses (a) and (b) above and (y) the grant of replacement liens in the Collateral in favor of the holders of liens described in clause (c) above, provided that such replacement liens shall be junior to the liens granted in favor of DIP TL Agent and DIP TL Lenders and DIP ABL Agent and DIP ABL Lenders in the DIP TL Priority

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Collateral.

Based upon the foregoing, and after due consideration and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

Section 1. Authorization and Conditions to Financing.

1.1 Motion Granted. The Motion is granted in accordance with Bankruptcy Rule 4001(c)(2) to the extent provided in this Order. This Order shall hereinafter be referred to as the "***Interim Order***."

1.2 Authorization to Borrow from DIP ABL Lenders and Use Loan Proceeds. Borrowers are hereby authorized and empowered to immediately borrow and obtain Revolving Loans<sup>1</sup> and Letters of Credit (including the assumption by DIP ABL Lender of the existing letter of credit issued pursuant to the terms of the Pre-Petition Term Loan Documents) and to incur indebtedness and obligations owing to DIP ABL Agent and DIP ABL Lenders pursuant to the terms and conditions of this Interim Order, the DIP ABL Loan Agreement, and the other DIP ABL Financing Agreements (as such term is more fully defined in the DIP ABL Loan Agreement, the "***DIP ABL Financing Agreements***"), during the period commencing on the date of this Interim Order through and including the date of the Final Hearing as set forth in Section 6 of this Interim Order (the "***Interim Financing Period***"), in such amounts as may be made available to Debtors by DIP ABL Agent and DIP ABL Lenders in accordance with all of the

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<sup>1</sup> Capitalized terms used but not otherwise defined in this Order shall have the respective meanings ascribed thereto in the DIP ABL Loan Agreement.

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lending formulae, sublimits, terms and conditions set forth in the DIP ABL Loan Agreement, the other DIP ABL Financing Agreements, the Budget and this Interim Order. Subject to the terms and conditions contained in this Interim Order and the DIP ABL Financing Agreements, Debtors shall use the proceeds of the Revolving Loans, the Letters of Credit and any other credit accommodations provided to Debtors pursuant to this Interim Order, the DIP ABL Loan Agreement or the other DIP ABL Financing Agreements for, inter alia, the payment of employee salaries, payroll, taxes, and all other expenses specified in the Budget, including the fees of the U.S. Trustee, the Clerk of this Court and, subject to Section 2.4 of this Interim Order, Allowed Professional Fees (as defined below), the fees incurred by the advisors to the Coalition of Pre-Petition Notes Purchasers and the repayment of the Pre-Petition ABL Obligations.

### 1.3 DIP ABL Financing Agreements.

1.3.1 Authorization. Debtors are hereby authorized and directed to enter into, execute, deliver, perform, and comply with all of the terms, conditions and covenants of the DIP ABL Loan Agreement, the other DIP ABL Financing Agreements and all other agreements, documents and instruments executed or delivered in connection with or related to the DIP ABL Loan Agreement, the other DIP ABL Financing Agreements, or this Interim Order, pursuant to which, inter alia, each Debtor ratifies, reaffirms, extends, assumes, adopts, amends, and restates the Existing ABL Loan Agreement, and the other Existing ABL Financing Agreements to which it is a party, including, without limitation, each of the Blocked Account Agreements, by and among Debtors, Blocked Account Banks and Existing ABL Agent (as amended, the “***Blocked Account Agreements***”), copies of which are included with the Exhibit Supplement.

1.3.2 Approval. The DIP ABL Financing Agreements (including,

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without limitation, the DIP ABL Loan Agreement) and each term set forth therein are approved to the extent necessary to implement the terms and provisions of this Interim Order. All of such terms, conditions and covenants shall be sufficient and conclusive evidence of the borrowing arrangements by and among Debtors, DIP ABL Agent and DIP ABL Lenders, and of each Debtor's acceptance of all of the terms, conditions, and covenants of the DIP ABL Loan Agreement, and the other DIP ABL Financing Agreements, for all purposes, including, without limitation, to the extent applicable, the payment of all Obligations (as defined in the DIP ABL Loan Agreement) arising thereunder, including, without limitation, all principal, interest, commissions, letter of credit fees, agency and collateral monitoring fees, unused line fees, DIP facility fee, arrangement fees, and other fees and expenses, including, without limitation, all of DIP ABL Agent's and DIP ABL Lenders' consultant fees, professional fees, attorney fees and legal expenses, as more fully set forth in the DIP ABL Financing Agreements and this Interim Order (the “**DIP ABL Obligations**”).

1.3.3 Amendment. Subject to the terms and conditions of the DIP ABL Loan Agreement, and the other DIP ABL Financing Agreements, Debtors, DIP ABL Agent and DIP ABL Lenders may amend, modify, supplement or waive any provision of the DIP ABL Financing Agreements (an “**Amendment**”) without further approval or order of the Court so long as (i) such Amendment is not material (for purposes hereof, a “material” Amendment shall mean any Amendment that (A) operates to increase the interest rate other than as currently provided in the DIP ABL Financing Agreements, increase the aggregate of the Commitments (as defined in the DIP ABL Loan Agreement) of the DIP ABL Lenders, add specific new events of default or enlarge the nature and extent of default remedies available to the DIP ABL Agent and DIP ABL

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Lenders following an event of default, or otherwise modify any terms and conditions in any DIP ABL Financing Agreement in a manner materially less favorable to Debtors) or (B) is not permitted under the express terms of the DIP TL Loan Agreement, and is undertaken in good faith by DIP ABL Agent, DIP ABL Lenders and Debtors; (ii) the Debtors provide prior written notice of the Amendment (the "***Amendment Notice***") to (w) the U.S. Trustee, (x) counsel to the DIP TL Agent, (y) counsel to the Coalition of Prepetition Notes Purchasers, (z) counsel to any official committee appointed in the Cases under Section 1102 of the Bankruptcy Code (the "***Official Committee(s)***"), or in the event no such Official Committee is appointed at the time of such Amendment, the 20 Largest Unsecured Creditors; (iii) the Debtors file the Amendment Notice with the Court; and (iv) no objection to the Amendment is filed with the Court within two (2) business days from the later of the date the Amendment Notice is served or the date the Amendment Notice is filed with the Court in accordance with this Section. Any material Amendment to the DIP ABL Financing Agreements must be approved by the Court to be effective.

1.4 Payment of Prepetition ABL Obligations. The Debtors are authorized to pay in cash in full the Existing ABL Agent and the Existing ABL Lenders in respect of all Pre-Petition ABL Obligations in accordance with the Existing ABL Financing Agreements and to execute and deliver the releases provided for in the DIP ABL Financing Agreements in favor of Existing ABL Agent and Existing ABL Lenders, subject only to Section 4.1 of this Interim Order. Subject to Section 4.1 of this Interim Order, such payment shall not be avoidable or recoverable from Existing ABL Agent or any Existing ABL Lender under Section 547, 548, 550, 553 or any other Section of the Bankruptcy Code, or any other claim, charge, assessment, or

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other liability, whether by application of the Bankruptcy Code, other law or otherwise.

1.5 Payments and Application of Payments. Subject to Section 1.7.6 of this Interim Order, the Debtors are authorized and directed to make all payments and transfers of Estate property to DIP ABL Agent and DIP ABL Lenders as provided, permitted and/or required under the DIP ABL Loan Agreement and the other DIP ABL Financing Agreements. Without limiting the generality of the foregoing, the Debtors are authorized and directed, without further order of this Court, to pay or reimburse DIP ABL Agent and DIP ABL Lenders for all present and future costs and expenses, including, without limitation, all professional fees, consultant fees and reasonable legal fees and expenses paid or incurred by DIP ABL Agent and DIP ABL Lenders in connection with the financing transactions as provided in this Interim Order and the DIP ABL Financing Agreements, all of which shall be and are included as part of the principal amount of the DIP ABL Obligations and secured by the DIP ABL Collateral.

1.6 Continuation of Prepetition Procedures. All pre-petition practices and procedures for the payment and collection of proceeds of the Pre-Petition ABL Collateral, the turnover of cash, the delivery of property to Existing ABL Agent and Lenders and the funding pursuant to the Existing ABL Financing Agreements, including the Blocked Account Agreement, any other similar lockbox or blocked depository bank account arrangements, and the Bank Product Agreements are hereby approved, ratified and reaffirmed and shall continue for the benefit of DIP ABL Agent and DIP ABL Lenders without interruption after the commencement of the Cases.

1.7 DIP TL Agreement

1.7.1 Authorization to Borrow from DIP TL Lenders and Use Loan

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Proceeds. Debtor Borrower is hereby authorized and empowered to immediately borrow and obtain DIP Term Loans in the aggregate principal amount of \$110,000,000 from DIP TL Lenders pursuant to the terms and conditions of this Interim Order, the DIP TL Agreement, and the other DIP TL Documents. Subject to the terms and conditions contained in this Interim Order and the DIP TL Documents, Debtors shall use the proceeds of the DIP Term Loans for working capital, the repayment of the Pre-Petition Term Loan Obligations and other purposes as provided in the DIP TL Agreement and this Interim Order.

1.7.2 Authorization. Debtors are hereby authorized and directed to enter into, execute, deliver, perform, and comply with all of the terms, conditions and covenants of the DIP TL Agreement, the other DIP TL Documents and all other agreements, documents and instruments executed or delivered in connection with or related to the DIP TL Documents (including the Fee Letter (as defined in the DIP TL Agreement)), or this Interim Order.

1.7.3 Approval. The DIP TL Agreement and the other DIP TL Documents and each term set forth therein are approved to the extent necessary to implement the terms and provisions of this Interim Order. All of such terms, conditions and covenants shall be sufficient and conclusive evidence of the financing arrangements by and among Debtors, DIP TL Agent and DIP TL Lenders, including, without limitation, to the extent applicable, the payment of all DIP TL Obligations arising thereunder, including, without limitation, all principal, interest, closing fees, commitment fees, back-stop fees, administrative fees, exit fees and other fees, costs, expense charges, including, without limitation, all of DIP TL Agent's and DIP TL Lenders' professional fees, attorney fees and legal expenses, as more fully set forth in the DIP TL Agreement, the other DIP TL Documents and this Interim Order (the "DIP TL Obligations").

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1.7.4 Amendment. Subject to the terms and conditions of the DIP TL Agreement and the other DIP TL Documents, Debtors, DIP TL Agent and DIP TL Lenders may amend, modify, supplement or waive any provision of the DIP TL Documents (a “**DIP TL Document Amendment**”) without further approval or order of the Court so long as (i) such DIP TL Document Amendment is not material (for purposes hereof, a “material” DIP TL Document Amendment shall mean any DIP TL Document Amendment that (A) operates to increase the interest rate other than as currently provided in the DIP TL Documents, add specific new events of default or enlarge the nature and extent of default remedies available to the DIP TL Agent and DIP TL Lenders following an event of default, or otherwise modify any terms and conditions in any DIP TL Document in a manner materially less favorable to Debtors or (B) is not permitted under the express terms of the DIP ABL Loan Agreement), and is undertaken in good faith by the DIP TL Agent, DIP TL Lenders and Debtors; (ii) the Debtors provide prior written notice of the DIP TL Document Amendment (the “**DIP TL Document Amendment Notice**”) to (w) the U.S. Trustee, (x) counsel to the DIP ABL Agent, (y) counsel to the Coalition of Pre-Petition Notes Purchasers, (z) counsel to the Official Committee(s) or, in the event no such Official Committee is appointed at the time of such Amendment, the 20 Largest Unsecured Creditors; (iii) the Debtors file the DIP TL Document Amendment Notice with the Court; and (iv) no objection to the DIP TL Document Amendment is filed with the Court within two (2) business days from the later of the date the DIP TL Document Amendment Notice is served or the date the DIP Note Document Amendment Notice is filed with the Court in accordance with this Section. Any material Amendment to the DIP TL Documents must be approved by the Court to be effective.

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1.7.5 Payment of Pre-Petition Term Loan Obligations. The Debtors are authorized to pay in cash in full the Pre-Petition Term Loan Agent and the Pre-Petition Term Loan Lenders in respect of all Pre-Petition Term Loan Obligations in accordance with the Pre-Petition Term Loan Documents (the “Pre-Petition Term Loan Payoff Amount”) (other than the obligations arising under the existing letter of credit that is being assumed by the DIP ABL Lenders in accordance with the terms hereof) and to execute and deliver the releases provided for in the Pre-Pre-Petition Term Loan Documents in favor of Pre-Petition Term Loan Agent and Pre-Petition Term Loan Lenders, subject only to Section 4.1 of this Interim Order. Subject to Section 4.1 of this Interim Order, such payment shall not be avoidable or recoverable from Pre-Petition Term Loan Agent or any Pre-Petition Term Loan Lender under Section 547, 548, 550, 553 or any other Section of the Bankruptcy Code, or any other claim, charge, assessment, or other liability, whether by application of the Bankruptcy Code, other law or otherwise. Subject to Section 4.1 of this Interim Order, payment of the Pre-Petition Term Loan Payoff Amount shall satisfy, discharge and extinguish all Pre-Petition Term Loan Obligations. Upon receipt of the Pre-Petition Term Loan Payoff Amount, Pre-Petition Term Loan Agent shall release and terminate all liens and security interests securing the Pre-Petition Term Loan Obligations pursuant to statements and instruments reasonably satisfactory to DIP TL Agent and shall provide filed and recorded copies of such releases and terminations to DI TL Agent promptly upon receipt by Pre-Petition Term Loan Agent. If Pre-Petition Term Loan Agent fails to timely provide such releases and terminations and provided above, DIP TL Agent is hereby authorized to execute such statements and instruments in the name of Pre-Petition Term Loan Agent and to record, register or otherwise file all such releases.

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1.7.6 Payment and Application of Payments. Subject to Section 1.5 of this Interim Order, the Debtors are authorized and directed to make all payments and transfers of Estate property to DIP TL Agent and DIP TL Lenders as provided for and required under the DIP TL Agreement and the other DIP TL Documents. Without limiting the generality of the foregoing, the Debtors are authorized and directed, without further order of this Court, to pay or reimburse DIP TL Agent and DIP TL Lenders for all present and future costs and expenses, including, without limitation, all professional fees, consultant fees and reasonable legal fees and expenses paid or incurred by DIP TL Agent and DIP TL Lenders in connection with the financing transactions as provided in this Interim Order and the DIP TL Documents, all of which shall be and are included as part of the principal amount of the DIP TL Obligations and secured by the DIP TL Collateral.

1.8 Intercreditor Agreement. Each of DIP ABL Agent, on behalf of itself and the other DIP ABL Lenders, and in its capacity as collateral agent, and the DIP TL Agent, on behalf of itself and the other DIP TL Lenders, in its capacity as collateral agent for the DIP TL Lenders, have entered or about to enter into an Intercreditor Agreement (the “*Intercreditor Agreement*”), dated as of the date hereof, which sets forth, inter alia (as is more fully set forth in the Intercreditor Agreement), (a) the respective rights, obligations and priorities of the claims and interest of the DIP ABL Agent, DIP ABL Lenders, the DIP TL Agent, the DIP TL Lenders and specifically provides, inter alia, that all liens and security interests with respect to all DIP ABL Priority Collateral (as defined below) securing all obligations and amounts owed under the DIP TL Documents executed in favor of the DIP TL Agent are subordinated, in all respects, to all liens and security interests with respect to the DIP ABL Priority Collateral securing all

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obligations and amounts owed to DIP ABL Agent and DIP ABL Lenders under the DIP ABL Loan Agreement and the DIP ABL Financing Agreements, and (b) the respective rights, obligations and priorities of the claims and interests of the DIP ABL Agent, DIP ABL Lenders, the DIP TL Agent, and the DIP TL Lenders and specifically provides, inter alia, that all liens and security interests with respect to all DIP TL Priority Collateral securing all obligations and amounts owed under the DIP ABL Financing Agreements executed in favor of the DIP ABL Agent are subordinated, in all respects, to all liens and security interests with respect to the DIP TL Priority Collateral securing all obligations and amounts owed to the DIP TL Agent and DIP TL Lenders under the DIP TL Documents.

Section 2. Postpetition Lien; Superpriority Administrative Claim Status.

2.1 Post-Petition Lien.

2.1.1 Post-Petition Lien Granting In Favor of DIP ABL Agent. To secure the prompt payment and performance of any and all DIP ABL Obligations of Debtors to DIP ABL Agent and DIP ABL Lenders of whatever kind, nature or description, absolute or contingent, now existing or hereafter arising, DIP ABL Agent, for the benefit of itself, the other DIP ABL Lenders and the other Secured Parties (as defined in the DIP ABL Loan Agreement), shall have and is hereby granted, effective as of the Petition Date, valid and perfected liens in and upon all of the Collateral (as defined in the DIP ABL Loan Agreement), including, without limitation, avoidance actions (if any) brought under, inter alia, Sections 542, 545, 547, 548, 549 or 550 of the Bankruptcy Code (the “Avoidance Actions”) (collectively referred to herein, the “**DIP ABL Collateral**”), having the priority specified in Section 2.1.3 and 2.1.4, including, without limitation, valid and perfected first priority security interests and liens, in and upon all of

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the Working Capital Priority Collateral (as defined in the Intercreditor Agreement) (the "***DIP ABL Priority Collateral***").

2.1.2 Post-Petition Lien Granting In Favor of DIP TL Agent. To secure the prompt payment and performance of any and all DIP TL Obligations of Debtors to DIP TL Agent and DIP TL Lenders of whatever kind, nature or description, absolute or contingent, now existing or hereafter arising, DIP TL Agent, for the benefit of itself and the other DIP TL Lenders, shall have and is hereby granted, effective as of the Petition Date, valid and perfected security interests and liens in the Collateral (as defined in the DIP TL Agreement), including without limitation, avoidance actions (if any) brought under Sections 542, 545, 547, 548, 549 or 550 of the Bankruptcy Code, having the priority specified in Sections 2.1.3 and 2.1.4 including, without limitation, valid and perfected first priority security interests and liens, in and upon all of the Term Loan Priority Collateral (as defined in the Intercreditor Agreement) (the "***DIP TL Priority Collateral***").

2.1.3 Lien Priority in Favor of DIP ABL Agent. The pre- and post-petition liens and security interests of DIP ABL Agent and DIP ABL Lenders granted under the DIP ABL Financing Agreements and this Interim Order in the DIP ABL Priority Collateral shall be and shall continue to be first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with Section 363, 364 or any other Section of the Bankruptcy Code or other applicable law; provided, however, that DIP ABL Agent's and DIP ABL Lenders' liens on and security interests (a) in the DIP ABL Priority Collateral (which includes certain of the Avoidance

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Actions to the extent set forth in the Intercreditor Agreement) shall be senior except only for (i) the ABL Permitted Liens constituting Permitted Liens ((as defined in the DIP ABL Loan Agreement) and excluding the liens in favor of the DIP TL Agent and the DIP TL Lenders, which shall be permitted junior liens); and (ii) the Carve-Out Expenses (as defined below) solely to the extent provided for in Sections 2.3, 2.4 and 2.5 of this Interim Order (the foregoing clauses (i) and (ii) are collectively referred to herein as the “**ABL Permitted Liens and Claims**”) and (b) in the DIP TL Priority Collateral, excluding the Working Capital Excluded Collateral (as defined in the Intercreditor Agreement, but including any DIP TL Priority Collateral that is acquired by Debtors post-petition, shall be junior and subject only to (i) the Permitted TL Liens and Claims (defined below), and (ii) subject to the terms of the Intercreditor Agreement, the liens and security interests of the DIP TL Agent and the DIP TL Lenders. Notwithstanding anything herein to the contrary, the liens and security interests granted under the DIP ABL Financing Agreements and this Interim Order in the DIP ABL Priority Collateral shall be deemed to have been perfected prior to any perfection or deemed perfection of the liens in the DIP ABL Priority Collateral granted to the DIP TL Agent and DIP TL Lenders under the DIP TL Loan Documents and this Interim Order, and such liens in favor of the DIP TL Agent and DIP TL Lenders in the DIP ABL Priority Collateral shall by consent be junior and subordinate to the liens of the DIP ABL Agent and the DIP ABL Lenders in the DIP ABL Priority Collateral pursuant to Fed.R.Bankr.P.4001(d)(1)(A)(v) and to the extent set forth in and subject to the terms and provisions of the Intercreditor Agreement.

2.1.4 Lien Priority in Favor of DIP TL Agent. The post-petition liens and security interests of DIP TL Agent and the DIP TL Lenders, granted under the DIP TL

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Documents and this Interim Order in the DIP TL Priority Collateral shall be and shall continue to be first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with Section 363, 364 or any other Section of the Bankruptcy Code or other applicable law; provided, however, that DIP TL Agent's and DIP TL Lenders' liens on and security interests (a) in the DIP TL Priority Collateral (which includes certain of the Avoidance Actions to the extent set forth in the Intercreditor Agreement) shall be senior except only for (i) the Permitted TL Liens and Claims constituting Permitted Liens ((as defined in the DIP TL Agreement) and excluding the liens in favor of DIP ABL Agent and DIP ABL Lenders, which shall be permitted junior liens); and (ii) the Carve-Out Expenses (as defined below) solely to the extent provided for in Sections 2.3, 2.4 and 2.5 of this Interim Order (the foregoing clauses (i) and (ii) are collectively referred to herein as the "***Permitted TL Liens and Claims***"), (b) in the DIP ABL Priority Collateral shall be junior and subject only to (i) ABL Permitted Liens and Claims, and (ii) the liens and security interests of the DIP ABL Agent and DIP ABL Lenders. Notwithstanding anything herein to the contrary, the liens and security interests granted under the DIP TL Documents and this Interim Order in the DIP TL Priority Collateral shall be deemed to have been perfected prior to any perfection or deemed perfection of the liens in the DIP TL Priority Collateral granted to the DIP ABL Agent and DIP ABL Lenders under the DIP ABL Financing Agreements and this Interim Order, and such liens in favor of the DIP ABL Agent and DIP ABL Lenders in the DIP TL Priority Collateral shall by consent be junior and subordinate to the liens of the DIP TL Agent and the DIP TL Lenders in the DIP TL Priority Collateral pursuant to Fed.R.Bankr.P.4001(d)(1)(A)(v)

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and to the extent set forth in and subject to the terms and provisions of the Intercreditor Agreement.

2.1.5 Post-Petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection and validity of the post-petition liens and security interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal, state or local requirements or law requiring notice, filing, registration, recording or possession of the DIP ABL Collateral, the DIP TL Collateral, or other act to validate or perfect such security interest or lien, including without limitation, control agreements with the Blocked Account Banks or with any other financial institution(s) holding a Blocked Account or other depository account consisting of Collateral (a "**Perfection Act**"). Notwithstanding the foregoing, if either DIP ABL Agent or DIP TL Agent shall, in its sole discretion, elect for any reason to file, record or otherwise effectuate any Perfection Act, each of DIP ABL Agent and DIP TL Agent is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by either DIP ABL Agent or DIP TL Agent, which act or acts shall be deemed to have been accomplished as of the date and time of entry of this Interim Order notwithstanding the date and time actually accomplished, and in such event, the subject filing or recording office is authorized to accept, file or record any document in regard to such act in accordance with applicable law. DIP ABL Agent, DIP ABL Lenders or DIP TL Agent may choose to file, record or present a certified copy of this Interim Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file or record such certified copy of this Interim Order in accordance with applicable law.

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Should either DIP ABL Agent and DIP TL Agent so choose and attempt to file, record or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the post-petition liens and security interests granted herein by virtue of the entry of this Interim Order.

2.1.6 Nullifying Pre-Petition Restrictions to Post-Petition Financing.

Notwithstanding anything to the contrary contained in any pre-petition agreement, contract, lease, document, note or instrument to which any Debtor is a party or under which any Debtor is obligated, except as otherwise permitted under the DIP ABL Financing Agreements or the DIP TL Documents, any provision that restricts, limits or impairs in any way any Debtor from granting each of DIP ABL Agent, DIP ABL Lenders and DIP TL Agent security interests in or liens upon any of the Debtors' assets or properties (including, among other things, any anti-lien granting or anti-assignment clauses in any leases or other contractual arrangements to which any Debtor is a party) under the DIP ABL Loan Agreement, the other DIP ABL Financing Agreements, the DIP TL Agreement, the other DIP TL Documents, or this Interim Order, or otherwise entering into and complying with all of the terms, conditions and provisions hereof or the DIP ABL Financing Agreements or the DIP TL Documents shall not (i) be effective and/or enforceable against any such Debtor(s), DIP ABL Agent, DIP ABL Lenders, DIP TL Agent or DIP TL Lenders or (ii) adversely affect the validity, priority or enforceability of the liens, security interests, claims, rights, priorities and/or protections granted to DIP ABL Agent, DIP ABL Lenders and DIP TL Agent pursuant to this Interim Order, the DIP ABL Financing Agreements or the DIP TL Documents to the maximum extent permitted under the Bankruptcy Code and other applicable law.

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2.2 DIP ABL Superpriority Administrative Expense. For all DIP ABL Obligations now existing or hereafter arising pursuant to this Interim Order, the DIP ABL Financing Agreements or otherwise, DIP ABL Agent, for the benefit of itself and the other DIP ABL Lenders is granted an allowed superpriority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of Debtors, whether now in existence or hereafter incurred by Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, inter alia Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1), 546(c), 726 or 1114 of the Bankruptcy Code (the "***DIP ABL Superpriority Claim***"), provided, however, the DIP ABL Superpriority Claim shall be subject only (x) to the ABL Permitted Liens and Claims (including the Carve-Out Expenses (as defined below)) as and to the extent expressly set forth in this Interim Order and (y) subject to the Intercreditor Agreement, the DIP TL Superpriority Claim (defined below).

2.3 DIP TL Superpriority Administrative Expense. For all DIP TL Obligations now existing or hereafter arising pursuant to this Interim Order, the DIP TL Documents or otherwise, DIP TL Agent, for the benefit of itself and the other DIP TL Lenders is granted an allowed superpriority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of Debtors, whether now in existence or hereafter incurred by Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, inter alia Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1), 546(c), 726 or 1114 of the Bankruptcy Code (the "***DIP TL Superpriority***"),

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*Claim*"), provided, however, the DIP TL Superpriority Claim shall be subject only to (x) the TL Permitted Liens and Claims (including the Carve-Out Expenses as defined below), as and to the extent expressly set forth in this Interim Order and (y) subject to the Intercreditor Agreement, the DIP ABL Superpriority Claim.

#### 2.4 Carve Out Expenses.

2.4.1 Carve Out Expenses. Upon the declaration by DIP ABL Agent of the occurrence of an Event of Default (the "*Event of Default*"), each of DIP ABL Agent's, DIP ABL Lenders', DIP TL Agent's, and DIP TL Lenders' liens, claims and security interests in the Collateral and their respective Superpriority Claims shall be subject only to the right of payment of the following expenses (the "*Carve Out Expenses*");

- a. statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6);
- b. fees payable to the Clerk of this Court; and
- c. subject to the terms and conditions of this Interim Order, an amount not exceeding \$2,000,000 of the unpaid and outstanding reasonable fees and expenses actually incurred on or after the declaration of an Event of Default and approved by a final order of the Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code (collectively, the "*Allowed Professional Fees*"), by attorneys, accountants and other professionals retained by the Debtors and any Official Committee(s) under Section 327 or 1103(a) of the Bankruptcy Code (collectively, the "*Professionals*"), less the amount of any retainers, if any, then held by such Professionals, which shall be created as follows: (i) upon entry of this Interim Order, each

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of the Professional Fee Carve-Out and the Carve-Out Reserve (as defined below) shall be in the aggregate amount of \$500,000, and (ii) commencing with the next Monday, which is at least seven (7) calendar days after the date of the entry of this Interim Order and on each Monday of the two (2) successive calendar weeks thereafter, the Professional Fee Carve-Out and the Carve-Out Reserve shall increase by \$500,000 per week until the Professional Fee Carve-Out and the Carve-Out Reserve each are in the amount of \$2,000,000 (the "**Professional Fee Carve Out**").

2.4.2 Excluded Professional Fees. Notwithstanding anything to the contrary in this Interim Order, neither the Professional Fee Carve-Out nor the proceeds of any Revolving Loans, Letters of Credit, DIP ABL Collateral, DIP TL Loans or DIP TL Collateral shall be used to pay any Allowed Professional Fees or any other fees or expenses incurred by any Professional in connection with any of the following: (a) an assertion or joinder in (but excluding any investigation into) any claim, counter-claim, action, proceeding, application, motion, objection, defense or other contested matter seeking any order, judgment, determination or similar relief: (i) challenging the legality, validity, priority, perfection, or enforceability of (A) the Pre-Petition ABL Obligations or (B) the Existing ABL Agent's and Existing ABL Lenders' liens on and security interests in the Pre-Petition ABL Collateral or (C) the DIP ABL Obligations or (D) the DIP ABL Agent's and the DIP ABL Lenders' liens and security interests in the DIP ABL Collateral or (E) the Pre-Petition Term Loan Obligations or (F) the DIP TL Obligations or (G) the DIP TL Agent's and DIP TL Lenders' liens on and security interests in the DIP TL Collateral or (H) the Pre-Petition Term Loan Obligations or (I) the Pre-Petition Term Loan Agent's liens on and security interests in the Pre-Petition Term Loan Collateral, (ii) invalidating,

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setting aside, avoiding or subordinating, in whole or in part, (A) the Pre-Petition ABL Obligations, the DIP ABL Obligations or the Existing ABL Agent's and Existing ABL Lenders' liens on and security interests in the Pre-Petition ABL Collateral, or (B) DIP ABL Agent's and DIP ABL Lenders' liens on and security interests in the DIP ABL Collateral, or (C) DIP TL Agent's and DIP TL Lenders' liens on and security interests in the DIP TL Collateral, or (D) the Pre-Petition Term Loan Obligations or the Pre-Petition Term Loan Agent's liens on and security interests in the Pre-Petition Term Loan Collateral, or (iii) preventing, hindering or delaying (A) DIP ABL Agent's or DIP ABL Lenders' assertion or enforcement of any lien, claim, right or security interest or realization upon any DIP ABL Collateral or (B) DIP TL Agent's or DIP TL Lenders' assertion or enforcement of any lien, claim, right or security interest or realization upon any DIP TL Collateral, (b) a request to use the Cash Collateral (as such term is defined in Section 363 of the Bankruptcy Code) without the prior written consent of DIP ABL Agent and DIP TL Agent in accordance with the terms and conditions of this Interim Order, (c) a request for authorization to obtain Debtor-in-Possession financing or other financial accommodations pursuant to Section 364(c) or Section 364(d) of the Bankruptcy Code, other than from DIP ABL Agent or DIP ABL Lenders, or DIP TL Agent or DIP TL Lenders, without the prior written consent of DIP ABL Agent and DIP TL Agent, (d) the commencement or prosecution of any action or proceeding of any claims, causes of action or defenses against either Existing ABL Agent, any Existing ABL Lender, DIP ABL Agent or any DIP ABL Lender, or Pre-Petition Indenture Trustee or any Pre-Petition Note Purchaser, or DIP TL Agent or any DIP TL Lender, or any of their respective officers, directors, employees, agents, attorneys, affiliates, successors or assigns, including, without limitation, any attempt to recover or avoid any claim or interest

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from Existing ABL Agent or any Existing ABL Lender, or Pre-Petition Indenture Trustee or any Pre-Petition Note Purchaser, or Pre-Petition Term Loan Agent or any Pre-Petition Term Loan Lender under Chapter 5 of the Bankruptcy Code, or (e) any act which has or could have the effect of materially and adversely modifying or compromising the rights and remedies of DIP ABL Agent or any DIP ABL Lender, or DIP TL Agent or any DIP TL Lender, or Pre-Petition Term Loan Agent or any Pre-Petition Term Loan Lender which is contrary, in a manner that is material and adverse to DIP ABL Agent or any DIP ABL Lender, or to DIP TL Agent or any DIP TL Lender, to any term or condition set forth in or acknowledged by the DIP ABL Financing Agreements or the DIP TL Documents, as applicable, or this Interim Order and which results in the occurrence of an Event of Default under the DIP ABL Financing Agreements or DIP TL Documents, as applicable, or this Interim Order; provided however, no more than \$50,000 of the proceeds of post-petition Revolving Loans may be used by the Official Committee to conduct the investigation permitted by Section 4.1 herein.

2.5 Carve Out Reserve. At DIP ABL Agent's sole reasonable discretion, DIP ABL Agent may, at any time, but initially in the increments set forth in Section 2.4.1(c) above, establish a Reserve against the amount of Revolving Loans, or other credit accommodations that would otherwise be made available to Debtors pursuant to the lending formulae contained in the DIP ABL Loan Agreement in respect of the Professional Fee Carve-Out and the other Carve-Out Expenses.

2.6 Payment of Carve-Out Expenses.

2.6.1 Prior to the declaration of an Event of Default, Debtors shall be permitted to pay Allowed Professional Fees of the Professionals in accordance with the Budget

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and any such amounts paid prior to the occurrence of an Event of Default shall not reduce the Professional Fee Carve-Out.

2.6.2 Any payment or reimbursement made either directly by DIP ABL Agent, any DIP ABL Lender, DIP TL Agent or any DIP TL Lender at any time, or by or on behalf of the Debtors on or after the declaration of an Event of Default, in respect of any Allowed Professional Fees or any other Carve Out Expenses (exclusive of the application of any retainers by any of the Professionals) shall, in either case, permanently reduce the Professional Fee Carve Out on a dollar-for-dollar basis. The obligation of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders to fund or otherwise cause to be paid the Professional Fee Carve-Out and the other Carve-Out Expenses shall be added to and made a part of the DIP ABL Obligations and DIP TL Obligations, as applicable, secured by the DIP ABL Collateral and DIP TL Collateral, as applicable, and entitle DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders to all of the rights, claims, liens, priorities and protections under this Interim Order, the DIP ABL Financing Agreements, the DIP TL Documents, the Bankruptcy Code or applicable law. Payment of any Carve-Out Expenses, whether by or on behalf of DIP ABL Agent, any DIP ABL Lender, DIP TL Agent or any DIP TL Lender shall not and shall not be deemed to reduce the DIP ABL Obligations or the DIP TL Obligations, and shall not and shall not be deemed to subordinate any of DIP ABL Agent's and DIP ABL Lenders' liens and security interests in the DIP ABL Collateral or the DIP ABL Superpriority Claim any of DIP TL Agent's or DIP TL Lenders' liens and security interests in the DIP TL Collateral or the DIP TL Superpriority Claim to any junior pre- or post-petition lien, interest or claim in favor of any other party. Except as otherwise provided herein with respect to the Professional Fee Carve-Out

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and the other Carve-Out Expenses, DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders shall not, under any circumstance, be responsible for the direct payment or reimbursement of any fees or disbursements of any Professionals incurred in connection with the Cases under any chapter of the Bankruptcy Code, and nothing in Section 2.4, 2.5 or 2.6 of this Interim Order shall be construed to obligate DIP ABL Agent, or any DIP ABL Lender, DIP TL Agent or any DIP TL Lender in any way, to pay compensation to or to reimburse expenses of any Professional, or to ensure that the Debtors have sufficient funds to pay such compensation or reimbursement.

2.7 Adequate Protection. As adequate protection for the Junior TL Liens to the extent of any diminution in the value of such interest as a result of the financing contemplated by the DIP TL Agreement, the holders of the Junior TL Liens shall be granted replacement liens in the Collateral junior and subject to the Carveout, the ABL Permitted Liens and Claims, the TL Permitted Liens and Claims and the liens constituting the DIP ABL Collateral and the liens constituting the DIP TL Collateral.

Section 3. Default; Rights and Remedies; Relief from Stay.

3.1 Events of Default. The occurrence of any of the following events shall constitute an "***Event of Default***" under this Interim Order:

a. Any Debtor's failure to perform, in any respect, any of the terms, conditions or covenants or their obligations under this Interim Order; or

b. An "Event of Default" under the DIP ABL Loan Agreement, or any of the other DIP ABL Financing Agreements, or the DIP TL Agreement or any of the other DIP TL Documents.

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3.2 Rights and Remedies Upon Event of Default. Upon the occurrence of and during the continuance of an Event of Default, (i) the Debtors shall be bound by all restrictions, prohibitions and other terms as provided in this Interim Order, the DIP ABL Loan Agreement, and the other DIP ABL Financing Agreements, the DIP TL Agreement, and the other DIP TL Documents, (ii) DIP ABL Agent shall be entitled to take any act or exercise any right or remedy (subject to Section 3.4 below) as provided in this Interim Order or any DIP ABL Financing Agreement, including, without limitation, declaring all DIP ABL Obligations immediately due and payable, accelerating the DIP ABL Obligations, ceasing to extend Revolving Loans, or provide or arrange for Letters of Credit on behalf of Debtors, setting off any DIP ABL Obligations with DIP ABL Priority Collateral or proceeds in DIP ABL Agent's possession, and enforcing any and all rights with respect to the DIP ABL Priority Collateral and (iii) DIP TL Agent shall be entitled to take any act or exercise any right or remedy (subject to Section 3.4 below and to the Intercreditor Agreement, as provided in this Interim Order or any DIP TL Document, including, without limitation, declaring all DIP TL Obligations immediately due and payable and accelerating the DIP TL Obligations. None of DIP ABL Agent, any DIP ABL Lender, DIP TL Agent or any DIP TL Lender shall have any obligation to lend or advance any additional funds to or on behalf of Debtors, or provide any other financial accommodations to Debtors, immediately upon or after the occurrence of an Event of Default or upon the occurrence of any act, event, or condition that, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

3.3 Expiration Termination of Commitments.

3.3.1 Upon the expiration of Debtor Borrowers' authority to borrow and

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obtain other credit accommodations from DIP ABL Agent and DIP ABL Lenders pursuant to the terms of this Interim Order and the DIP ABL Financing Agreements (except if such authority shall be extended with the prior written consent of DIP ABL Agent, which consent shall not be implied or construed from any action, inaction or acquiescence by DIP ABL Agent or any DIP ABL Lender), unless an Event of Default set forth in Section 3.1 above occurs sooner and the automatic stay has been lifted or modified pursuant to Section 3.4 of this Interim Order, all of the DIP ABL Obligations shall immediately become due and payable and DIP ABL Agent and DIP ABL Lenders shall be automatically and completely relieved from the effect of any stay under Section 362 of the Bankruptcy Code, any other restriction on the enforcement of its liens upon and security interests in the DIP ABL Collateral or any other rights granted to DIP ABL Agent and DIP ABL Lenders pursuant to the terms and conditions of the DIP ABL Financing Agreements or this Interim Order, and DIP ABL Agent, acting on behalf of itself and the other DIP ABL Lenders, shall be and is hereby authorized, in its sole discretion, to take any and all actions and remedies provided to it in this Interim Order, the DIP ABL Financing Agreements, or applicable law, subject to the Intercreditor Agreement, which DIP ABL Agent may deem appropriate and to proceed against and realize upon the DIP ABL Collateral or any other property of the Debtors' Estates.

3.3.2 Upon the termination of the DIP TL Agreement and the DIP TL Documents pursuant to the terms of this Interim Order and the DIP TL Documents (except if such termination shall be extended with the prior written consent of DIP TL Agent, which consent shall not be implied or construed from any action, inaction or acquiescence by DIP TL Agent or any DIP TL Lender), unless an Event of Default set forth in Section 3.1 above occurs

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sooner and the automatic stay has been lifted or modified pursuant to Section 3.4 of this Interim Order, all of the DIP TL Lenders shall automatically and completely relieved from the effect of any stay under Section 362 of the Bankruptcy Code, any other restriction on the enforcement of its liens upon and security interests in the DIP TL Collateral or any other rights granted to DIP TL Agent and DIP TL Lenders pursuant to the terms and conditions of the DIP TL Documents or this Interim Order, and DIP TL Agent, acting on behalf of itself and the other DIP TL Lenders, shall be and is hereby authorized, in its sole discretion, to take any and all actions and remedies provided to it in this Interim Order, the DIP TL Documents, or applicable law, subject to the Intercreditor Agreement, which DIP TL Agent may deem appropriate and to proceed against and realize upon the DIP TL Collateral or any other property of the Debtors Estates.

3.4 Relief from Automatic Stay. The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application or order of the Court to the extent necessary to permit each of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders to perform any act authorized or permitted under or by virtue of this Interim Order, the DIP ABL Financing Agreements or the DIP TL Documents including, without limitation, (a) to implement the post-petition DIP ABL Financing arrangements and the DIP Term Loan arrangements authorized by this Interim Order and pursuant to the terms of the DIP ABL Financing Agreements and the DIP TL Documents, (b) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the DIP ABL Collateral or the DIP TL Collateral, and (c) to assess, charge, collect, advance, deduct and receive payments with respect to the DIP ABL Obligations or the DIP TL Obligations, including, without

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limitation, all interests, fees, costs and expenses permitted under the DIP ABL Financing Agreements or the DIP TL Documents, and apply such payments to the DIP ABL Obligations and the DIP TL Obligations pursuant to the DIP ABL Financing Agreements, the DIP TL Documents and this Interim Order.

3.4.1 Without limiting the foregoing, upon the occurrence of an Event of Default and after providing five (5) business days prior written notice (the “**Enforcement Notice**”) to counsel for the Debtors, counsel for the DIP TL Agent, counsel for the Coalition of Pre-Petition Notes Purchasers, counsel for the Official Committee (if appointed), and the U.S. Trustee, DIP ABL Agent, acting on behalf of itself and the other DIP ABL Lenders, shall be entitled to take any action and exercise all rights and remedies provided to it by this Interim Order, the DIP ABL Financing Agreements, or applicable law, and subject to the Intercreditor Agreement, as DIP ABL Agent may deem appropriate in its sole discretion to, among other things, proceed against and realize upon the DIP ABL Collateral or any other assets or properties of Debtors’ Estates upon which DIP ABL Agent, for the benefit of itself and the other DIP ABL Lenders, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all DIP ABL Obligations.

3.4.2 Without limiting the foregoing, upon the occurrence of an Event of Default and after providing an Enforcement Notice to counsel for the Debtors, counsel for the DIP ABL Agent, counsel for the Coalition of Pre-Petition Notes Purchasers, counsel for the Official Committee (if appointed), and the U.S. Trustee, DIP TL Agent, acting on behalf of itself and the other DIP TL Lenders, shall be entitled to take any action and exercise all rights and remedies provided to it by this Interim Order, the DIP TL Documents or applicable law, and

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subject to the Intercreditor Agreement, as DIP TL Agent may deem appropriate in its sole discretion to, among other things, proceed against and realize upon the DIP TL Collateral or any other assets or properties of Debtors' Estates upon which DIP TL Agent, for the benefit of itself and the other DIP TL Lenders, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all DIP TL Obligations.

Section 4. Representations; Covenants; and Waivers.

4.1 Objections to Pre-Petition Obligations. Any action, claim or defense (hereinafter, an "**Objection**") that seeks to object to, challenge, contest or otherwise invalidate or reduce, whether by setoff, recoupment, counterclaim, deduction, disgorgement or claim of any kind: (a) the existence, validity or amount of the Pre-Petition ABL Obligations, (b) the extent, legality, validity, perfection or enforceability of Existing ABL Agent's and Existing ABL Lenders' pre-petition liens and security interests in the Pre-Petition ABL Collateral, (c) Existing ABL Agent's and Existing ABL Lenders' right to apply proceeds received at closing against the Pre-Petition ABL Obligations in satisfaction of Existing ABL Agent's and Existing Lenders' pre-petition liens as provided for in this Interim Order, (d) the existence, validity or amount of the Pre-Petition Notes Obligations, (e) the existence, validity or amount of the Pre-Petition Term Loan Obligations, or (f) the extent, legality, validity, perfection or enforceability of the Pre-Petition Term Loan Agent's and the Pre-Petition Term Loan Lenders' pre-petition liens and security interests in the Pre-Petition Term Loan Collateral shall be filed with the Court within the earlier of (x) by any Official Committee, and no other party, within (60) calendar days from the date of appointment of the Official Committee by the U.S. Trustee, or (y) in the event no Official Committee is appointed, within the thirty (30) days following the Petition Date, by any party in

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interest with requisite standing within seventy five (75) calendar days from the date of entry of this Interim Order, or (z) the objection deadline to confirmation of the Joint Plan. If any such Objection is timely filed and successfully pursued, nothing in this Interim Order shall prevent the Court from granting appropriate relief with respect to the Pre-Petition ABL Obligations, and Existing ABL Agent's and Existing ABL Lenders' liens on the Pre-Petition ABL Collateral, the Pre-Petition Term Loan Obligations and the Pre-Petition Term Loan Agent's and the Pre-Petition Term Loan Lenders' liens or the Pre-Petition Term Loan Collateral. If no Objection is timely filed, or if an Objection is timely filed but denied, (A) each of the Pre-Petition ABL Obligations and/or Pre-Petition Term Loan Obligations shall be deemed allowed in full, shall not be subject to any setoff, recoupment, counterclaim, deduction or claim of any kind, and shall not be subject to any further objection or challenge by any party at any time, and Existing ABL Agent's and Existing ABL Lenders' pre-petition liens on and security interest in the Pre-Petition ABL Collateral and/or the Pre-Petition Term Loan Agent's and Pre-Petition Term Loan Lenders' liens on and security interests in the Pre-Petition Term Loan Collateral shall be deemed legal, valid, perfected, enforceable, and non-avoidable for all purposes and of first and senior priority, subject to only the ABL Permitted Liens and Claims, and the Term Loan Permitted Liens and Claims, respectively, and (B) Existing ABL Agent, Existing ABL Lenders, Pre-Petition Term Loan Agent and Pre-Petition Term Loan Lenders and each of their respective participants, agents, officers, directors, employees, attorneys, professionals, successors, and assigns shall be deemed released and discharged from any and all claims and causes of action related to or arising out of the Pre-Petition ABL Financing Agreements or the Pre-Petition Term Loan Agreements and shall not be subject to any further objection or challenge by any party at any time. Nothing

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contained in this Section 4.1 or otherwise shall or shall be deemed or construed to impair, prejudice or waive any rights, claims or protections afforded to DIP ABL Agent and DIP ABL Lenders in connection with all Revolving Loans, and Letters of Credit and other financial and credit accommodations provided by DIP ABL Agent and DIP ABL Lenders to Debtors in reliance on Section 364(e) of the Bankruptcy Code and in accordance with the terms and provisions of this Interim Order and the DIP ABL Financing Agreements.

4.1.1 If and to the extent all or any portion of the Pre-Petition Term Loan Payoff Amount is required to be returned to the Debtors, such returned amount shall be deemed to be DIP TL Priority Collateral and shall be remitted to DIP TL Agent for application to the DIP TL Obligations in accordance with the terms of the DIP TL Agreement and other DIP TL Documents.

4.1.2 If and to the extent all or any portion of the repayment of the Prepetition ABL Obligations are required to be returned to the Debtors, such returned amount shall be deemed to be DIP ABL Priority Collateral and shall be remitted to DIP ABL Agent for application to the DIP ABL Obligations in accordance with the terms of the DIP ABL Agreement and other DIP ABL Financing Agreements.

4.2 Debtors' Waivers. At all times during the Cases, and whether or not an Event of Default has occurred, the Debtors irrevocably waive any right that they may have to seek authority (i) to use Cash Collateral of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and/or DIP TL Lenders under Section 363 of the Bankruptcy Code, (ii) to obtain post-petition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from DIP ABL Agent and DIP ABL Lenders and the DIP TL Agent and DIP

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TL Lenders or as may be otherwise expressly permitted pursuant to the DIP ABL Loan Agreement and DIP TL Agreement, (iii) to challenge the application of any payments authorized by this Interim Order pursuant to Section 506(b) of the Bankruptcy Code, to assert that the value of the Pre-Petition ABL Collateral is less than the Pre-Petition ABL Obligations or to assert that the value of the Pre-Petition Term Loan Collateral is less than the Pre-Petition Term Loan Obligations, (iv) to propose, support or have a plan of reorganization or liquidation that does not provide for the indefeasible payment in cash in full and satisfaction of all DIP ABL Obligations and DIP TL Obligations on the effective date of such plan in accordance with the terms and conditions set forth in the DIP ABL Agreement and DIP TL Agreement, respectively, or (v) to seek relief under the Bankruptcy Code, including without limitation, under Section 105 of the Bankruptcy Code, to the extent any such relief would (x) in any way restrict or impair the rights and remedies of any of DIP ABL Agent or the DIP ABL Lenders as provided in this Interim Order and the DIP ABL Financing Agreements or DIP ABL Agent's and DIP ABL Lenders' exercise of such rights or remedies or (y) in any way restrict or impair the rights and remedies of any of DIP TL Agent or the DIP TL Lenders as provided in this Interim Order and the DIP TL Documents or DIP TL Agent's and DIP TL Lenders' exercise of such rights or remedies; provided, however, that DIP ABL Agent or DIP TL Agent, as applicable, may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by DIP ABL Agent or any DIP ABL Lender or DIP TL Agent or any DIP TL Lender.

4.3 Section 506(c), 552(b) and Other Claims. Except to the extent of the Carve-Out Expenses, no costs or expenses of administration which have or may be incurred in the Cases at any time during the Interim Financing Period (and subject to the entry of a Final

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Financing Order, any time after the expiration of the Interim Financing Period) shall be charged against DIP ABL Agent or any DIP ABL Lender, DIP TL Agent or any DIP TL Lender or their respective claims or their interests in the Collateral pursuant to Section 506(c), 552(b) or any other provision of the Bankruptcy Code, or any legal or equitable doctrine (including unjust enrichment), without the prior written consent of DIP ABL Agent, DIP TL Agent, as applicable, and no such consent shall be implied from any other action, inaction or acquiescence by DIP ABL Agent or any DIP ABL Lender, DIP TL Agent or any DIP TL Lender.

#### 4.4 Collateral Rights.

4.4.1 Until all of the DIP ABL Obligations shall have been indefeasibly paid and satisfied in full:

- (1) no other party shall foreclose or otherwise seek to enforce any junior lien or claim in any DIP ABL Priority Collateral; and
- (2) upon and after the occurrence of an Event of Default, and subject to DIP ABL Agent obtaining relief from the automatic stay as provided for herein and subject to the terms of the Intercreditor Agreement, in connection with a liquidation of any of the DIP ABL Priority Collateral, DIP ABL Agent (or any of its employees, consultants, contractors or other professionals) shall have the right to: (i) enter upon, occupy and use any real or personal property, fixtures, equipment, leasehold interests or warehouse arrangements owned or leased by Debtors, including, without limitation, the TL Priority Collateral, and (ii) use any and all trademarks, tradenames, copyrights, licenses, patents or any other similar assets of Debtors, which are owned by or subject to a lien of any third party, including without limitation, the TL Priority Collateral, and which are used by Debtors in their businesses, provided, however, DIP

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ABL Agent and DIP ABL Lenders will be responsible, except to the extent otherwise provided in the Intercreditor Agreement, for the payment of any applicable fees, rentals, royalties or other amounts due such lessor, licensor or owner of such property for the period of time that DIP ABL Agent actually uses the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals or other amounts due for any period prior to the date that DIP ABL Agent actually occupies or uses such assets or properties).

4.4.2 Until all of the DIP TL Obligations shall have been indefeasibly paid and satisfied in full no other party shall foreclose or otherwise seek to enforce any junior lien or claim in any DIP TL Priority Collateral.

4.5 Release. Subject to Section 4.1 above, in consideration of DIP ABL Agent and DIP ABL Lenders making post-petition loans, advances and providing other credit and financial accommodations to the Debtors pursuant to the provisions of the DIP ABL Financing Agreements and this Interim Order, (a) each Debtor, on behalf of itself and its successors and assigns, (collectively, the “**Releasors**”), shall, forever release, discharge and acquit (i) Existing ABL Agent, each Existing ABL Lender and their respective participants, officers, directors, agents, attorneys and predecessors-in-interest (collectively, the “**ABL Releasees**”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called "lender liability" claims or defenses, that Releasors had, have or hereafter can or may have against ABL Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Pre-Petition ABL Obligations, the Existing ABL Financing Agreements and any Revolving Loans, Letters of

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Credit or other financial accommodations made by Existing ABL Agent and Existing ABL Lenders to Debtors pursuant to the Existing ABL Financing Agreements, and (ii) Pre-Petition Term Loan Agent, each Existing Pre-Petition Term Loan Lender and their respective participants, officers, directors, agents, attorneys and predecessors-in-interest (collectively, the ***“Pre-Petition Term Loan Releasees”***) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called "lender liability" claims or defenses, that Releasers had, have or hereafter can or may have against Pre-Petition Term Loan Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Pre-Petition Term Loan Obligations, the Pre-Petition Term Loan Agreements and any term loans, letters of credit or other financial accommodations made by Pre-Petition Term Loan Agent and Pre-Petition Term Loan Lenders to Debtors pursuant to the Pre-Petition Term Loan Agreements, (b) upon the repayment of all DIP ABL Obligations owed to DIP ABL Agent and DIP ABL Lenders by Debtors and termination of the rights and obligations arising under the DIP ABL Financing Agreements and either a Final Financing Order or extended Interim Order, as the case may be (which payment and termination shall be on terms and conditions acceptable to DIP ABL Agent), DIP ABL Agent and DIP ABL Lender shall be released from any and all liabilities, actions, duties, responsibilities and causes of action arising or occurring in connection with or related to the DIP ABL Financing Agreements or the applicable Financing Order (including without limitation any obligation or responsibility (whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated) to pay or otherwise fund the Carve-Out Expenses), on terms and

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conditions acceptable to DIP ABL Agent, and (c) upon the repayment of all DIP TL Obligations in full in cash and termination of the obligations arising of DIP TL Agent and DIP TL Lenders under the DIP TL Documents and this Interim Order (or any other applicable order of this court), as the case may be (which payment and termination shall be on terms and conditions acceptable to DIP TL Agent), DIP TL Agent and DIP TL Lenders shall be released from any and all liabilities, actions, duties, responsibilities and causes of action arising or occurring in connection with or related to the DIP TL Agreement and any other DIP TL Documents and the applicable orders (including without limitation any obligation or responsibility (whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated) to pay or otherwise fund the Carve-Out Expenses), on terms and conditions acceptable to DIP TL Agent.

Section 5. Other Rights and Obligations.

5.1 No Modification or Stay of This Interim Order. Notwithstanding (i) any stay, modification, amendment, supplement, vacating, revocation or reversal of this Interim Order, the DIP ABL Financing Agreements, the DIP TL Documents or any term hereunder or thereunder, (ii) the failure to obtain an order approving the Motion at the Final Hearing (the “**Final DIP Financing Order**”) pursuant to Bankruptcy Rule 4001(c)(2), or (iii) the dismissal or conversion of one or more of the Cases (each, a “**Subject Event**”), (x) the acts taken by each of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders in accordance with this Interim Order, and (y) the DIP ABL Loans and the loans made by the DIP TL Lenders incurred or arising prior to DIP ABL Agent's and DIP TL Agent's actual receipt of written notice from Debtors expressly describing the occurrence of such Subject Event shall, in each instance, be

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governed in all respects by the original provisions of this Interim Order, and the acts taken by each of DIP ABL Agent (on behalf of itself and the other Secured Parties (as defined in the DIP ABL Loan Agreement) including the Issuing Bank), DIP ABL Lenders, DIP TL Agent and DIP TL Lenders respectively, in accordance with this Interim Order, and the liens granted to DIP ABL Agent and DIP ABL Lenders in the DIP ABL Collateral, and to DIP TL Agent and DIP TL Lenders in the DIP TL Collateral and all other rights, remedies, privileges, and benefits in favor of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders pursuant to this Interim Order, the DIP ABL Financing Agreements, and the DIP TL Documents shall remain valid and in full force and effect pursuant to Section 364(e) of the Bankruptcy Code. For purposes of this Interim Order, the term "appeal", as used in Section 364(e) of the Bankruptcy Code, shall be construed to mean any proceeding for reconsideration, amending, rehearing, or re-evaluating this Interim Order by this Court or any other tribunal.

5.2 Power to Waive Rights; Duties to Third Parties. DIP ABL Agent and the DIP TL Lenders shall have the right to waive any of the terms, rights and remedies provided or acknowledged in this Interim Order in respect of DIP ABL Agent and DIP ABL Lenders (the "**DIP ABL Lender Rights**"), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any DIP ABL Lender Right(s). DIP TL Agent and DIP TL Lenders shall have the right to waive any of the terms, rights and remedies provided or acknowledged in this Interim Order in respect of DIP TL Agent and DIP TL Lenders (the "**DIP TL Lender Rights**") and shall have no obligation or duty to any other party with respect to the exercise of enforcement, or failure to exercise or enforce, any DIP TL Lender Right(s). Any waiver by DIP ABL Agent or any DIP ABL Lender of any DIP ABL

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Lender Rights or by DIP TL Agent or any DIP TL Lender of any DIP TL Rights shall not be or constitute a continuing waiver. Any delay in or failure to exercise or enforce any DIP ABL Lender Right or DIP TL Right shall neither constitute a waiver of such DIP ABL Lender Right or DIP TL Right, subject DIP ABL Agent, any DIP ABL Lender, DIP TL Agent or any DIP TL Lender to any liability to any other party, nor cause or enable any other party to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to DIP ABL Agent or any DIP ABL Lender or DIP TL Agent or any DIP TL Lender.

5.3 Disposition of Collateral. Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP ABL Priority Collateral or the DIP TL Priority Collateral, outside the ordinary course of business unless such action is authorized by an order of this Court. Debtors shall remit to DIP ABL Agent or cause to be remitted to DIP ABL Agent, all proceeds of the DIP ABL Priority Collateral for application by DIP ABL Agent to the DIP ABL Loans, in such order and manner as DIP ABL Agent may determine in its discretion, in accordance with the terms of this Interim Order, the DIP ABL Loan Agreement, and the other DIP ABL Financing Agreements. Debtors shall remit to DIP TL Agent, or cause to be remitted to DIP TL Agent, all proceeds of DIP TL Priority Collateral for such application by DIP TL Agent to the DIP TL Loans, in such order and manner as DIP TL Agent may determine in its discretion in accordance with the terms of this Interim Order, the DIP TL Agreement and the other DIP TL Documents.

5.4 Inventory. Debtors shall not, without the consent of DIP ABL Agent, (and subject to the Intercreditor Agreement, the DIP TL Agent (a) enter into any agreement to return any inventory to any of their creditors for application against any pre-petition indebtedness under

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any applicable provision of Section 546 of the Bankruptcy Code, or (b) consent to any creditor taking any setoff against any of its pre-petition indebtedness based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise.

5.5 Reservation of Rights. The terms, conditions and provisions of this Interim Order are in addition to and without prejudice to the rights of each of DIP ABL Agent and DIP ABL Lenders, or DIP TL Agent or any DIP TL Lender, subject to each of their respective rights as set forth in the Intercreditor Agreement and to pursue any and all rights and remedies under the Bankruptcy Code, the DIP ABL Financing Agreements, the DIP TL Documents or this Interim Order, as applicable, or any other applicable agreement or law, including, without limitation, rights to seek adequate protection and/or additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of cash, DIP ABL Collateral, DIP TL Collateral or granting of any interest in the DIP ABL Collateral or the DIP TL Collateral or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of Professionals or other parties seeking compensation or reimbursement from the Estate, provided, however, so long as no Event of Default exists, DIP ABL Agent and DIP ABL Lenders, or DIP TL Agent or any DIP TL Lender shall not take any action to seek relief from the automatic stay, to convert or dismiss the case.

5.6 Binding Effect.

5.6.1 The provisions of this Interim Order and the DIP ABL Financing Agreements, the DIP ABL Loans, DIP ABL Superpriority Claim, the DIP TL Documents, the DIP TL Superpriority Claim, and any and all rights, remedies, privileges and benefits in favor of

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each of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders provided or acknowledged in this Interim Order, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Interim Order pursuant to Bankruptcy Rules 6004(g) and 7062, shall continue in full force and effect, and shall survive entry of any such other order, including without limitation, any order which may be entered confirming any plan of reorganization, converting one or more of the Cases to any other chapter under the Bankruptcy Code, or dismissing one or more of the Cases.

5.6.2 Any order dismissing one or more of the Cases under Section 1112 or otherwise shall be deemed to provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (a) (i) the DIP ABL Superpriority Claim and DIP ABL Agent's and DIP ABL Lender' liens on and security in the DIP ABL Collateral, and (ii) the DIP TL Superpriority Claim and the DIP TL Agent's and the DIP TL Lenders' liens on and security interests in the DIP TL Collateral shall continue in full force and effect notwithstanding such dismissal until the DIP ABL Obligations and the DIP TL Obligations, respectively, are indefeasibly paid and satisfied in full in cash, and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing each of the DIP ABL Superpriority Claim, the liens in the DIP ABL Collateral, the DIP TL Superpriority Claim and the liens in the DIP TL Collateral.

5.6.3 In the event this Court modifies any of the provisions of this Interim Order, the DIP ABL Financing Agreements or the DIP TL Documents following a Final Hearing, (a) such modifications shall not affect the rights or priorities of each DIP ABL Agent and DIP ABL Lenders pursuant to this Interim Order with respect to the DIP ABL Collateral and the DIP TL Agent and DIP TL Lenders with respect to the DIP TL Agent's liens in the DIP TL

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Collateral or any portion of the DIP ABL Obligations and the DIP TL Obligations which arises or is incurred or is advanced prior to such modifications, and (b) this Interim Order shall remain in full force and effect except as specifically amended or modified at such Final Hearing.

5.6.4 This Interim Order shall be binding upon Debtors, all parties in interest in the Cases and their respective successors and assigns, including any trustee or other fiduciary appointed in the Cases or any subsequently converted bankruptcy case(s) of any Debtor. This Interim Order shall also inure to the benefit of DIP ABL Agent and DIP ABL Lenders, DIP TL Agent and DIP TL Lenders, Debtors and their respective successors and assigns.

5.7 Restrictions on Cash Collateral Use, Additional DIP ABL Financing, Plan Treatment. All post-petition advances and other financial accommodations under the DIP ABL Loan Agreement, the other DIP ABL Financing Agreements, the DIP TL Agreement and the other DIP TL Documents are made in reliance on this Interim Order and there shall not at any time be entered in the Cases or in any subsequently converted case under Chapter 7 of the Bankruptcy Code, any order (other than the Final DIP Financing Order) which (a) authorizes the use of cash collateral of Debtors in which DIP ABL Agent, DIP ABL Lenders, DIP TL Agent or DIP TL Lenders have an interest, or the sale, lease, or other disposition of property of any Debtor's Estate in which DIP ABL Agent, DIP ABL Lenders, DIP TL Agent or DIP TL Lenders have a lien or security interest, except as expressly permitted hereunder or in the DIP ABL Financing Agreements or the DIP TL Documents, or (b) authorizes under Section 364 of the Bankruptcy Code the obtaining of credit or the incurring of indebtedness secured by a lien or security interest, which is equal or senior to a lien or security interest in property in which DIP

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Case No: 10-\_\_\_\_\_(\_\_\_\_)  
Caption: Order (A) Authorizing Debtors to Obtain Interim Post-Petition Financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105 and 364(c); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; (C) Authorizing Debtors to Enter into Agreements with Wachovia Bank, N.A., as Agent; (D) Authorizing Debtors to use Pre-Petition Cash Collateral and Grant Pre-Petition Term Loan Lenders Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363; (E) Authorizing Debtors to Enter into Agreements with Wilmington Trust FSB as Agent for Certain Holders of DIP Floating Rate Senior Secured Notes; (F) Authorizing Repayment of Pre-Petition Secured Debt Owning to Wachovia Bank, N.A. as Existing Agent; and (G) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001

ABL Agent, DIP ABL Lenders, DIP TL Agent or DIP TL Lenders hold a lien or security interest, or which is entitled to priority administrative claim status which is equal or superior to that granted to DIP ABL Agent, DIP ABL Lenders, DIP TL Agent or DIP TL Lenders herein; unless, in each instance (i) DIP ABL Agent and DIP TL Agent shall have given its express prior written consent with respect thereto, no such consent being implied from any other action, inaction or acquiescence by DIP ABL Agent, any DIP ABL Lender, DIP TL Agent or DIP TL Lenders or (ii) such other order requires that all DIP ABL Obligations shall first be indefeasibly paid and satisfied in full in accordance with the terms of the DIP ABL Loan Agreement, and the other DIP ABL Financing Agreements, including, without limitation, all debts and obligations of Debtors to DIP ABL Agent and DIP ABL Lenders which arise or result from the obligations, loans, security interests and liens authorized herein, on terms and conditions acceptable to DIP ABL Agent. The security interests and liens granted to or for the benefit of each of DIP ABL Agent and DIP ABL Lenders, DIP TL Agent and DIP TL Lenders hereunder and the rights of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders pursuant to this Interim Order and the DIP ABL Financing Agreements with respect to the DIP ABL Obligations and the DIP ABL Priority Collateral and the DIP TL Documents with respect to the DIP TL Obligations and the DIP TL Priority Collateral are cumulative and shall not be altered, modified, extended, impaired, or affected by any plan of reorganization or liquidation of Debtors and, if DIP ABL Agent or DIP TL Agent shall expressly consent in writing that the DIP ABL Obligations or the DIP TL Obligations, respectively, shall not be repaid in full in cash upon confirmation thereof, shall continue after confirmation and consummation of any such plan.

5.8 No Owner/Operator Liability. In determining to make any loan under the

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DIP ABL Loan Agreement, the other DIP ABL Financing Agreements, the DIP TL Agreement, the DIP TL Documents or any Financing Order, or in exercising any rights or remedies as and when permitted pursuant to the DIP ABL Financing Agreements, DIP TL Documents or any Financing Order, each of DIP ABL Agent, DIP ABL Lenders, DIP TL Agent and DIP TL Lenders shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute).

5.9 Marshalling. In no event shall DIP ABL Agent, any DIP ABL Lender, DIP TL Agent, any DIP TL Lender or any Collateral be subject to the equitable doctrine of "marshalling" or any similar doctrine.

5.10 Term; Termination. Notwithstanding any provision of this Interim Order to the contrary, the term of the DIP ABL financing arrangements among Debtors, DIP ABL Agent and DIP ABL Lenders authorized by this Interim Order may be terminated pursuant to the terms of the DIP ABL Agreement. Notwithstanding any provision of this Interim Order to the contrary, the term of the financing arrangements among Debtors, DIP TL Agent and DIP TL Lenders authorized by this Interim Order may be terminated pursuant to the terms of the DIP TL Agreement.

5.11 Limited Effect. Unless the Interim Order specifically provides otherwise, in the event of a conflict between the terms and provisions of any of the DIP ABL Financing Agreements or the DIP TL Documents and this Interim Order, the terms and provisions of this

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Interim Order shall govern, interpreted as most consistent with the terms and provisions of the DIP ABL Financing Agreements and the DIP TL Documents.

5.12 Objections Overruled. All objections to the entry of this Interim Order are, to the extent not withdrawn, hereby overruled.

Section 6. Final Hearing and Response Dates. The Final Hearing on the Motion pursuant to Bankruptcy Rule 4001(c)(2) is scheduled for June \_\_\_\_, 2010 at \_\_\_\_\_ before this Court (the "**Final Hearing**"). *The Debtors shall promptly mail copies of this Interim Order to, (a) the Noticed Parties, (b) to any other party that has filed a request for notices with this Court and to any Official Committee after same has been appointed, or Official Committee's counsel, if same shall have filed a request for notice. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections, which objections shall be served upon (a) counsel for the Debtors, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, New Jersey 07068; Attn: Kenneth A. Rosen, Esq., Fax: (973) 597-2549; (b) counsel for the DIP ABL Agent, Duane, Morris & Heckscher, LLP, 744 Broad Street, Suite 1200, Newark, New Jersey 07102; Attn: William Katchen, Esq., Fax: (973) 424-2100; and Otterbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169-0075; Attn: Andrew M. Kramer, Esq., Fax: (212) 682-6104; (c) counsel to the DIP TL Agent, Gibbon P.C., One Gateway Center, Newark, New Jersey 07102, Attn: Karen Giannelli, Esq., Fax: (973) 639-6278; and Goldberg Kohn Ltd., 55 East Monroe Street, Suite 3300, Chicago, Illinois 6060, Attn: Randall Klein, Esq., Fax (312) 863-7474; (d) and counsel to Coalition of Prepetition Noteholders, Milbank, Tweed, Hadley & McCloy, LLP, One Chase Manhattan Plaza; Attn: Debra Alligood White, Esq., Fax: (202) 835-7586; and Michael E. Comerford, Esq., Fax: (212) 822-5318; (e) counsel to the Term Loan*

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*Agent, (f) counsel to any Official Committee; and (g) the U.S. Trustee; and shall be filed with the Clerk of the United States Bankruptcy Court for the District of New Jersey, in each case, to allow actual receipt of the foregoing no later than \_\_\_\_\_, prevailing Eastern time.*

**EXHIBIT A**

**Budget**

**THE NEWARK GROUP, INC.**  
**WEEKLY CASH FLOW FORECAST**

Week: #	1	2	3	4	5	6	7	8	9	10	11	12	13	W 1-13
	13 Week Cash Flow Forecast													
(\$ thousands)	11-Jun-10	18-Jun-10	25-Jun-10	02-Jul-10	09-Jul-10	16-Jul-10	23-Jul-10	30-Jul-10	06-Aug-10	13-Aug-10	20-Aug-10	27-Aug-10	03-Sep-10	Total
Receipts:														
Trade Receipts	\$ 11,667	\$ 13,360	\$ 13,710	\$ 13,129	\$ 12,770	\$ 12,504	\$ 12,924	\$ 13,742	\$ 10,738	\$ 11,730	\$ 12,306	\$ 11,438	\$ 13,000	\$ 163,018
Receipts from Foreign Operations	-	250	-	250	-	250	-	250	250	250	250	250	250	2,250
Total Receipts	11,667	13,610	13,710	13,379	12,770	12,754	12,924	13,992	10,988	11,980	12,556	11,688	13,250	165,268
Disbursements:														
Payroll (including taxes)	1,340	2,756	1,090	2,756	1,090	2,756	1,090	2,756	1,090	2,756	1,090	1,090	2,756	24,413
Utilities	2,100	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	18,900
Utilities - Deposit	-	1,450	1,450	-	-	-	-	-	-	(2,900)	-	-	-	-
Freight	1,000	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	15,400
Waste Paper	4,484	6,148	5,282	4,569	4,361	4,355	4,414	4,778	3,721	4,057	5,252	2,957	4,486	58,864
General AP	3,100	3,100	2,700	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	29,900
Insurance-Medical	1,250	-	250	510	510	510	510	510	510	510	510	510	510	6,600
Rent	147	105	105	220	105	105	105	220	220	105	105	220	105	1,867
Insurance-Business	-	58	-	-	275	-	-	-	412	-	-	-	275	1,021
Taxes	40	88	1	39	35	242	171	18	161	167	178	27	-	1,167
Employees T & E	15	15	15	15	15	15	15	15	15	15	15	15	15	195
Subtotal- Operations	13,476	16,320	13,493	12,809	11,091	12,683	11,004	12,997	10,828	9,410	11,849	9,519	12,848	158,326
Interest Paid	256	-	-	850	-	-	-	-	1,251	-	-	-	1,248	3,605
Debt Principal Payments / (Drawdowns)	73,735	-	-	-	-	-	-	-	-	-	-	-	-	73,735
DIP / Exit Term Loan Drawdown	(110,000)	-	-	-	-	-	-	-	-	-	-	-	-	(110,000)
Pension Contribution	-	-	-	-	-	-	-	-	-	-	-	-	-	-
401(k)	464	-	-	-	-	448	35	-	-	-	544	-	-	1,491
ESOP Funding	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commodity Hedges	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Financing Fees	5,000	-	-	25	-	-	-	25	-	-	-	-	25	5,075
Restructuring Professional Fees	1,056	300	-	550	-	-	-	1,270	-	-	-	2,590	-	5,766
Other	-	-	29	-	-	-	29	-	-	-	-	29	-	87
Total Disbursements	(16,013)	16,620	13,522	14,234	11,091	13,131	11,068	14,292	12,079	9,410	12,393	12,138	14,121	138,085
Net Cash Flow	\$ 27,680	\$ (3,010)	\$ 189	\$ (855)	\$ 1,679	\$ (378)	\$ 1,856	\$ (300)	\$ (1,091)	\$ 2,571	\$ 163	\$ (450)	\$ (871)	\$ 27,183
<b>AVAILABILITY</b>														
Beginning ABL Balance	28,583	903	3,913	3,724	4,580	2,900	3,278	1,422	1,722	2,813	242	79	529	28,583
Net Increase / (Decrease)	(27,680)	3,010	(189)	855	(1,679)	378	(1,856)	300	1,091	(2,571)	(163)	450	871	(27,183)
Net Outstanding ABL Balance	903	3,913	3,724	4,580	2,900	3,278	1,422	1,722	2,813	242	79	529	1,400	1,400
LC's Outstanding	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172
Swap Exposure	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Dutch Revolving Loans	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398
Total Borrowing	22,473	25,483	25,294	26,150	24,470	24,848	22,992	23,292	24,383	21,812	21,649	22,099	22,970	22,970
ABL Borrowing Availability	\$ 27,527	\$ 24,517	\$ 24,706	\$ 23,850	\$ 25,530	\$ 25,152	\$ 27,008	\$ 26,708	\$ 27,849	\$ 30,246	\$ 30,390	\$ 29,822	\$ 29,078	\$ 29,078
Availability Block	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)
Professional Fee Carveout	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	-	-	-	-	-	-
Borrowing Availability	\$ 22,527	\$ 19,517	\$ 19,706	\$ 18,850	\$ 20,530	\$ 20,152	\$ 22,008	\$ 21,708	\$ 24,849	\$ 27,246	\$ 27,390	\$ 26,822	\$ 26,078	\$ 26,078

## **EXHIBIT B**

DIP ABL Loan Agreement

[OSHR DRAFT: 6/8/10]

**AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

**by and among**

**THE NEWARK GROUP, INC.  
Debtor and Debtor-In-Possession,  
as a Borrower**

**NEWARK GROUP INTERNATIONAL B.V.,  
as a Borrower**

**and**

**CERTAIN DOMESTIC SUBSIDIARIES OF THE NEWARK GROUP, INC.  
FROM TIME TO TIME PARTIES HERETO,  
as Borrowers**

**and**

**THE OTHER SUBSIDIARIES OF THE NEWARK GROUP, INC.  
FROM TIME TO TIME PARTIES HERETO,  
as Guarantors**

**THE LENDERS AND ISSUING BANK FROM TIME TO TIME PARTY HERETO**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent and Collateral Agent**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Sole Lead Arranger and Sole Bookrunner**

**Dated: June \_\_, 2010**

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**AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

This Amended and Restated Loan and Security Agreement, dated June \_\_, 2010, is entered into by and among THE NEWARK GROUP, INC., Debtor and Debtor-in-Possession, a New Jersey corporation (the "Company"), NEWARK GROUP INTERNATIONAL B.V., a private company with limited liability with its corporate seat in Amsterdam, the Netherlands and a wholly-owned subsidiary of the Company (the "Dutch Borrower"), those certain Domestic Subsidiaries of the Company from time to time party hereto pursuant to Section 9.22 (the "Subsidiary Borrowers"; and together with the Company and the Dutch Borrower, each individually a "Borrower" and collectively, "Borrowers" as hereinafter further defined), those certain Domestic Subsidiaries of the Company, each as Debtor and Debtor-in-Possession, from time to time party hereto as guarantors (each individually a "Guarantor" and collectively, "Guarantors" as hereinafter further defined), the parties hereto from time to time as lenders, whether by execution of this Agreement or an Assignment and Acceptance (each individually, a "Lender" and collectively, "Lenders" as hereinafter further defined) and WELLS FARGO BANK, NATIONAL ASSOCIATION, successor by merger to Wachovia Bank, National Association, a national banking association, in its capacity as administrative agent and collateral agent for Lenders (in such capacity, "Administrative Agent" and "Collateral Agent" as hereinafter further defined) and as Control Agent.

**WITNESSETH:**

**WHEREAS**, Borrowers, Guarantors, Administrative Agent, Collateral Agent and the parties thereto as lenders, are parties to the Loan and Security Agreement, dated as of March 9, 2007, as heretofore amended or otherwise modified (the "Existing Loan Agreement");

**WHEREAS**, Borrowers (other than Dutch Borrower) and Guarantor have filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of New Jersey;

**WHEREAS**, Borrowers and Guarantors have requested that Administrative Agent, Collateral Agent and Lenders amend and restate the Existing Loan Agreement pursuant to and in accordance with the terms and conditions set forth herein;

**WHEREAS**, Borrowers and Guarantors have requested that Administrative Agent and Lenders enter into financing arrangements with Borrowers pursuant to which Lenders may make loans and provide other financial accommodations to Borrowers in the aggregate amount of up to \$50,000,000; and

**WHEREAS**, each Lender is willing to agree (severally and not jointly) to amend and restate the Existing Loan Agreement and to make such loans and provide such financial accommodations to Borrowers on a pro rata basis according to its Commitment (as defined below) on the terms and conditions set forth herein and Administrative Agent is willing to act as agent for Lenders on the terms and conditions set forth herein and the other Financing Agreements;

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **SECTION 1. DEFINITIONS**

For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

1.1 “Account Control Agreement” shall mean an agreement in writing, in form and substance reasonably satisfactory to Administrative Agent, by and among the applicable Control Agent (or Collateral Agent and CL Administrative Agent), the applicable Borrower or Guarantor with an account at any depository institution and such depository institution at which such account is at any time maintained which provides that such depository institution will comply with instructions originated by such Control Agent (or Collateral Agent and CL Administrative Agent, as the case may be) directing disposition of the funds in the deposit account without further consent by such Borrower or Guarantor and has such other terms and conditions as Administrative Agent or Collateral Agent may reasonably require (for the avoidance of doubt, the Account Control Agreement (in one agreement or in separate agreements, as such depository institution may require) may be entered into for the benefit of the Administrative Agent and the CL Administrative Agent.

1.2 “Accounts” shall mean, as to each Borrower and Guarantor, all of the following now owned or hereafter arising or acquired (a) present and future rights of such Borrower and Guarantor to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a secondary obligation incurred or to be incurred, or (iv) arising out of the use of a credit or charge card or information contained on or for use with the card and (b) other “accounts” (as defined in the UCC) of such Borrower or Guarantor.

1.3 “Adjusted Eurodollar Rate” shall mean, with respect to each Interest Period for any Eurodollar Rate Loan comprising part of the same borrowing (including conversions, extensions and renewals), the greater of (a) the rate per annum determined by dividing (i) the London Interbank Offered Rate for such Interest Period by (ii) a percentage equal to: (A) one (1) minus (B) the Reserve Percentage or (b) two (2%) percent. For purposes hereof, “Reserve Percentage” shall mean for any day, that percentage (expressed as a decimal) which is in effect from time to time under Regulation D of the Board of Governors of the Federal Reserve System (or any successor), as such regulation may be amended from time to time or any successor regulation, as the maximum reserve requirement (including, without limitation, any basic, supplemental, emergency, special, or marginal reserves) applicable with respect to Eurocurrency liabilities as that term is defined in Regulation D (or against any other category of liabilities that includes deposits by reference to which the interest rate of Eurodollar Rate Loans is determined), whether or not any Lender has any Eurocurrency liabilities subject to such reserve requirement at that time. Eurodollar Rate Loans shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credits for proration, exceptions or offsets that may be available from time to time to a Lender. The Adjusted Eurodollar Rate shall be adjusted automatically on and as of the effective date of any change in the Reserve Percentage.

1.4 “Administrative Agent” shall mean Wells Fargo, in its capacity as administrative agent on behalf of Lenders pursuant to the terms hereof and any replacement or successor administrative agent hereunder.

1.5 “Administrative Details Form” shall mean, with respect to any Lender, a document containing such Lender’s contact information for purposes of notices provided under this Agreement and account details for purposes of payments made to such Lender under this Agreement.

1.6 “Affiliate” shall mean, with respect to a specified Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (a) any Person which beneficially owns or holds ten (10%) percent or more of any class of Voting Stock of such Person or other equity interests in such Person and (b) any Person of which such Person beneficially owns or holds ten (10%) percent or more of any class of Voting Stock or in which such Person beneficially owns or holds ten (10%) percent or more of the equity interests. For the purposes of this definition, the term “control” (including with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise. Notwithstanding anything to the contrary contained in this definition, in no event shall Wells Fargo be considered an Affiliate of any Borrower or Guarantor.

1.7 “Agent Payment Account” shall mean account no. 5000000149830 of Administrative Agent at Wells Fargo, or such other account of Administrative Agent as Administrative Agent may from time to time designate as the Agent Payment Account for purposes of this Agreement and the other Financing Agreements.

1.8 “Amended Environmental Permit” shall mean the amended and/or new “Comprehensive Plan Approval(s)” required to be obtained under the Settlement Agreement.

1.9 “Agreement” shall mean this Amended and Restated Loan and Security Agreement, as amended, modified or supplemented from time to time in accordance with its terms.

1.10 “Arranger” shall mean Wells Fargo, in its capacity as sole lead arranger.

1.11 “Assignment and Acceptance” shall mean an Assignment and Acceptance substantially in the form of Exhibit A attached hereto (with blanks appropriately completed) delivered to Administrative Agent in connection with an assignment of a Lender’s interest hereunder in accordance with the provisions of Section 13.7 hereof.

1.12 “Authorized Officers” shall mean the officers listed on the attached Exhibit F or such replacement Exhibit that any Authorized Officer may in the future provide to the Administrative Agent in writing.

1.13 “Bank Product” shall mean any of the following products, services or facilities extended to any Borrower or Subsidiary by any Hedge Agreement Provider (as defined in Section 5.1 hereof) or Bank Product Provider (as defined in Section 5.1 hereof), as applicable: (a) Cash Management Services; (b) products under any Hedge Agreement and not for speculative purposes;

(c) commercial credit card and merchant card services; and (d) other banking products or services as may be requested by any Borrower or Subsidiary, other than Letters of Credit. For any of the foregoing to be included as an "Obligation", the applicable Secured Party must have previously provided written notice to Administrative Agent of (i) the existence of such Bank Product and (ii) the maximum dollar amount of obligations arising thereunder (the "Bank Product Amount"). The Bank Product Amount may be changed from time to time upon written notice to Administrative Agent by the Secured Party.

1.14 "Bank Product Debt" shall mean the Indebtedness and other obligations of a Borrower or Subsidiary relating to Bank Products.

1.15 "Bankruptcy Code" shall mean the United States Bankruptcy Code, being Title 11 of the United States Code (11 U.S.C. Sections 101-1330), as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all official rules and regulations thereunder.

1.16 "Bankruptcy Court" shall mean the United States Bankruptcy Court for the District of New Jersey.

1.17 "Borrowers" shall mean, collectively, the following (together with their respective successors and assigns: (a) The Newark Group, Inc., Debtor and Debtor-in-Possession, a New Jersey corporation, (b) Newark Group International B.V., a private company with limited liability with its corporate seat in Amsterdam, the Netherlands, (c) those certain Domestic Subsidiaries of the Company from time to time party hereto pursuant to Section 9.22; each sometimes being referred to herein individually as a "Borrower".

1.18 "Borrowing Base Certificate" shall mean a borrowing base certificate in substantially the form of Exhibit G hereto or such other form as may be reasonably satisfactory to Administrative Agent.

1.19 "Budget" shall mean the initial budget delivered to Agent in accordance with Section 8.31 hereof (attached hereto as Exhibit H), setting forth the Projected Information (as such term is defined in Section 8.31 hereof) for the periods covered thereby, together with any subsequent or amended budgets thereto delivered to Administrative Agent and Lenders, in form and substance reasonably satisfactory to Administrative Agent, in accordance with the terms and conditions hereof.

1.20 "Business Day" shall mean any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of the State of New York, the State of North Carolina, and a day on which Administrative Agent is open for the transaction of business; except, that, if a determination of a Business Day shall relate to any Eurodollar Rate Loans, the term Business Day shall also exclude any day on which banks are closed for dealings in dollar deposits in the London interbank market or other applicable Eurodollar Rate market.

1.21 "B.V. Intercompany Notes" has the meaning provided in Section 9.10.

1.22 “Capital Expenditures” shall mean expenditures for the acquisition (including the acquisition by capitalized lease) or improvement of capital assets, as determined in accordance with GAAP.

1.23 “Capital Lease” shall mean, as applied to any Person, any lease of (or any agreement conveying the right to use) any property (whether real, personal or mixed) by such Person as lessee which in accordance with GAAP, is required to be reflected as a liability on the balance sheet of such Person.

1.24 “Capital Stock” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person’s capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).

1.25 “Carve-Out” shall have the meaning set forth in Section 5.5(c) hereof.

1.26 “Cash Equivalents” shall mean, at any time, (a) any evidence of Indebtedness with a maturity date of ninety (90) days or less issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof; (b) certificates of deposit or bankers’ acceptances with a maturity of 364 days or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$250,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of ninety (90) days or less issued by a corporation (except an Affiliate of any Borrower or Guarantor) organized under the laws of any State of the United States of America or the District of Columbia and rated at least A-1 by Standard & Poor’s Ratings Service, a division of The McGraw-Hill Companies, Inc. or at least P-1 by Moody’s Investors Service, Inc.; (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any financial institution having combined capital and surplus and undivided profits of not less than \$250,000,000; (e) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any governmental agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within ninety (90) days or less from the date of acquisition; provided, that, the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985; and (f) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the types described in clauses (a) through (e) above.

1.27 “Cash Management Services” shall mean any services provided from time to time by any Lender or any of its Affiliates to any Borrower or Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automatic clearinghouse, controlled disbursement, depository, electronic funds transfer, information reporting, lockbox, stop payment, overdraft and/or wire transfer services.

1.28 “Change of Control” shall mean the occurrence of any of the following events: (a) the failure of the Company to own, directly or indirectly, 100% of the combined voting power of all Voting Stock and the economic interests of the Dutch Borrower, (b) Continuing Directors shall cease for any reason to constitute a majority of the members of the board of directors of the Company then in office, or (c) any Person or group, other than the Permitted Holder having beneficial ownership, directly or indirectly, of more than 40% of the Voting Stock of the Company, unless the Permitted Holder has beneficial ownership, directly or indirectly, of a greater percentage of Voting Stock of the Company than such Person or group. As used herein, “beneficial ownership” and “group” shall have the meanings provided in Rule 13d-3 of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934.

1.29 “Chapter 11 Cases” shall mean the Chapter 11 cases of the Company and Guarantors under the Bankruptcy Code referred to as In re Newark Group, Inc., et al., Chapter 11 Case No. \_\_\_\_\_ (Jointly Administered), currently pending in the Bankruptcy Court.

1.30 “CL Administrative Agent” shall mean Orix Finance Corp., in its capacity as administrative agent and/or collateral agent under the CL Credit Agreement and the other CL Financing Agreements.

1.31 “CL Cap Amount” shall have the meaning provided in the Intercreditor Agreement.

1.32 “CL Credit Agreement” shall mean the Loan and Security Agreement, dated of even date herewith, by and among the Company, the guarantors from time to time party thereto, the CL Lenders and the CL Administrative Agent pursuant to which the CL Lenders agree to provide a term loan facility to the Company, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.33 “CL Financing Agreements” shall have the meaning specified for the term “Financing Agreements” in the CL Credit Agreement.

1.34 “CL Lenders” shall mean those certain lenders and other financial institutions from time to time party to the CL Credit Agreement.

1.35 “CL Obligations” shall have the meaning specified for the term “Obligations” in the CL Credit Agreement.

1.36 “CL Priority Collateral” shall have the meaning specified for the term “Term Loan Priority Collateral” in the Intercreditor Agreement.

1.37 “Closing Date” shall mean the date hereof.

1.38 “Code” shall mean the Internal Revenue Code of 1986, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

1.39 “Collateral” shall mean a collective reference to all real and personal property pledged to Collateral Agent and/or Administrative Agent pursuant to the terms of this Agreement, the other Financing Agreements or otherwise, as is more specifically described in Section 5.1 hereof

and in such Financing Agreements and including, without limitation, the Priority Collateral and the CL Priority Collateral.

1.40 “Collateral Access Agreement” shall mean an agreement in writing, in form and substance reasonably satisfactory to Administrative Agent, from any lessor of premises to any Borrower or Guarantor, or any other person to whom any Collateral is consigned or who has custody, control or possession of any such Collateral or is otherwise the owner or operator of any premises on which any of such Collateral is located, in favor of Collateral Agent with respect to the Collateral at such premises or otherwise in the custody, control or possession of such lessor, consignee or other person.

1.41 “Collateral Agent” shall mean Wells Fargo, in its capacity as collateral agent on behalf of Lenders pursuant to the terms hereof and any replacement or successor collateral agent hereunder.

1.42 “Commitment” shall mean the Revolving Commitments and the Swingline Commitment, individually or collectively, as appropriate.

1.43 “Company” shall have the meaning set forth in the first paragraph of this Agreement.

1.44 “Compliance Certificate” shall have the meaning provided in Section 9.6(a)(i).

1.45 “Consigned Inventory Loan Limit” shall mean, at any time, the amount equal to ten 10% percent of the aggregate Dollar Amount of Eligible Inventory at such time.

1.46 “Consolidated EBITDA” shall mean, for any period, the sum (without duplication) of (a) Consolidated Net Income for such period, plus (b) an amount which, in the determination of Consolidated Net Income for such period, has been deducted for (i) interest expense, (ii) total federal, state, local and foreign income, value added and similar taxes, (iii) depreciation and amortization expense, (iv) other non cash charges (excluding non-cash charges that are expected to become cash charges in a future period or that are reserves for future cash charges, but including non-cash charges related to foreign currency translation and remeasurement), (v) non-cash charges related to stock-related compensation, (vi) non-capitalized fees and expenses related to reorganization and refinancing and other cash restructuring charges in an aggregate amount not to exceed twenty-four (\$24,000,000) million dollars over the term of this Agreement; provided, that, the actual amount of restructuring charges will be updated each month end prior to the Closing Date and each month thereafter, (vii) pension plan expenses, all as determined in accordance with GAAP, minus (c) actuarially determined minimum pension funding obligations, minus (d) to the extent included in determining such Consolidated Net Income, all non-cash income and any gains related to foreign currency translation and remeasurement. For the avoidance of doubt, Consolidated EBITDA shall not include any cancellation of indebtedness income arising in connection with the cancellation and discharge of any of the Indebtedness of Borrowers and Guarantors and other liabilities in connection with the Chapter 11 Case.

1.47 “Consolidated Net Income” shall mean, for any period, net income (excluding extraordinary items and excluding income received from joint venture investments to the extent not received in cash) after taxes for such period of the Company and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

1.48 “Consultant” shall have the meaning set forth in Section 8.34 hereof.

1.49 “Continuing Directors” shall mean during any period of 24 consecutive months commencing after the Closing Date, individuals who at the beginning of such 24 month period were directors of the Company (together with any new director (i) whose election by the Company’s board of directors or whose nomination for election by the Company’s shareholders was approved by a vote of at least two thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved or (ii) who was designated or appointed by the Permitted Holder pursuant to a designation or appointment right of the Permitted Holder contained in the certificate of incorporation and/or bylaws of the Company).

1.50 “Control Accounts” shall have the meaning set forth in Section 6.3 hereof.

1.51 “Control Agent” shall have the meaning provided in the Intercreditor Agreement.

1.52 “Control Collateral” shall have the meaning provided in the Intercreditor Agreement.

1.53 “Credit Facility” shall mean the Revolving Loans and Letters of Credit provided to or for the benefit of any Borrower pursuant to Sections 2.1, 2.2, 2.3 and 2.4 hereof.

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

1.55 “Defaulting Lender” shall have the meaning set forth in Section 6.11 hereof.

1.56 “DO Guarantors” shall mean the U.S. Borrowers and the Guarantors.

1.57 “DO Guaranty” shall mean the guaranty of the DO Guarantors set forth in Section 15.

1.58 “Dollar Amount” shall mean, at any time, (a) with respect to Dollars or an amount denominated in Dollars, such amount and (b) with respect to an amount of Euros or an amount denominated in Euros, the equivalent amount thereof in Dollars as determined by Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with Euros.

1.59 “Dollars” and “\$” shall mean dollars in lawful currency of the United States of America.

1.60 “Domestic Guaranty” shall mean the guaranty of Guarantors set forth in Section 14.

1.61 “Domestic Obligations” shall mean the Obligations owing by any or all of U.S. Borrowers to Administrative Agent, any Lender, any of their Affiliates or any Issuing Bank.

1.62 “Domestic Subsidiaries” shall mean, with respect to any Person, any Subsidiary of such Person which is incorporated or organized under the laws of any state of the United States or the District of Columbia.

1.63 “Dutch Borrower” shall have the meaning set forth in the first paragraph of this Agreement.

1.64 “Dutch Deed of Pledge” shall mean the Deed of Pledge, dated on or about the date hereof, by and among the Company, the Dutch Borrower and Collateral Agent providing for a right of pledge over the shares in the capital of the Dutch Borrower, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.65 “Dutch Revolving Loan Limit” shall mean, as to the Dutch Borrower, at any time, the Dollar Amount equal to (a) the lesser of (i) €15,000,000 or (ii) the Maximum Credit at such time minus (b) the aggregate Dollar Amount of any outstanding investments, loans or advances made by any Borrower or Guarantor to Foreign Subsidiaries (other than Newark Paperboard Products, Ltd.) excluding (i) the intercompany loans made by the Company to the Dutch Borrower pursuant to the B.V. Intercompany Notes and (ii) any investment, loan or advance by the Company to the Dutch Borrower from the proceeds of Loans made to the Company on the Closing Date, in order to repay outstanding indebtedness of the Dutch Borrower on the Closing Date.

1.66 “Dutch Subsidiary” shall mean a Subsidiary organized under Dutch law.

1.67 “Eligible Accounts” shall mean Accounts created by a Borrower that in each case satisfy the criteria set forth below as reasonably determined in accordance with Administrative Agent’s customary practices. In general, Accounts shall be Eligible Accounts if:

(a) such Accounts arise from the actual and bona fide sale and delivery of goods by such Borrower or rendition of services by such Borrower in the ordinary course of its business which transactions are completed in accordance with the terms and provisions contained in any documents related thereto;

(b) such Accounts are not unpaid more than (i) ninety (90) days after the date of the original invoice therefor or (ii) more than sixty (60) days after the date of the original due date therefor; provided, that, Administrative Agent may in its discretion deem Accounts for which the applicable Borrower has granted extended trade terms to be Eligible Accounts;

(c) such Accounts comply with the terms and conditions contained in Section 7.2(b) of this Agreement;

(d) such Accounts do not arise from sales on consignment, guaranteed sale, sale and return, sale on approval, or other terms under which payment by the account debtor may be conditional or contingent;

(e) the chief executive office of the account debtor with respect to such Accounts is located in the United States of America or Canada (provided, that, at any time promptly upon Administrative Agent’s request, such Borrower shall execute and deliver, or cause to be executed and delivered, such other agreements, documents and instruments as may be required by Administrative Agent to perfect the security interests of Administrative Agent in those Accounts of an account debtor with its chief executive office or principal place of business in Canada in accordance with the applicable laws of the Province of Canada in which such chief executive office or principal place of business is located and take or cause to be taken such other and further actions

as Administrative Agent may request to enable Administrative Agent as secured party with respect thereto to collect such Accounts under the applicable Federal or Provincial laws of Canada) or, at Administrative Agent's option, if the chief executive office and principal place of business of the account debtor with respect to such Accounts is located other than in the United States of America or Canada, then if either: (i) the account debtor has delivered to such Borrower an irrevocable letter of credit issued or confirmed by a bank satisfactory to Administrative Agent and payable only in the United States of America and in U.S. dollars, sufficient to cover such Account, in form and substance satisfactory to Administrative Agent and if required by Administrative Agent, the original of such letter of credit has been delivered to Administrative Agent or Administrative Agent's agent and the issuer thereof, and such Borrower has complied with the terms of Section 5.2(f) hereof with respect to the assignment of the proceeds of such letter of credit to Administrative Agent or naming Administrative Agent as transferee beneficiary thereunder, as Administrative Agent may specify, or (ii) such Account is subject to credit insurance payable to Administrative Agent issued by an insurer and on terms and in an amount reasonably acceptable to Administrative Agent, or (iii) such Account is otherwise acceptable in all respects to Administrative Agent; provided, that, the aggregate face amount of all Accounts deemed Eligible Accounts pursuant to this clause (iii) shall not exceed \$500,000;

(f) such Accounts do not consist of progress billings (such that the obligation of the account debtors with respect to such Accounts is conditioned upon such Borrower's satisfactory completion of any further performance under the agreement giving rise thereto), bill and hold invoices or retainage invoices, except as to bill and hold invoices, if Administrative Agent shall have received an agreement in writing from the account debtor, in form and substance satisfactory to Administrative Agent, confirming the unconditional obligation of the account debtor to take the goods related thereto and pay such invoice;

(g) the account debtor with respect to such Accounts has not asserted a counterclaim, defense or dispute and is not owed or does not claim to be owed any amounts that may give rise to any right of setoff or recoupment against such Accounts (but the portion of the Accounts of such account debtor in excess of the amount at any time and from time to time owed by such Borrower to such account debtor or claimed owed by such account debtor shall be deemed Eligible Accounts);

(h) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Accounts or reduce the amount payable or delay payment thereunder;

(i) such Accounts are subject to the first priority, valid and perfected security interest of Collateral Agent and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any liens except those permitted in this Agreement that are subject to an intercreditor agreement in form and substance satisfactory to Administrative Agent between the holder of such security interest or lien and Administrative Agent or Collateral Agent;

(j) neither the account debtor nor any officer or employee of the account debtor with respect to such Accounts is an officer, employee, agent or other Affiliate of any Borrower or Guarantor;

(k) the account debtors with respect to such Accounts are not any foreign government, the United States of America, any State, political subdivision, department, agency or instrumentality thereof, unless, if the account debtor is the United States of America, any State, political subdivision, department, agency or instrumentality thereof, upon Administrative Agent's request, the Federal Assignment of Claims Act of 1940, as amended or any similar State or local law, if applicable, has been complied with in a manner satisfactory to Administrative Agent;

(l) there are no proceedings or actions which are threatened or pending against the account debtors with respect to such Accounts which might result in any material adverse change in any such account debtor's financial condition (including, without limitation, any bankruptcy, dissolution, liquidation, reorganization or similar proceeding);

(m) the aggregate amount of such Accounts owing by a single account debtor do not constitute more than ten (10%) percent of the aggregate amount of all otherwise Eligible Accounts (but the portion of the Accounts not in excess of the applicable percentages may be deemed Eligible Accounts);

(n) such Accounts are not owed by an account debtor who has Accounts unpaid more than the periods permitted in clause (b) of this definition which constitute more than fifty (50%) percent of the total Accounts of such account debtor;

(o) the account debtor is not located in a state requiring the filing of a Notice of Business Activities Report or similar report in order to permit such Borrower to seek judicial enforcement in such State of payment of such Account, unless such Borrower has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year or such failure to file and inability to seek judicial enforcement is capable of being remedied without any material delay or material cost;

(p) such Accounts are owed by account debtors whose total indebtedness to such Borrower does not exceed the credit limit with respect to such account debtors as determined by such Borrower from time to time, to the extent such credit limit as to any account debtor is established consistent with the current practices of such Borrower as of the date hereof and such credit limit is acceptable to Administrative Agent (but the portion of the Accounts not in excess of such credit limit may be deemed Eligible Accounts); and

(q) such Accounts are owed by account debtors deemed creditworthy at all times by Administrative Agent in its Permitted Discretion.

The criteria for Eligible Accounts set forth above may only be changed and any new criteria for Eligible Accounts may only be established by Administrative Agent in good faith based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent Administrative Agent has no written notice thereof from a Borrower prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Accounts in the good faith determination of Administrative Agent. Any Accounts that are not Eligible Accounts shall nevertheless be part of the Collateral.

1.68 “Eligible Consigned Inventory” shall mean Inventory which otherwise constitutes Eligible Inventory except for the fact that it is on consignment and with respect to which (a) Administrative Agent has received evidence reasonably satisfactory to Administrative Agent that the applicable Borrower has a valid and effective consignment agreement in place with the consignee of such Inventory, (b) Administrative Agent has received evidence reasonably satisfactory to Administrative Agent that the applicable Borrower has filed a precautionary UCC-1 financing statement in the appropriate jurisdiction naming the consignee as consignee or debtor, (c) Administrative Agent has received current UCC searches against the consignee in the consignee’s jurisdiction of organization, (d) Administrative Agent has received evidence reasonably satisfactory to Administrative Agent that the applicable Borrower has provided notice to the consignee’s secured parties of the consignment arrangement and (e) Administrative Agent shall have received a Collateral Access Agreement from the owner and lessor of the premises on which such Inventory is held and/or such other documentation as it shall reasonably require.

1.69 “Eligible Inventory” shall mean Inventory of each Borrower consisting of finished goods held for resale in the ordinary course of the business of a Borrower and raw materials for such finished goods, that in each case satisfy the criteria set forth below as reasonably determined by Administrative Agent in accordance with Administrative Agent’s customary practices. In general, Eligible Inventory shall not include: (a) work-in-process; (b) components which are not part of finished goods; (c) spare parts for equipment; (d) packaging and shipping materials; (e) supplies used or consumed in such Borrower’s business; (f) Inventory at premises other than those owned or leased and controlled by any Borrower, except (i) Inventory at premises leased to a Borrower by a third party that has executed and delivered to Administrative Agent a Collateral Access Agreement, (ii) Inventory at premises leased to a Borrower by a third party with respect to which a Reserve satisfactory to Administrative Agent has been established and (iii) Eligible Consigned Inventory in an amount not to exceed the Consigned Inventory Loan Limit; (g) Inventory subject to a security interest or lien in favor of any Person other than Collateral Agent except those permitted in this Agreement that are subject to an intercreditor agreement in form and substance satisfactory to Administrative Agent between the holder of such security interest or lien and Administrative Agent or Collateral Agent; (h) bill and hold goods; (i) unserviceable, obsolete or slow moving Inventory; (j) Inventory that is not subject to the first priority, valid and perfected security interest of Collateral Agent; (k) returned, damaged and/or defective Inventory; (l) Inventory purchased or sold on consignment, except Eligible Consigned Inventory and (m) Inventory located outside the United States of America. The criteria for Eligible Inventory set forth above may only be changed and any new criteria for Eligible Inventory may only be established by Administrative Agent in good faith based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent Administrative Agent has no written notice thereof from a Borrower prior to the date hereof, in either case under clause (i) or (ii) which materially and adversely affects or could reasonably be expected to materially and adversely affect the Inventory in the good faith determination of Administrative Agent. Any Inventory that is not Eligible Inventory shall nevertheless be part of the Collateral.

The amount of Eligible Inventory of any Borrower shall, at Administrative Agent’s option, be determined based on the lesser of the amount of Inventory set forth in the general ledger of such Borrower or the perpetual inventory record maintained by such Borrower.

1.70 “Eligible Transferee” shall mean (a) any Lender; (b) the parent company of any Lender and/or any Affiliate of such Lender which is at least fifty (50%) percent owned by such Lender or its parent company; (c) any person (whether a corporation, partnership, trust or otherwise) that is engaged in the business of making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or with respect to any Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor, and in each case is approved by Administrative Agent; and (d) any other commercial bank, financial institution or “accredited investor” (as defined in Regulation D under the Securities Act of 1933) approved by Administrative Agent; provided, that, in each case, (i) except as Administrative Agent and Required Lenders may otherwise specifically agree, (A) neither any Borrower nor any Guarantor or any Affiliate of any Borrower or Guarantor shall qualify as an Eligible Transferee, (B) no Person to whom any Indebtedness which is in any way subordinated in right of payment to any other Indebtedness of any Borrower or Guarantor shall qualify as an Eligible Transferee and (C) no Person in substantially the same line of business as the Borrowers shall qualify as an Eligible Transferee and (ii) a Person shall qualify as an Eligible Transferee in respect of Loans made to the Dutch Borrower, only if it is a PMP.

1.71 “EMU” shall mean Economic and Monetary Union as contemplated in the Treaty on European Union.

1.72 “EMU Legislation” shall mean legislative measures of the European Council (including without limitation European Council regulations) for the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise), being in part the implementation of the third stage of EMU.

1.73 “Environmental Laws” shall mean all foreign, federal, state and local laws (including common law), legislation, rules, codes, licenses, permits (including any conditions imposed therein), authorizations, judicial or administrative decisions, injunctions or agreements between any Borrower or Guarantor and any Governmental Authority, (a) relating to pollution and the protection, preservation or restoration of the environment (including air (outdoor and indoor), water vapor, surface water, ground water, drinking water, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, (b) relating to the exposure to, or the use, storage, recycling, treatment, generation, manufacture, processing, distribution, transportation, handling, labeling, production, release or disposal, or threatened release, of Hazardous Materials, or (c) relating to all laws with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials. The term “Environmental Laws” includes (i) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, including the federal Superfund Amendments and Reauthorization Act, the federal Water Pollution Control Act of 1972, the federal Clean Water Act, the federal Clean Air Act, the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984), the federal Toxic Substances Control Act, the federal Insecticide, Fungicide and Rodenticide Act, and the Federal Safe Drinking Water Act of 1974, (ii) applicable foreign, state or local counterparts to such laws and (iii) any common law or equitable doctrine that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Hazardous Materials.

1.74 “Equipment” shall mean, as to each Borrower and Guarantor, all of such Borrower’s and Guarantor’s now owned and hereafter acquired (a) equipment, wherever located, including machinery, data processing and computer equipment (whether owned or licensed and including embedded software), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located and (b) other “equipment” (as defined in the UCC) and all attachments, accessions and property now or hereafter affixed to any of the foregoing or used in connection therewith, and substitutions and replacements thereof, wherever located.

1.75 “ERISA” shall mean the Employee Retirement Income Security Act of 1974, together with all rules, regulations and interpretations thereunder or related thereto.

1.76 “ERISA Affiliate” shall mean any person, trades or businesses (whether or not incorporated) required to be aggregated with any Borrower, any Guarantor or any of its or their respective Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

1.77 “ERISA Event” shall mean (a) any “reportable event”, as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Pension Plan, other than events as to which the requirement of notice has been waived in regulations issued by the Pension Benefit Guaranty Corporation; (b) the adoption of any amendment to a Pension Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (c) a complete or partial withdrawal by any Borrower, Guarantor or any ERISA Affiliate from a Multiemployer Plan or a cessation of operations which is treated as such a withdrawal or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a Pension Plan; (e) an 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 Plan; (f) the imposition of any liability under Title IV of ERISA, other than the Pension Benefit Guaranty Corporation premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower, Guarantor or any ERISA Affiliate in excess of \$1,000,000 and (g) any other event or condition with respect to a Plan including any Pension Plan subject to Title IV of ERISA maintained, or contributed to, by any ERISA Affiliate that could reasonably be expected to result in liability of any Borrower in excess of \$1,000,000 and (h) an event or transaction which might reasonably be expected to give rise to liability under Sections 4069 or 4212(c) of ERISA.

1.78 “ESOP Plan” shall mean The Newark Group, Inc. Employees’ Stock Ownership Plan dated as of April 22, 2002, as such ESOP Plan may be amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

1.79 “Euro” and “EUR” mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

1.80 “Eurodollar Rate Loans” shall mean any Revolving Loans or portion thereof on which interest is payable based on the Adjusted Eurodollar Rate in accordance with the terms hereof.

1.81 “Event of Default” shall mean the occurrence or existence of any event or condition described in Section 10.1 hereof.

1.82 “Excess Availability” shall mean the amount, as determined by Administrative Agent, calculated at any date, equal to: (a) the lesser of: (i) the U.S. Borrowing Base and (ii) the Maximum Credit (in each case under (i) or (ii) after giving effect to any Reserves (other than any Reserves in respect of Letter of Credit Obligations and other than the Special Availability Reserve)), minus (b) the sum of: (i) the amount of all then outstanding and unpaid Obligations (but not including for this purpose Obligations arising pursuant to any guarantees in favor of Administrative Agent and Lenders of the Obligations of the other Borrowers or any outstanding Letter of Credit Obligations), plus (ii) the amount of all Reserves then established in respect of Letter of Credit Obligations, plus (iii) the aggregate amount of all then outstanding and unpaid trade payables and other obligations of Borrowers which are outstanding more than sixty (60) days past due as of the end of the immediately preceding month or at Administrative Agent’s option, as of a more recent date based on such reports as Administrative Agent may from time to time specify (other than trade payables or other obligations being contested or disputed by the applicable Borrower in good faith), plus (iv) without duplication, the amount of checks issued by any Borrower to pay trade payables and other obligations which are more than sixty (60) days past due as of the end of the immediately preceding month or at Administrative Agent’s option, as of a more recent date based on such reports as Administrative Agent may from time to time specify (other than trade payables or other obligations being contested or disputed by the applicable Borrower in good faith) (but only such past due payables and other obligations that arose after the commencement of the Chapter 11 Cases or are otherwise required to be paid during the Chapter 11 Cases), but not yet sent.

1.83 “Exchange Act” shall mean the Securities Exchange Act of 1934, together with all rules, regulations and interpretations thereunder or related thereto.

1.84 “Excluded Deposit Accounts” shall have the meaning given to such term in Section 5.2(d).

1.85 “Excluded Subsidiaries” shall mean NP Cogen, Inc.

1.86 “Existing Financing Agreements” shall mean, collectively (each as amended, supplemented, amended and restated, replaced or otherwise modified from time to time): (a) the Existing Loan Agreement, and (b) all documents, certificates, instruments, notes, guarantees and agreements executed and delivered by Borrowers and Guarantors in connection therewith, whether or not specifically mentioned herein or therein.

1.87 “Existing Letters of Credit” shall mean (a) each of the letters of credit issued by Wachovia Bank, National Association to or for the account of Borrowers pursuant to the Existing Loan Agreement and (b) the irrevocable standby letter of credit number SM224723 issued on March 9, 2007 (and subsequently extended) by Wachovia Bank, National Association to Liberty Mutual Insurance Company for the account of the Company in the original face amount of \$8,388,794.

1.88 “Existing Loan Agreement” shall have the meaning set forth in the recitals hereto.

1.89 “Extension of Credit” shall mean, as to any Lender, the making of a Loan by such Lender or the issuance of, or participation in, a Letter of Credit by such Lender.

1.90 “Fee Letter” shall mean the letter agreement, dated as of October 22, 2009, by and among the Company, Administrative Agent and Wachovia Bank, National Association setting forth certain fees payable by Borrowers to Administrative Agent for the benefit of itself and Lenders, as amended as of the date hereof, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.91 “Final Judgment” shall mean the final judgment issued or to be issued by the Superior Court of Suffolk County, Massachusetts or other applicable court with respect to the Settlement Agreement and/or the agreements set forth therein.

1.92 “Final Order” shall mean an order or judgment of the Bankruptcy Court duly entered on the docket of the Bankruptcy Court that (a) has not been modified or amended without the consent of the Administrative Agent, or vacated, reversed, revoked, rescinded, stayed or appealed from, except as Administrative Agent may otherwise specifically agree, (b) with respect to which the time to appeal, petition for certiorari, application or motion for reversal, rehearing, reargument, stay, or modification has expired, (c) no petition, application or motion for reversal, rehearing, reargument, stay or modification thereof or for a writ of certiorari with respect thereto has been filed or granted or the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order or judgment was appealed and (d) is no longer subject to any or further appeal or petition, application or motion for reversal, rehearing, reargument, stay or modification thereof or for any writ of certiorari with respect thereto or further judicial review in any form.

1.93 “Financial Markets Supervision Act” shall mean the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*).

1.94 “Financial Advisor” shall have the meaning set forth in Section 8.32 hereof.

1.95 “Financing Agreements” shall mean, collectively, this Agreement, the Existing Financing Agreements (other than the Existing Loan Agreement), the Intercreditor Agreement, the Fee Letter, the Security Documents, the Revolving Notes, the Swingline Notes, all Letter of Credit Documents, all other notes, guarantees, Account Control Agreements, investment property control agreements, intercreditor agreements and all other agreements, documents and instruments now or at any time hereafter executed and/or delivered by any Borrower or Guarantor in connection with this Agreement; provided, that, in no event shall the term Financing Agreements be deemed to include any Hedge Agreement. For the avoidance of doubt, Financing Agreements shall not include the CL Financing Agreements, other than the Intercreditor Agreement.

1.96 “Financing Order” shall mean the INTERIM ORDER (A) AUTHORIZING DEBTORS TO OBTAIN INTERIM POST-PETITION FINANCING AND GRANT SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. §§ 105 AND 364(c); (B) MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362; (C) AUTHORIZING DEBTORS TO ENTER INTO DIP ABL AGREEMENTS WITH WELLS FARGO BANK, N.A., AS AGENT; (D) AUTHORIZING DEBTORS TO ENTER INTO DIP TERM LOAN AGREEMENTS WITH ORIX FINANCE CORP., AS AGENT; (E) AUTHORIZING REPAYMENT OF PRE-PETITION SECURED DEBT OWING TO WELLS FARGO BANK, N.A., AS EXISTING AGENT; (F) AUTHORIZING REPAYMENT OF PRE-PETITION SECURED DEBT OWING TO WACHOVIA BANK, N.A., AS EXISTING AGENT

FOR PRE-PETITION TERM LOAN LENDERS; AND (G) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001 entered by the United States Bankruptcy Court for the District of New Jersey in the Chapter 11 Cases after notice pursuant to Section 364 of the Bankruptcy Code and any other supplemental orders relating thereto, which Financing Order, in form and substance satisfactory to Administrative Agent in its sole discretion, shall authorize post-petition financing under the terms set forth in this Agreement, and shall contain such other terms or provisions as Administrative Agent and its counsel shall require.

1.97 “Foreign Currency Equivalent” shall mean, with respect to any amount denominated in Dollars, the equivalent amount thereof in Euros as determined by Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Euros with Dollars.

1.98 “Foreign Currency Loan” shall mean any Loan denominated in Euros.

1.99 “Foreign Lender” shall mean any Lender that is organized under the laws of a jurisdiction other than that in which a Borrower is resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

1.100 “Foreign Subsidiary” shall mean, with respect to any Person, any Subsidiary of such Person which is not a Domestic Subsidiary.

1.101 “Funded Indebtedness” shall mean, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (other than an account payable to a trade creditor (whether or not an Affiliate) incurred in the ordinary course of business of such Person and payable in accordance with customary trade practices, but including, without limitation, all earn-outs and similar deferred payment obligations); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) except with respect to the ESOP Plan, all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities issued by such Person; (f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker’s acceptances, drafts or similar documents or instruments issued for such Person’s account; (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; (h) indebtedness of any partnership or

joint venture in which such Person is a general partner or a joint venturer to the extent such Person is liable therefor as a result of such Person's ownership interest in such entity, except to the extent that the terms of such indebtedness expressly provide that such Person is not liable therefor or such Person has no liability therefor as a matter of law, (i) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP, and (j) in respect of letters of credit issued on behalf of the Borrowers and Guarantors (and/or in connection with the Borrowers and Guarantors have reimbursement obligations) and (k) all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements, hedging agreements, collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values.

1.102 "Funding Bank" shall have the meaning given to such term in Section 3.3 hereof.

1.103 "GAAP" shall mean generally accepted accounting principles in the United States of America as in effect from time to time as 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 which are applicable to the circumstances as of the date of determination consistently applied; except, that, subject to the second sentence of Section 13.2(g) hereof, for purposes of Sections 9.17 and 9.18 hereof, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered to Administrative Agent prior to the date hereof.

1.104 "Governmental Authority" shall mean any nation or government, any state, province, or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.105 "Guarantors" shall mean, collectively, the following (together with their successors and assigns: (a) NP Cogen, Inc., Debtor and Debtor-in-Possession, a California corporation, and (b) any other Person that at any time after the date hereof becomes party to a guarantee in favor of Agent or otherwise liable on or with respect to the Obligations or who is the owner of any property which is security for the Obligations (other than Borrowers); each sometimes referred to herein individually as a "Guarantor".

1.106 "Guaranty Obligations" shall mean, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting security therefor, (b) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including without limitation keep well agreements, maintenance agreements, comfort letters or similar agreements or arrangements) for the benefit of any holder of Indebtedness of such other Person, (c) to lease or purchase property, securities or

services primarily for the purpose of assuring the holder of such Indebtedness, or (d) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

1.107 "Hazardous Materials" shall mean any hazardous, toxic or dangerous substances, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, mold, fungi, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

1.108 "Hedge Agreement" shall mean an agreement between any Borrower or Guarantor and Administrative Agent, Collateral Agent, any Hedge Agreement Provider (as defined in Section 5.1) or any Bank Product Provider (as defined in Section 5.1) that is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement rate, floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing or a master agreement for any the foregoing together with all supplements thereto) for the purpose of protecting against or managing exposure to fluctuations in interest or exchange rates, currency valuations or commodity prices; sometimes being collectively referred to herein as "Hedge Agreements".

1.109 "Indebtedness" shall mean, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (other than an account payable to a trade creditor (whether or not an Affiliate) incurred in the ordinary course of business of such Person and payable in accordance with customary trade practices, but including, without limitation, all earn-outs and similar deferred payment obligations); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities issued by such Person; (f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account; (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which

is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; (h) all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values; (i) all obligations owed by such Person under License Agreements with respect to non-refundable, advance or minimum guarantee royalty payments; (j) indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer to the extent such Person is liable therefor as a result of such Person's ownership interest in such entity, except to the extent that the terms of such indebtedness expressly provide that such Person is not liable therefor or such Person has no liability therefor as a matter of law and (k) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP.

1.110 "Independent Financial Advisor" shall mean a firm (a) that does not, and whose directors, officers and employees or Affiliates do not, have a direct or indirect financial interest in any Borrower or Guarantor and (b) that, in the judgment of the Board of Directors of the Company, is otherwise independent and qualified to perform the task for which it is to be engaged.

1.111 "Information Certificate" shall mean, collectively, the Information Certificates of Borrowers and Guarantors constituting Exhibit B hereto containing material information with respect to Borrowers and Guarantors, their respective businesses and assets provided by or on behalf of Borrowers and Guarantors to Administrative Agent in connection with the preparation of this Agreement and the other Financing Agreements and the financing arrangements provided for herein.

1.112 "Intellectual Property" shall mean, as to each Borrower and Guarantor, such Borrower's and Guarantor's now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright applications, copyright registrations, trademarks, servicemarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing and all applications, registrations and recordings relating to any of the foregoing as may be filed in the United States Copyright Office, the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country or jurisdiction, together with all rights and privileges arising under applicable law with respect to any Borrower's or Guarantor's use of any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or servicemark, or the license of any trademark or servicemark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration; software and contract rights relating to computer software programs, in whatever form created or maintained.

1.113 “Intercreditor Agreement” shall mean the Intercreditor Agreement, dated as of the Closing Date, by and among Administrative Agent, the CL Administrative Agent and the Control Agent, as amended, restated, supplemented and/or modified from time to time in accordance with the provisions thereof.

1.114 “Interest Period” shall mean for any Eurodollar Rate Loan, a period of approximately one (1), two (2), or three (3) months duration as any Borrower (or Company on behalf of such Borrower) may elect, the exact duration to be determined in accordance with the customary practice in the applicable Eurodollar Rate market; provided, that, such Borrower (or Company on behalf of such Borrower) may not elect an Interest Period which will end after the Termination Date.

1.115 “Interest Rate” shall mean:

(a) Subject to clause (b) of this definition below:

(i) as to Prime Rate Loans, a rate equal to four (4%) percent per annum in excess of the Prime Rate,

(ii) as to Eurodollar Rate Loans, a rate equal to five (5%) percent per annum in excess of the Adjusted Eurodollar Rate (in each case, based on the London Interbank Offered Rate applicable for the Interest Period selected by a Borrower, as in effect two (2) Business Days prior to the commencement of the Interest Period, whether such rate is higher or lower than any rate previously quoted to any Borrower or Guarantor).

(b) Notwithstanding anything to the contrary contained in clause (a) of this definition, the Interest Rate shall mean the rate two (2%) percent per annum in excess of the Prime Rate as to Prime Rate Loans and the rate of two (2%) percent per annum in excess of the Adjusted Eurodollar Rate as to Eurodollar Rate Loans, at Administrative Agent’s option, without notice, (i) either (A) for the period on and after the date of termination hereof until such time as all Obligations are indefeasibly paid and satisfied in full in immediately available funds, or (B) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Administrative Agent, (ii) on the Loans at any time outstanding in excess of the U.S. Borrowing Base (whether or not such excess arises or is made with or without Administrative Agent’s or any Lender’s knowledge or consent and whether made before or after an Event of Default) and (iii) on the Loans to the Dutch Borrower at any time outstanding in excess of the Dutch Revolving Loan Limit (whether or not such excess arises or is made with or without Administrative Agent’s or any Lender’s knowledge or consent and whether made before or after an Event of Default).

1.116 “Inventory” shall mean, as to each Borrower and Guarantor, all of such Borrower’s and Guarantor’s now owned and hereafter existing or acquired (a) goods, wherever located, which (i) are leased by such Borrower or Guarantor as lessor; (ii) are held by such Borrower or Guarantor for sale or lease or to be furnished under a contract of service; (iii) are furnished by such Borrower or Guarantor under a contract of service; or (iv) consist of raw materials, work in process, finished goods or materials used or consumed in its business and (b) other “inventory” (as defined in the UCC wherever located).

1.117 “Inventory Loan Limit” shall mean \$17,000,000.

1.118 "Investment Banker" shall have the meaning set forth in Section 8.33 hereof.

1.119 "Investment Property Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to Administrative Agent, by and among Collateral Agent, any Borrower or Guarantor (as the case may be) and any securities intermediary, commodity intermediary or other person who has custody, control or possession of any investment property of such Borrower or Guarantor acknowledging that such securities intermediary, commodity intermediary or other person has custody, control or possession of such investment property on behalf of Collateral Agent, that it will comply with entitlement orders originated by Collateral Agent with respect to such investment property, or other instructions of Collateral Agent, and has such other terms and conditions as Administrative Agent or Collateral Agent may require.

1.120 "Issuing Bank" shall mean Wells Fargo or any Lender that is approved by Administrative Agent that shall issue a Letter of Credit for the account of a Borrower and has agreed in a manner satisfactory to Administrative Agent to be subject to the terms hereof as an Issuing Bank.

1.121 "Jackson Drive Real Property" shall have the meaning set forth in Section 8.30.

1.122 "JD Corp." shall mean Jackson Drive Corp.

1.123 "Lenders" shall have the meaning set forth in the first paragraph of this Agreement.

1.124 "Letter of Credit Documents" shall mean, with respect to any Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any application therefor, and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or at risk or (b) any collateral security for such obligations.

1.125 "Letter of Credit Fee" shall have the meaning set forth in Section 3.2.

1.126 "Letter of Credit Limit" shall mean \$15,000,000.

1.127 "Letter of Credit Obligations" shall mean, at any time, the sum of (a) the aggregate undrawn amount of all Letters of Credit outstanding at such time, plus (b) the aggregate amount of all drawings under Letters of Credit for which Issuing Bank has not at such time been reimbursed, plus (c) without duplication, the aggregate amount of all payments made by each Lender to Issuing Bank with respect to such Lender's participation in Letters of Credit as provided in Section 2.2 for which Borrowers have not at such time reimbursed the Lenders, whether by way of a Revolving Loan or otherwise.

1.128 "Letters of Credit" shall mean all letters of credit (whether documentary or stand-by and whether for the purchase of inventory, equipment or otherwise) issued by an Issuing Bank for the account of any Borrower pursuant to this Agreement, and all amendments, renewals, extensions or replacements thereof and including, but not limited to, the Existing Letters of Credit.

1.129 "License Agreements" shall have the meaning set forth in Section 8.11 hereof.

1.130 “Loans” shall mean (a) Revolving Loans and (b) Swingline Loans, as appropriate.

1.131 “London Interbank Offered Rate” shall mean, with respect to any Eurodollar Rate Loan for the Interest Period applicable thereto, the rate appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to eurodollar deposits in dollars in the London interbank market) at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, that, if more than one rate is specified on such Page for such comparable period, the applicable rate shall be the arithmetic mean of all such rates (rounded to the nearest 1/100th of 1%). In the event that such rate is not available at such time for any reason, then the term “London Interbank Offered Rate” shall mean, with respect to any Eurodollar Rate Loan for the Interest Period applicable thereto, the rate of interest per annum at which dollar deposits of \$5,000,000 and for a term comparable to such Interest Period are offered by the principal London office of Wells Fargo, as specified by Administrative Agent (or, in the event there is a successor Administrative Agent at the time, any other commercial bank approved by the U.S. Borrower, Required Lenders and such successor Administrative Agent), in immediately available funds in the London interbank market at approximately 11:00 a.m. London time two (2) Business Days prior to the commencement of such Interest Period.

1.132 “Mandatory Swingline Borrowing” shall have the meaning set forth in Section 2.5(b)(ii).

1.133 “Material Adverse Effect” shall mean a material adverse effect on (a) the financial condition, business, performance or operations of Borrowers; (b) the legality, validity or enforceability of this Agreement or any of the other Financing Agreements; (c) the legality, validity, enforceability, perfection or priority of the security interests and liens of Collateral Agent upon the Collateral; (d) the Collateral or its value; (e) the ability of Borrowers to repay the Obligations or of Borrowers to perform their obligations under this Agreement or any of the other Financing Agreements as and when to be performed; or (f) the ability of Administrative Agent or any Lender to enforce the Obligations or realize upon the Collateral or otherwise with respect to the rights and remedies of Administrative Agent and Lenders under this Agreement or any of the other Financing Agreements.

1.134 “Material Contract” shall mean any contract or other agreement (other than the Financing Agreements), whether written or oral, to which any Borrower or Guarantor is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect.

1.135 “Maximum Credit” shall mean the amount of \$50,000,000 (as such amount may be reduced from time to time as provided in the definition of “Reserves” or in Section 2.1(e)).

1.136 “Multiemployer Plan” shall mean a “multi-employer plan” as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by any Borrower, Guarantor or any ERISA Affiliate or with respect to which any Borrower, Guarantor or any ERISA Affiliate may incur any liability.

1.137 “Net Cash Proceeds” shall mean the aggregate cash proceeds received by any Borrower or Guarantor in respect of any insurance and condemnation recoveries, any sale, lease, transfer or other disposition of any assets or properties, or interest in assets and properties or as proceeds from the issuance and/or sale of any Capital Stock or Indebtedness, in each case net of the reasonable and customary direct costs relating to such sale, lease, transfer or other disposition or issuance and/or sale (including, without limitation, legal, accounting and investment banking fees, and sales commissions) and taxes paid or payable as a result thereof and in the case of a sale of any assets or properties or interest in assets and properties, amounts applied to the repayment of Indebtedness secured by a valid and enforceable lien (other than a lien created under the Financing Agreements) on the asset or assets that are the subject of such sale or other disposition required to be repaid in connection with such transaction, including any amounts paid or advanced for such costs or expenses with proceeds of Revolving Loans. Until the CL Obligations have been paid in full, any reference to “Net Cash Proceeds” herein relating solely to CL Priority Collateral and any mandatory prepayments of CL Obligations permitted to be made under Section 2.6 hereof shall have the meaning set forth in the CL Credit Agreement (as in effect on the date hereof).

1.138 “Net Recovery Percentage” shall mean the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the amount of the recovery in respect of the Inventory at such time on a “net orderly liquidation value” basis as set forth in the most recent appraisal of such inventory in form and containing assumptions and appraisal methods reasonably satisfactory to Administrative Agent by an appraiser reasonably acceptable to Administrative Agent, on which Administrative Agent and the Lenders are expressly permitted to rely, net of operating expenses, liquidation expenses and commissions, and (b) the denominator of which is the applicable original cost of the aggregate amount of the Inventory subject to such appraisal; provided, that, the Net Recovery Percentage established on the Closing Date will be mutually agreed upon by Administrative Agent and the Company.

1.139 “NP Cogen” shall mean NP Cogen, Inc., Debtor and Debtor-in-Possession, a California corporation, and its successors and assigns.

1.140 “Obligations” shall mean (a) any and all Loans, Letter of Credit Obligations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any or all of Borrowers to Administrative Agent, Collateral Agent, Control Agent or any Lender and/or any of their Affiliates or any Issuing Bank, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Agreement or any of the other Financing Agreements or on account of any Letter of Credit and all other Letter of Credit Obligations, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the conversion or dismissal of the Chapter 11 Cases, or before, during or after the confirmation of any plan of reorganization in the Chapter 11 Cases (and including any principal, interest, fees, costs, expenses and other amounts owed to Administrative Agent, Collateral Agent, Control Agent or any Lender and/or any of their Affiliates or any Issuing Bank by any or all of Borrowers or Guarantors in the Chapter 11 Cases or any similar case or proceeding), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, or secured or unsecured (other than the Company’s Parallel Debts) and (b) for purposes only of Section 5.1 hereof and subject to the priority in right of payment set forth in Section 6.4(a) hereof, all obligations, liabilities and indebtedness of every kind, nature and description owing by any or all of

Borrowers to Administrative Agent or any Bank Product Provider or Hedge Agreement Provider arising under or pursuant to any Bank Products, whether now existing or hereafter arising (other than the Company's Parallel Debts); provided, that, (i) as to any such obligations, liabilities and indebtedness arising under or pursuant to a Hedge Agreement, the same shall only be included within the Obligations if upon Administrative Agent's request, Administrative Agent shall have entered into an agreement, in form and substance satisfactory to Administrative Agent in good faith, with the Hedge Agreement Provider that is a counterparty to such Hedge Agreement, as acknowledged and agreed to by Borrowers, providing for the delivery to Administrative Agent by such counterparty of information with respect to the amount of such obligations and providing for the other rights of Administrative Agent and such Hedge Agreement Provider in connection with such arrangements, (ii) any Bank Product Provider or Hedge Agreement Provider, other than Wells Fargo and its Affiliates, shall have delivered written notice to Administrative Agent that (A) such Bank Product Provider or Hedge Agreement Provider has entered into a transaction to provide Bank Products to a Borrower and (B) the obligations arising pursuant to such Bank Products provided to Borrowers constitute Obligations entitled to the benefits of the security interest of Collateral Agent granted hereunder, and Administrative Agent shall have accepted such notice in writing, and (iii) except as otherwise provided herein, in no event shall any Bank Product Provider or Hedge Agreement Provider acting in such capacity to whom such obligations, liabilities or indebtedness are owing be deemed a Lender for purposes hereof to the extent of and as to such obligations, liabilities or indebtedness and in no event shall the approval of any such person in its capacity as Bank Product Provider or Hedge Agreement Provider be required in connection with the release or termination of any security interest or lien of Collateral Agent..

1.141 "OFAC" shall mean the U.S. Department of the Treasury's Office of Foreign Assets Control.

1.142 "Other Taxes" shall have the meaning given to such term in Section 6.5 hereof.

1.143 "Parallel Debt" shall mean, in relation to an Underlying Debt (and subject to Section 13.13 herein), an obligation to pay to Collateral Agent an amount equal to (and in the same currency as) the amount of such Underlying Debt.

1.144 "Participant" shall mean any financial institution that acquires and holds a participation in the interest of any Lender in any of the Loans and Letters of Credit in conformity with the provisions of Section 13.7 of this Agreement governing participations.

1.145 "Participating Member State" means the states of the European Union that have adopted the Euro as their lawful currency as of the Closing Date (being, Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Slovenia and Spain).

1.146 "Patriot Act" shall mean the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001.

1.147 "Pension Plan" shall mean a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA which any Borrower or Guarantor sponsors, maintains, or to which any Borrower, Guarantor or ERISA Affiliate makes, is making, or is obligated to make contributions, has

made contributions at any time during the immediately preceding six (6) plan years or may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during any preceding six (6) year period, or could reasonably be expected to be deemed to be a contributing sponsor under Section 4069 of ERISA other than a Multiemployer Plan.

1.148 “Permitted Discretion” shall mean, as used in this agreement with references to Administrative Agent, a determination made in good faith in the exercise of its reasonable business judgment based on how an asset based lender with similar rights providing a credit facility of the type set forth herein would act in similar circumstances at the time with the information then available to it.

1.149 “Permitted Holder” shall mean any of Edward K. Mullen or Robert H. Mullen.

1.150 “Permitted Investments” shall have the meaning set forth in Section 9.10.

1.151 “Permitted Liens” shall have the meaning set forth in Section 9.8.

1.152 “Person” or “person” shall mean any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Code), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

1.153 “Plan” shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) which any Borrower or Guarantor sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a Multiemployer Plan has made contributions at any time during the immediately preceding six (6) plan years or with respect to which any Borrower or Guarantor may incur liability.

1.154 “Pledge Agreement” shall mean the Pledge Agreement dated of even date herewith, executed by Borrowers and Guarantors party thereto in favor of Collateral Agent, for the benefit of the Lenders, and the Control Agent, as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

1.155 “PMP” shall mean a professional market party (*professionele marktpartij*) as defined in the Financial Markets Supervision Act.

1.156 “Prime Rate” shall mean, for any day, a rate per annum equal to the greatest of (a) the prime rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) two (2%) percent. For purposes hereof: “prime rate” shall mean, at any time, the rate of interest per annum publicly announced or otherwise identified from time to time by Wells Fargo at its principal office in Charlotte, North Carolina as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in the Prime Rate occurs. The parties hereto acknowledge that the rate announced publicly by Wells Fargo as its Prime Rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks; and “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 on the next succeeding Business Day, the average of the quotations for the day of such transactions received by Administrative Agent from three federal funds brokers of recognized standing selected by it. If for any reason Administrative Agent shall have determined (which determination shall be conclusive in the absence of manifest error) that it is unable to ascertain the Federal Funds Effective Rate, for any reason, including the inability or failure of Administrative Agent to obtain sufficient quotations in accordance with the terms above, the prime rate shall be determined without regard to clause (b) of the first sentence of this definition, as appropriate, until the circumstances giving rise to such inability no longer exist. Any change in the prime rate due to a change in the prime rate or the Federal Funds Effective Rate shall be effective on the opening of business on the date of such change.

1.157 “Prime Rate Loans” shall mean any Loans or portion thereof on which interest is payable based on the Prime Rate in accordance with the terms thereof.

1.158 “Priority Collateral” shall mean all “Working Capital Priority Collateral” as defined in the Intercreditor Agreement, including, upon the payment in full of the CL Obligations and the termination of the CL Commitment, all CL Priority Collateral other than Real Property.

1.159 “Pro Forma Basis” shall mean, with respect to any transaction, that such transaction shall be deemed to have occurred as of the first day of the twelve-month period ending as of the most recent month end preceding the date of such transaction.

1.160 “Pro Rata Share” shall mean as to any Lender, the fraction (expressed as a percentage) the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the aggregate amount of all of the Revolving Commitments of Lenders, as adjusted from time to time in accordance with the provisions of Section 13.7 hereof; provided, that, if the Revolving Commitments have been terminated, the numerator shall be the unpaid amount of such Lender’s Loans and its interest in the Letter of Credit Obligations and the denominator shall be the aggregate amount of all unpaid Loans and Letter of Credit Obligations.

1.161 “Projected Information” shall have the meaning set forth in Section 8.31(a) hereof.

1.162 “Real Property” shall mean all now owned and hereafter acquired real property of each Borrower and Guarantor, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located.

1.163 “Receivables” shall mean all of the following now owned or hereafter arising or acquired property of each Borrower and Guarantor: (a) all Accounts; (b) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; (c) all payment intangibles of such Borrower or Guarantor; (d) letters of credit, indemnities, guarantees, security or other deposits and proceeds thereof issued payable to any Borrower or Guarantor or otherwise in favor of or delivered to any Borrower or Guarantor in connection with any Account; or (e) all other accounts, contract rights, chattel paper, instruments, notes, general intangibles and other forms of obligations owing to any Borrower or Guarantor, whether from the sale and lease of goods or other property, licensing of any property (including

Intellectual Property or other general intangibles), rendition of services or from loans or advances by any Borrower or Guarantor or to or for the benefit of any third person (including loans or advances to any Affiliates or Subsidiaries of any Borrower or Guarantor) or otherwise associated with any Accounts, Inventory or general intangibles of any Borrower or Guarantor (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to any Borrower or Guarantor in connection with the termination of any Plan or other employee benefit plan and any other amounts payable to any Borrower or Guarantor from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which any Borrower or Guarantor is a beneficiary).

1.164 “Records” shall mean, as to each Borrower and Guarantor, all of such Borrower’s and Guarantor’s present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of any Borrower or Guarantor with respect to the foregoing maintained with or by any other person).

1.165 “Recovery Event” shall mean theft, loss, physical destruction or damage, taking or similar event with respect to any property or assets owned by Company, the Dutch Borrower or any of their Subsidiaries which results in the receipt by the Company, the Dutch Borrower or any of their Subsidiaries of any cash insurance proceeds or condemnation award payable by reason thereof.

1.166 “Register” shall have the meaning set forth in Section 13.7 hereof.

1.167 “Required Lenders” shall mean, at any time, those Lenders whose Pro Rata Shares are greater than fifty (50%) percent of the aggregate of the Revolving Commitments of all Lenders, or if the Revolving Commitments shall have been terminated, Lenders to whom at least fifty (50%) percent of the then outstanding Loans and Letter of Credit Obligations are owing; provided, that, at any time that there are two (2) or more Lenders, “Required Lenders” must include at least two (2) Lenders.

1.168 “Reserves” shall mean as of any date of determination, such amounts as Administrative Agent may from time to time establish and revise in its Permitted Discretion reducing the amount of Loans and Letters of Credit which would otherwise be available to any Borrower under the lending formula(s) provided for herein: (a) to reflect events, conditions, contingencies or risks which, as determined by Administrative Agent in good faith, adversely affect, or would have a reasonable likelihood of adversely affecting, either (i) the Collateral or any other property which is security for the Obligations, its value or the amount that might be received by Administrative Agent from the sale or other disposition or realization upon such Collateral, or (ii) the assets, business or prospects of any Borrower or Guarantor or (iii) the security interests and other rights of Collateral Agent and Administrative Agent or any Lender in the Collateral (including the enforceability, perfection and priority thereof), including, without limitation, the maximum amount of any indebtedness or claim which may have a lien or administrative claim upon property of the estate of any Borrower or Guarantor superior to or on a parity with the lien and security interest or

administrative claim of Collateral Agent and Administrative Agent or any Lender therein or thereon (including, without limitation, the fees and expenses of the Clerk of the Bankruptcy Court and the Office of the United States Trustee pursuant to Section 1920(a) of the Bankruptcy Code and fees and expenses of professionals whose retention is approved by Bankruptcy Court during the Chapter 11 Cases pursuant to Section 327 or Section 1103 of the Bankruptcy Code, including the Carve-Out to the extent provided in clause (vii) below) or (b) to reflect Administrative Agent's good faith belief that any collateral report or financial information furnished by or on behalf of any Borrower or Guarantor to Administrative Agent is or may have been incomplete, inaccurate or misleading in any material respect or (c) to reflect outstanding Letters of Credit pursuant to and in accordance with Section 2.2(c) hereof (which Reserve shall be reduced by the amount of cash collateral received by Administrative Agent from Borrowers to the extent such amount fully cash collateralized the Defaulting Lenders' Pro Rata Share of such Reserve or (d) in respect of any state of facts which Administrative Agent determines in good faith constitutes a Default or an Event of Default. Without limiting the generality of the foregoing, Reserves may, at Administrative Agent's option, be established to reflect: (i) dilution with respect to the Accounts (based on the ratio of the aggregate amount of non-cash reductions in Accounts for any period to the aggregate dollar amount of the sales of such Borrower for such period) as calculated by Administrative Agent for any period that is or is reasonably anticipated to be greater than five (5%) percent; (ii) returns, discounts, claims, credits and allowances of any nature that are not paid pursuant to the reduction of Accounts; (iii) sales, excise or similar taxes included in the amount of any Accounts reported to Administrative Agent; (iv) a change in the turnover, age or mix of the categories of Inventory that adversely affects the aggregate value of all Inventory; (v) amounts due or to become due to owners and lessors of premises where any Collateral is located, other than for those locations where Administrative Agent has received a Collateral Access Agreement that Administrative Agent has accepted in writing, which acceptance shall not be unreasonably withheld, it being agreed that Reserves with respect to leased premises shall not exceed an amount equal to three months' rent and other obligations owed to the lessor of such premises pursuant to any applicable lease documentation; (vi) obligations, liabilities or indebtedness (contingent or otherwise) of any Borrower or Guarantor to any Bank Product Provider or Hedge Agreement Provider arising under or in connection with any Bank Products to the extent that such obligations, liabilities or indebtedness constitute Obligations (as such term is defined herein) or otherwise receive the benefit of the security interest of Collateral Agent in any Collateral, which Reserve with respect to any Hedge Agreement shall be not more than one hundred five (105%) percent of the aggregate mark-to-market exposure then owing by any Borrower or Guarantor under each such Hedge Agreement; and (vii) the Professional Fee Carve-Out as set forth in Section 2.4 of the Financing Order. The amount of any Reserve established by Administrative Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Administrative Agent in good faith and to the extent that such Reserve is in respect of amounts that may be payable to third parties Administrative Agent may, at its option, deduct such Reserve from the Maximum Credit, at any time that such limit is less than the amount of the U.S. Borrowing Base. Reserves established on the Closing Date, if any, will be mutually agreed upon by Administrative Agent and the Company. Administrative Agent will not establish new reserves after the Closing Date on account of any circumstances, conditions, events or contingencies of which Administrative Agent has actual knowledge as of the Closing Date. To the extent Administrative Agent may establish new criteria or revise existing criteria (including percentages applied to determine the amount of) for Eligible Accounts and Eligible Inventory so as to address any circumstances, condition, event or contingency in a manner

reasonably satisfactory to Administrative Agent, Administrative Agent shall not establish or increase a reserve for the same purpose. The amount of any reserve established or increased by Administrative Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as reasonably determined by Administrative Agent in good faith. Administrative Agent shall provide prior written notice to the Company of any material change in the categories of reserves established after the Closing Date or in the manner such reserves are calculated or any other change to any item for the calculation thereof. The term "Reserves" as used herein shall include in addition, and not in limitation, the Special Availability Reserve.

1.169 "Restricted Payment" shall mean (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of the Company 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 shares of any class of Capital Stock of the Company or any of its Subsidiaries, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of the Company or any of its Subsidiaries, now or hereafter outstanding, (d) any payment with respect to any earnout obligation, (e) any payment or prepayment of principal of, premium, if any, or interest on, redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, the Senior Subordinated Notes or any other Subordinated Debt, (f) any voluntary prepayment of the CL Obligations, (g) any payment or prepayment of principal of, premium, if any, or interest on, redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Indebtedness the proceeds of which are used to refinance or repay the CL Obligations, (h) the payment by Borrowers or any of their Subsidiaries of any management or consulting fee to any Person or of any salary, bonus or other form of compensation to any Person who is directly or indirectly a significant partner, shareholder, owner or executive officer of any such Person, to the extent such management fee, consulting fee, salary, bonus or other form of compensation is not included in the Budget or otherwise approved by the Bankruptcy Court, or (i) any cash payments by any Borrower or Guarantor to their respective pension plans in excess of (A) the actuarially determined minimum funding obligations with respect to such plans (including expenses of maintaining and administering such plans) and (B) such amounts as are otherwise required to be contributed to or paid with respect to such plans pursuant to applicable law as approved by the Bankruptcy Court.

1.170 "Revaluation Date" shall mean, shall mean each of the following: (a) each date a Eurodollar Rate Loan denominated in Euros is made pursuant to Section 2.1; (b) each date a Eurodollar Rate Loan denominated in Euros is continued pursuant to Section 3.1; (c) the last Business Day of each calendar month; (d) each date a Eurodollar Rate Loan denominated in Euros is repaid or prepaid hereunder and (e) such additional dates as Administrative Agent or the Required Lenders shall determine.

1.171 "Revolving Commitment" shall mean, at any time, as to each Lender, the principal amount set forth on Schedule 1.171 hereto or on Schedule 1 to the Assignment and Acceptance Agreement pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 13.7 hereof, as the same may be adjusted from time to time in accordance with the terms hereof

1.172 “Revolving Loans” shall mean the loans now or hereafter made by or on behalf of any Lender or by Administrative Agent for the account of any Lender on a revolving basis pursuant to the Credit Facility (involving advances, repayments and readvances) as set forth in Section 2.1 hereof.

1.173 “Revolving Note” or “Revolving Notes” shall mean the promissory notes of Borrowers provided pursuant to Section 2.1 or 2.4 in favor of any of the Lenders evidencing the Revolving Loan provided by any such Lender pursuant to Section 2.1 or 2.4, individually or collectively, as appropriate, as such promissory notes may be amended, modified, extended, restated, replaced or supplemented from time to time.

1.174 “Sanctioned Country” shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html>, or as otherwise published from time to time.

1.175 “Sanctioned Person” shall mean (a) a Person named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC available at <http://www.treas.gov/offices/eotffc/ofac/sdn/index.html>, or as otherwise published from time to time, or (b) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

1.176 “Scheduled Asset Dispositions” shall mean the sale, lease, conveyance, disposition or other transfer of the following (including the real estate and other assets related thereto) (a) the paperboard mills in Newark, New Jersey, Natick, Massachusetts, Lawrence, Massachusetts, Middletown, Ohio, North Hoosick Falls, New York, Haverhill, Massachusetts, and Stockton, California, (b) the water rights with respect to certain real property located in Los Angeles, California, and (c) the property located at 99-107 Lockwood Street, Newark, New Jersey.

1.177 “Secured Parties” shall mean Collateral Agent, Administrative Agent, the Issuing Bank, the Lenders, Hedge Agreements Providers and Bank Product Providers.

1.178 “Security Documents” shall mean the Pledge Agreement, the Dutch Deed of Pledge and all other agreements, documents and instruments relating to, arising out of, or in any way connection with any of the foregoing documents or granting to Collateral Agent, liens or security interests to secure, inter alia, the Obligations whether now or hereafter executed and/or filed, each as may be amended from time to time in accordance with the terms hereof, executed and delivered in connection with the granting, attachment and perfection of Collateral Agent’s security interests and liens arising thereunder, including, without limitation, UCC financing statements.

1.179 “Senior Subordinated Note Indenture” shall mean that certain Indenture dated as of March 12, 2004 by and between the Company, the guarantors from time to time party thereto and The Bank of New York, as trustee, as it may be amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

1.180 “Senior Subordinated Notes” shall mean those certain 9¾% senior unsecured subordinated notes due 2014 issued by the Company on March 12, 2004, as they may be amended,

modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

1.181 “Settlement Agreement” shall mean the Settlement Agreement and Final Judgment, dated September 18, 2007, by and between the Commonwealth of Massachusetts and the Company related to allegations of violations of Environmental Laws asserted by the Commonwealth of Massachusetts against the Company.

1.182 “Special Administrative Agent Advances” shall have the meaning set forth in Section 12.11 hereof.

1.183 “Special Availability Reserve” shall mean, at any time, \$3,000,000

1.184 “Specified Sales” shall mean (a) the sale, transfer, lease or other disposition of inventory and materials in the ordinary course of business and (b) the sale, transfer or other disposition of Permitted Investments described in clause (a) of Section 9.10.

1.185 “Spot Rate” shall mean, with respect to Euros, the rate quoted by Wells Fargo as the spot rate for the purchase by Wells Fargo of Euros with Dollars through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made.

1.186 “Subordinated Debt” shall mean (a) subordinated Indebtedness of Borrowers evidenced by a subordinated seller note that contains subordination and other terms acceptable to Administrative Agent and (b) any other any Indebtedness incurred by any Borrower or Guarantor, in each case which by its terms is specifically subordinated in right of payment to the prior payment of the Obligations and contains subordination and other terms acceptable to Administrative Agent, including, without limitation, the Senior Subordinated Notes.

1.187 “Subsidiary” or “subsidiary” shall mean, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

1.188 “Swingline Commitment” shall mean the commitment of the Swingline Lender to make Swingline Loans in an aggregate principal amount at any time outstanding up to the Swingline Committed Amount, and the commitment of the Lenders to purchase participation interests in the Swingline Loans as provided in Section 2.5(b)(ii), as such amounts may be reduced from time to time in accordance with the provisions hereof.

1.189 “Swingline Committed Amount” shall mean \$7,500,000.

1.190 “Swingline Lender” shall mean Wells Fargo and any successor swingline lender.

1.191 “Swingline Loans” shall have the meaning set forth in Section 2.5(a).

1.192 “Swingline Note” shall mean the promissory note of the Borrowers in favor of the Swingline Lender evidencing the Swingline Loans provided pursuant to Section 2.5(d), as such promissory note may be amended, modified, extended, restated, replaced, or supplemented from time to time.

1.193 “Termination Date” shall mean the earliest to occur of (i) the date that is one hundred and eighty (180) days after the commencement of the Chapter 11 Case, (ii) the date that is sixty (60) days after the entry of the Financing Order if the Final Order has not been entered prior to the expiration of such 60-day period, (iii) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the “effective date”) of a plan of reorganization filed in the Chapter 11 Case that is confirmed pursuant to an order entered by the Bankruptcy Court in form and substance satisfactory to Administrative Agent, (iv) the date of confirmation of a plan of reorganization or liquidation for the Company or Guarantors in the Chapter 11 Case unless such confirmation order is in form and substance satisfactory to Administrative Agent, (v) the date when all Obligations are paid and satisfied in full in immediately available funds and the Commitments have been terminated pursuant to Section 2.1(d) and (vi) the date any Chapter 11 Case is converted to a Chapter 7 case under the Bankruptcy Code.

1.194 “Treaty on European Union” shall mean the Treaty of Rome of March 25, 1957, as amended by the Single European Act 1986 and the Maastricht Treaty (which was signed at Maastricht on February 1, 1992 and came into force on November 1, 1993), as amended from time to time.

1.195 “UCC” shall mean the Uniform Commercial Code as in effect in the State of New York, and any successor statute, as in effect from time to time (except, that, terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as Administrative Agent may otherwise determine).

1.196 “Underlying Debt” shall mean, in relation to the Company and at any given time, each obligation (whether present or future, actual or contingent) owing by the Company to a Lender under the Financing Agreements (including, for the avoidance of doubt, any change or increase in those obligations pursuant to or in connection with any amendment or supplement or restatement or novation of any Financing Agreement, in each case whether or not anticipated as of the date of this Agreement) excluding the Company’s Parallel Debts.

1.197 “Unfinanced Capital Expenditures” shall mean for any period Capital Expenditures made during such period and not financed from the proceeds of Funded Indebtedness (other than from Revolving Loans). The term “Capital Expenditures” shall not include capital expenditures in respect of the reinvestment of proceeds derived from Recovery Events received by the Company and its Subsidiaries to the extent that such reinvestment is permitted under the Financing Agreements.

1.198 “Unused Line Fee” shall have the meaning set forth in Section 3.2.

1.199 “U.S. Borrower” shall mean the Company and each Borrower that is a Domestic Subsidiary of the Company.

1.200 “U.S. Borrowing Base” shall mean, at any time, the amount equal to:

(a) (i) eighty-five (85%) percent of the Eligible Accounts of the U.S. Borrowers, plus (ii) the amount equal to the lesser of: (A) fifty (50%) percent multiplied by the Value of the Eligible Inventory consisting of raw materials inventory of the U.S. Borrower or (B) eighty-five (85%) percent of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory of the U.S. Borrowers (relating to each division of US Borrowers), plus (iii) the amount equal to the lesser of: (A) sixty-five (65%) percent multiplied by the Value of the Eligible Inventory consisting of finished goods inventory of the U.S. Borrowers or (B) eighty-five (85%) percent of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory of the U.S. Borrowers (relating to each division of US Borrowers), minus

(b) Reserves (including the Special Availability Reserve) established from time to time by Administrative Agent in its reasonable discretion, subject to the requirements for establishment of Reserves set forth in the definition of that term.

1.201 “Value” shall mean, as determined by Administrative Agent in good faith, with respect to Inventory, the lower of (a) cost computed on a first-in first-out basis in accordance with GAAP or (b) market value; provided, that, for purposes of the calculation of the U.S. Borrowing Base, (i) the Value of the Inventory shall not include: (A) the portion of the value of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Borrower or (B) write-ups or write-downs in value with respect to currency exchange rates and (ii) notwithstanding anything to the contrary contained herein, for the purpose of determining the amount in clause (a)(ii)(B) of the definition of U.S. Borrowing Base only, the cost of the Inventory shall be computed in the same manner and consistent with the most recent appraisal of the Inventory received and accepted by Administrative Agent.

1.202 “Voting Stock” shall mean with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

1.203 “Wells Fargo” shall mean Wells Fargo Bank, National Association, successor by merger to Wachovia Bank, National Association, in its individual capacity, and its successors and assigns.

## **SECTION 2. CREDIT FACILITIES**

### **2.1 Loans.**

(a) Subject to and upon the terms and conditions contained herein including, without limitation, the limitations set forth in Section 2.1(b), each Lender severally (and not jointly) agrees to make prior to the Termination Date its Pro Rata Share of Revolving Loans to (i) the U.S. Borrowers, in Dollars, from time to time in amounts requested by any U.S. Borrower (or Company on behalf of such Borrower) up to the aggregate amount outstanding for all Lenders at any time

equal to the lesser of: (A) the U.S. Borrowing Base at such time or (B) the Maximum Credit at such time and (ii) the Dutch Borrower, in Euros or Dollars (in accordance with 3.1(a)), from time to time in amounts requested by the Dutch Borrower (or Company on behalf of such Borrower) up to the aggregate Dollar Amount outstanding for all Lenders at any time equal to the lesser of: (A) the U.S. Borrowing Base at such time, (B) the Maximum Credit or (C) the Dutch Revolving Loan Limit at such time.

(b) Except in Administrative Agent's discretion, with the consent of all Lenders, or as otherwise provided herein, (i) the aggregate Dollar Amount of the Loans (including Swingline Loans) and the Letter of Credit Obligations outstanding at any time shall not exceed the Maximum Credit, (ii) the aggregate principal amount of the Loans (including Swingline Loans) and Letter of Credit Obligations outstanding at any time shall not exceed the U.S. Borrowing Base, (iii) the aggregate principal Dollar Amount of the Loans (including Swingline Loans) made to the Dutch Borrower shall not exceed the Dutch Revolving Loan Limit, (iv) the aggregate Dollar Amount of the Loans (including Swingline Loans) and the Letter of Credit Obligations outstanding at any time based on Eligible Inventory shall not exceed an amount equal to the Inventory Loan Limit and (v) the aggregate Dollar Amount of the Loans (including Swingline Loans) and the Letter of Credit Obligations outstanding at any time based on Consigned Eligible Inventory shall not exceed an amount equal to the Consigned Inventory Loan Limit.

(c) In the event that (i) the aggregate Dollar Amount of the Loans (including Swingline Loans) and the Letter of Credit Obligations outstanding at any time exceed the Maximum Credit, (ii) except as otherwise provided herein, the aggregate principal amount of the Loans (including Swingline Loans) and Letter of Credit Obligations outstanding exceed the U.S. Borrowing Base, (iii) except as otherwise provided herein, the aggregate principal Dollar Amount of the Loans (including Swingline Loans) and Letter of Credit Obligations outstanding to the Dutch Borrower exceed the U.S. Borrowing Base or the Dutch Revolving Loan Limit, (iv) the aggregate Dollar Amount of the Loans (including Swingline Loans) and Letter of Credit Obligations outstanding at any time based on Eligible Inventory exceeds an amount equal to the Inventory Loan Limit or (v) the aggregate Dollar Amount of the Loans (including Swingline Loans) and the Letter of Credit Obligations outstanding at any time based on Consigned Eligible Inventory exceeds an amount equal to the Consigned Inventory Loan Limit, such event shall not limit, waive or otherwise affect any rights of Administrative Agent or Lenders in such circumstances or on any future occasions and Borrowers shall, upon demand by Administrative Agent, which may be made at any time or from time to time, immediately repay to Administrative Agent the entire amount of any such excess(es) for which payment is demanded.

(d) Borrowers shall have the right to repay Loans in whole or in part from time to time; provided, however, that, each partial repayment of a Revolving Loan shall be in a minimum principal amount of \$1,000,000 and integral multiples of \$1,000,000 in excess thereof, and each partial repayment of a Swingline Loan shall be in a minimum principal amount of \$100,000 and integral multiples of \$100,000 in excess thereof. The Borrowers shall give three Business Days' irrevocable notice in the case of Eurodollar Rate Loans and same-day irrevocable notice on any Business Day in the case of Prime Rate Loans, to Administrative Agent (which shall notify the Lenders thereof as soon as practicable); provided, that, the Company may provide such notice on behalf of the Borrowers. Payments shall be applied first to Prime Rate Loans and then to Eurodollar Rate Loans in direct order of Interest Period maturities. All repayments under this Section 2.1(d)

shall be subject to Section 3.3(d), but otherwise without premium or penalty. Interest on the principal amount prepaid shall be payable on the next occurring interest payment date that would have occurred had such loan not been prepaid or, at the request of Administrative Agent, interest on the principal amount prepaid shall be payable on any date that a repayment is made hereunder through the date of repayment. Amounts repaid may be reborrowed in accordance with the terms hereof.

(e) Borrowers shall have the right to terminate or permanently reduce the unused portion of the Maximum Credit at any time or from time to time upon not less than five Business Days' prior notice to Administrative Agent (which shall notify the Lenders thereof as soon as practicable) of each such termination or reduction, which notice shall specify the effective date thereof and the amount of any such reduction which shall be in a minimum Dollar Amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof and shall be irrevocable and effective upon receipt by Administrative Agent; provided, that, no such reduction or termination shall be permitted (i) if after giving effect thereto, and to any repayments of the Loans made on the effective date thereof, the sum of the outstanding Obligations would exceed the Maximum Credit or (ii) if such reduction or termination would reduce the Maximum Credit to below \$25,000,000, unless such reduction or termination is in connection with the termination of this Agreement and repayment in full of the Obligations. If the Maximum Credit is reduced below the then current Swingline Committed Amount, the Swingline Committed Amount shall automatically be reduced by an amount such that the Swingline Committed Amount equals the Maximum Credit.

## 2.2 Letters of Credit.

(a) Subject to and upon the terms and conditions contained herein and in the Letter of Credit Documents, at the request of a Borrower excluding the Dutch Borrower (or Company on behalf of such Borrower), Administrative Agent agrees to cause Issuing Bank to issue, and Issuing Bank agrees to issue, for the account of such Borrower one or more Letters of Credit in Dollars, for the ratable risk of each Lender according to its Pro Rata Share, containing terms and conditions acceptable to Administrative Agent and Issuing Bank.

(b) Borrower requesting such Letter of Credit (or Company on behalf of such Borrower) shall give Administrative Agent and Issuing Bank three (3) Business Days' prior written notice of such Borrower's request for the issuance of a Letter of Credit. Such notice shall be irrevocable and shall specify the original face amount of the Letter of Credit requested, the effective date (which date shall be a Business Day and in no event shall be a date less than ten (10) days prior to the Termination Date) of issuance of such requested Letter of Credit, whether such Letter of Credit may be drawn in a single or in partial draws, the date on which such requested Letter of Credit is to expire (which date shall be a Business Day and shall not be more than one year from the date of issuance nor after the Termination Date), the purpose for which such Letter of Credit is to be issued, and the beneficiary of the requested Letter of Credit. Borrower requesting the Letter of Credit (or Company on behalf of such Borrower) shall attach to such notice the proposed terms of the Letter of Credit. The renewal or extension of any Letter of Credit shall, for purposes hereof be treated in all respects the same as the issuance of a new Letter of Credit hereunder.

(c) In addition to being subject to the satisfaction of the applicable conditions precedent contained in Section 4 hereof and the other terms and conditions contained herein, no

Letter of Credit shall be available unless each of the following conditions precedent have been satisfied in a manner reasonably satisfactory to Administrative Agent: (i) Borrower requesting such Letter of Credit (or Company on behalf of such Borrower) shall have delivered to Issuing Bank at such times and in such manner as Issuing Bank may require, an application, in form and substance reasonably satisfactory to Issuing Bank and Administrative Agent, for the issuance of the Letter of Credit and such other Letter of Credit Documents as may be required pursuant to the terms thereof, and the form and terms of the proposed Letter of Credit shall be reasonably satisfactory to Administrative Agent and Issuing Bank, (ii) as of the date of issuance, no order of any court, arbitrator or other Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount of the proposed Letter of Credit, and no law, rule or regulation applicable to money center banks generally and no request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that Issuing Bank refrain from, the issuance of letters of credit generally or the issuance of such Letter of Credit, (iii) after giving effect to the issuance of such Letter of Credit, the Letter of Credit Obligations shall not exceed the Letter of Credit Limit, and (iv) the Excess Availability prior to giving effect to any Reserves with respect to such Letter of Credit, on the date of the proposed issuance of any Letter of Credit shall be equal to or greater than: (A) if the proposed Letter of Credit is for the purpose of purchasing Eligible Inventory and the documents of title with respect thereto are consigned to Issuing Bank, the sum of (1) the percentage equal to one hundred (100%) percent minus the then applicable percentage with respect to Eligible Inventory set forth in the definition of the term U.S. Borrowing Base multiplied by the Value of such Eligible Inventory, plus (2) freight, taxes, duty and other amounts which Administrative Agent estimates must be paid in connection with such Inventory upon arrival and for delivery to one of such Borrower's locations for Eligible Inventory within the United States of America and (B) if the proposed Letter of Credit is for any other purpose or the documents of title are not consigned to Issuing Bank in connection with a Letter of Credit for the purpose of purchasing Inventory, an amount equal to one hundred (100%) percent of the Letter of Credit Obligations with respect thereto. Effective on the issuance of each Letter of Credit, a Reserve shall be established in the applicable amount set forth in Section 2.2(c)(iv)(A) or Section 2.2(c)(iv)(B).

(d) Except in Administrative Agent's discretion, with the consent of all Lenders, the amount of all outstanding Letter of Credit Obligations shall not at any time exceed the Letter of Credit Limit.

(e) Each Borrower shall reimburse immediately Issuing Bank for any draw under any Letter of Credit issued for the account of a Borrower and pay Issuing Bank the amount of all other charges and fees payable to Issuing Bank in connection with any Letter of Credit issued for the account of a Borrower immediately when due, irrespective of any claim, setoff, defense or other right which any Borrower may have at any time against Issuing Bank or any other Person. Each drawing under any Letter of Credit or other amount payable in connection therewith when due shall constitute a request by Borrowers to Administrative Agent for a Prime Rate Loan in the amount of such drawing or other amount then due, and shall be made by Administrative Agent on behalf of Lenders as a Revolving Loan (or Special Administrative Agent Advance, as the case may be). The date of such Loan shall be the date of the drawing or as to other amounts, the due date therefor. Any payments made by or on behalf of Administrative Agent or any Lender to Issuing Bank and/or related parties in connection with any Letter of Credit shall constitute additional Revolving Loans to

the Borrowers pursuant to this Section 2 (or Special Administrative Agent Advances as the case may be).

(f) Borrowers and Guarantors shall, jointly and severally, indemnify and hold Administrative Agent and Lenders harmless from and against any and all losses, claims, damages, liabilities, costs and expenses which Administrative Agent or any Lender may suffer or incur in connection with any Letter of Credit and any documents, drafts or acceptances relating thereto, including any losses, claims, damages, liabilities, costs and expenses due to any action taken by Issuing Bank or correspondent with respect to any Letter of Credit, except for such losses, claims, damages, liabilities, costs or expenses that are a direct result of the gross negligence or willful misconduct of Administrative Agent or any Lender as determined pursuant to a final non-appealable order of a court of competent jurisdiction. Each Borrower and Guarantor assumes all risks with respect to the acts or omissions of the drawer under or beneficiary of any Letter of Credit and for such purposes the drawer or beneficiary shall be deemed such Borrower's agent. Each Borrower and Guarantor assumes all risks for, and agrees to pay, all foreign, Federal, State and local taxes, duties and levies relating to any goods subject to any Letter of Credit or any documents, drafts or acceptances thereunder. Each Borrower and Guarantor hereby releases and holds Administrative Agent and Lenders harmless from and against any acts, waivers, errors, delays or omissions with respect to or relating to any Letter of Credit, except for the gross negligence or willful misconduct of Administrative Agent or any Lender as determined pursuant to a final, non-appealable order of a court of competent jurisdiction. The provisions of this Section 2.2(f) shall survive the payment of Obligations and the termination of this Agreement.

(g) In connection with Inventory purchased pursuant to any Letter of Credit, Borrowers and Guarantors shall, at Collateral Agent's request, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or others receiving or holding cash, checks, Inventory, documents or instruments in which Collateral Agent holds a security interest that upon Administrative Agent's request, such items are to be delivered to Collateral Agent and/or subject to Collateral Agent's order, and if they shall come into any Borrower's or Guarantor's possession, to deliver them, upon Collateral Agent's request, to Collateral Agent in their original form. Except as otherwise provided herein, Collateral Agent shall not exercise such right to request such items so long as no Event of Default shall exist or have occurred and be continuing. Except as Collateral Agent may otherwise specify, Borrowers and Guarantors shall designate Issuing Bank as the consignee on all bills of lading and other negotiable and non-negotiable documents.

(h) Each Borrower and Guarantor hereby irrevocably authorizes and directs Issuing Bank to name such Borrower or Guarantor as the account party in any Letter of Credit and to deliver to Administrative Agent all instruments, documents and other writings and property received by Issuing Bank pursuant to any Letter of Credit and to accept and rely upon Administrative Agent's instructions and agreements with respect to all matters arising in connection with any Letter of Credit or the Letter of Credit Documents with respect thereto. Nothing contained herein shall be deemed or construed to grant any Borrower or Guarantor any right or authority to pledge the credit of Administrative Agent or any Lender in any manner. Borrowers and Guarantors shall be bound by any reasonable interpretation made in good faith by Administrative Agent or Issuing Bank under or in connection with any Letter of Credit or any documents, drafts or acceptances thereunder, notwithstanding that such interpretation may be inconsistent with any instructions of any Borrower or Guarantor.

(i) Immediately upon the issuance or amendment of any Letter of Credit, each Lender shall be deemed to have irrevocably and unconditionally purchased and received, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Pro Rata Share of the liability with respect to such Letter of Credit and the obligations of Borrowers with respect thereto (including all Letter of Credit Obligations with respect thereto). Each Lender shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to Issuing Bank therefor and discharge when due, its Pro Rata Share of all of such obligations arising under such Letter of Credit. Without limiting the scope and nature of each Lender's participation in any Letter of Credit, to the extent that Issuing Bank has not been reimbursed or otherwise paid as required hereunder or under any such Letter of Credit, each such Lender shall pay to Issuing Bank its Pro Rata Share of such unreimbursed drawing or other amounts then due to Issuing Bank in connection therewith.

(j) The obligations of Borrowers to pay each Letter of Credit Obligations and the obligations of Lenders to make payments to Administrative Agent for the account of Issuing Bank with respect to Letters of Credit 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, notwithstanding the occurrence or continuance of any Default, Event of Default, the failure to satisfy any other condition set forth in Section 4 or any other event or circumstance. If such amount is not made available by a Lender when due, Administrative Agent shall be entitled to recover such amount on demand from such Lender with interest thereon, for each day from the date such amount was due until the date such amount is paid to Administrative Agent at the interest rate then payable by any Borrower in respect of Loans that are Prime Rate Loans. Any such reimbursement shall not relieve or otherwise impair the obligation of Borrowers to reimburse Issuing Bank under any Letter of Credit or make any other payment in connection therewith.

## 2.3 Commitments.

The aggregate Dollar Amount of each Lender's Pro Rata Share of the Loans and Letter of Credit Obligations shall not exceed the amount of such Lender's Commitment, as the same may from time to time be amended in accordance with the provisions hereof.

## 2.4 [Intentionally Deleted.]

## 2.5 Swingline Loan Subfacility.

(a) Subject to and upon the terms and conditions contained herein, the Swingline Lender, in its individual capacity, agrees to make prior to the Termination Date certain revolving credit loans to (i) the U.S. Borrowers, in Dollars, and (ii) the Dutch Borrower, in Euros or Dollars (each a "Swingline Loan" and, collectively, the "Swingline Loans") for the purposes hereinafter set forth; provided, however, (A) the aggregate principal Dollar Amount of Swingline Loans outstanding at any time shall not exceed the Swingline Committed Amount, (B) the aggregate Dollar Amount of the Loans (including Swingline Loans) and the Letter of Credit Obligations outstanding at any time shall not exceed the Maximum Credit, (C) the aggregate principal amount of the Loans (including Swingline Loans) and Letter of Credit Obligations outstanding at any time shall not exceed the U.S. Borrowing Base, and (D) the aggregate principal Dollar Amount of the Loans (including Swingline Loans) made to the Dutch Borrower shall not exceed the Dutch Revolving

Loan Limit. Swingline Loans hereunder may be repaid and reborrowed in accordance with the provisions hereof.

(b) Notice of Borrowing and Disbursement. Upon receiving a request for a Swingline Loan from any Borrower (or the Company on behalf of any Borrower) not later than 12:00 Noon on any Business Day, the Swingline Lender will make Swingline Loans available to the Borrower on the same Business Day such request is received by the Administrative Agent. Swingline Loan borrowings hereunder shall be made in minimum amounts of \$100,000 (or the remaining available amount of the Swingline Committed Amount if less) and in integral amounts of \$100,000 in excess thereof.

(c) Each Swingline Loan borrowing shall be due and payable on the earlier of (i) the Termination Date and (ii) seven (7) days following such borrowing. The Swingline Lender may, at any time, in its sole discretion, by written notice to Borrowers and Administrative Agent, demand repayment of its Swingline Loans by way of a Revolving Loan borrowing, in which case the Borrowers shall be deemed to have requested a Revolving Loan borrowing comprised entirely of Prime Rate Loans in the amount of such Swingline Loans; provided, however, that, in the following circumstances, any such demand shall also be deemed to have been given one Business Day prior to each of (A) the Termination Date, (B) the occurrence of any event described in Sections 10.1(g) and (h), (C) upon acceleration of the Obligations hereunder, and (D) the exercise of remedies in accordance with the provisions of Section 10.2 hereof (each such Revolving Loan borrowing made on account of any such deemed request therefor as provided herein being hereinafter referred to as "Mandatory Swingline Borrowing"). Each Lender hereby irrevocably agrees to make such Revolving Loans promptly upon any such request or deemed request on account of each Mandatory Swingline Borrowing in the amount and in the manner specified in the preceding sentence on the date such notice is received by the Lenders from Administrative Agent if such notice is received at or before 2:00 p.m., Charlotte, North Carolina time, otherwise such payment shall be made at or before 12:00 noon, Charlotte, North Carolina time, on the Business Day next succeeding the date such notice is received notwithstanding (1) the amount of Mandatory Swingline Borrowing may not comply with the minimum amount for borrowings of Revolving Loans otherwise required hereunder, (2) whether any conditions specified in Section 4.2 are then satisfied, (3) whether a Default or an Event of Default then exists, (4) failure of any such request or deemed request for Revolving Loans to be made by the time otherwise required in Section 6.6, (5) the date of such Mandatory Swingline Borrowing, or (6) any reduction in the Maximum Credit or termination of the Commitments immediately prior to such Mandatory Swingline Borrowing or contemporaneously therewith. In the event that any Mandatory Swingline Borrowing cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code), then each Lender hereby agrees that it shall forthwith purchase (as of the date the Mandatory Swingline Borrowing would otherwise have occurred, but adjusted for any payments received from the Borrowers on or after such date and prior to such purchase) from the Swingline Lender such participation interest in the outstanding Swingline Loans as shall be necessary to cause each such Lender to share in such Swingline Loans ratably based upon its respective Pro Rata Share (determined before giving effect to any termination of the Commitments pursuant to Section 10.2); provided, that, (x) all interest payable on the Swingline Loans shall be for the account of the Swingline Lender until the date as of which the respective participation interest is purchased, and (y) at the time any purchase of a participation interest pursuant to this sentence is actually made, the purchasing Lender shall be required to pay to the Swingline Lender interest on the

principal amount of such participation interest purchased for each day from and including the day upon which the Mandatory Swingline Borrowing would otherwise have occurred to but excluding the date of payment for such participation interest, at the rate equal to, if paid within two (2) Business Days of the date of the Mandatory Swingline Borrowing, the Federal Funds Effective Rate, and thereafter at a rate equal to the Prime Rate. The Borrowers shall have the right to repay the Swingline Loan in whole or in part from time to time; provided, however, that, each partial repayment of a Swingline Loan shall be in a minimum principal amount of \$100,000 and integral multiples of \$100,000 in excess thereof (or the remaining outstanding principal amount).

(d) Swingline Loans shall bear interest at a per annum rate equal to the Interest Rate applicable to Revolving Loans that are Prime Rate Loans. Interest on Swingline Loans shall be payable in arrears on each Interest Payment Date.

(e) The Borrower covenants and agrees to pay the Swingline Loans in accordance with the terms of this Agreement.

## 2.6 Mandatory Repayments.

(a) Subject to the terms of the Intercreditor Agreement: (i) all of the Net Cash Proceeds, subject to Section 9.5 hereof, relating to insurance and condemnation recoveries on account of any loss of any Priority Collateral shall be paid to Administrative Agent for application to the Obligations in such order and manner as Administrative Agent shall from time to time determine and (ii) to the extent permitted by an order of the Bankruptcy Court in a manner that is not inconsistent with the terms of this Agreement or the Financing Order, until the payment in full of the CL Obligations, all of the Net Cash Proceeds, subject to the last sentence set forth in Section 9.5 hereof, relating to insurance and condemnation recoveries on account of any loss of any CL Priority Collateral shall be paid to CL Administrative Agent for application to the CL Obligations in accordance with the terms of the CL Credit Agreement.

(b) Subject to the terms of the Intercreditor Agreement, upon the sale or disposition of any Collateral by the Company or any of its Subsidiaries to the extent permitted under this Agreement, Borrowers shall immediately prepay the outstanding CL Obligations and the outstanding Obligations as set forth below, in an amount equal to one hundred (100%) percent of the Net Cash Proceeds received by such Person in connection with such sale or disposition as follows: (i) in the case of Priority Collateral, first, to the outstanding Obligations and second, to the outstanding CL Obligations, (ii) to the extent permitted by an order of the Bankruptcy Court in a manner that is not inconsistent with the terms of this Agreement or the Financing Order, in the case of Collateral (other than Priority Collateral and Capital Stock), first, to the outstanding CL Obligations until paid in full, and second, to the outstanding Obligations, except that the first \$1,000,000 of Net Cash Proceeds received during any calendar year from such sale or disposition of CL Priority Collateral shall not be required to be prepaid to the CL Obligations or the Obligations to the extent such sale is permitted pursuant to the CL Credit Agreement and (iii) to the extent permitted by an order of the Bankruptcy Court in a manner that is not inconsistent with the terms of this Agreement or the Financing Order, in the case of Capital Stock of any Domestic Subsidiary of Issuer or any Domestic Subsidiary, first, to the outstanding CL Obligations until paid in full and second, to the outstanding Obligations.

### **SECTION 3. INTEREST AND FEES**

#### **3.1 Interest.**

(a) The U.S. Borrowers may request Revolving Loans be made as Prime Rate Loans or Eurodollar Rate Loans. Subject to the provisions of Sections 3.1(b) and (c), the Dutch Borrower may request Revolving Loans be made as Prime Rate Loans (so long as such Loans are made in Dollars) or Eurodollar Rate Loans (which Loans may be made in Dollars or Euros). Borrowers shall pay to Administrative Agent, for the benefit of Lenders, interest on the outstanding principal amount of the Loans at the Interest Rate. All interest accruing during the continuance of an Event of Default or on and after the termination of this Agreement shall be payable on demand.

(b) The Borrowers (or Company on behalf of the Borrowers) may from time to time request Eurodollar Rate Loans or may request that Prime Rate Loans be converted to Eurodollar Rate Loans or that any existing Eurodollar Rate Loans continue for an additional Interest Period. Such request from the Borrowers (or Company on behalf of the Borrowers) shall (i) be made not later than 12:00 Noon (Charlotte, North Carolina time) on the third Business Day prior to the date of the requested borrowing or conversion, (ii) specify the applicable Borrower, (iii) specify the date of the requested borrowing or conversion (which shall be a Business Day), (iv) specify the currency and the aggregate principal amount to be borrowed or converted (subject to the limits set forth below) and (v) specify the Interest Period to be applicable to such Eurodollar Rate Loans. Subject to the terms and conditions contained herein, three (3) Business Days after receipt by Administrative Agent of such a request from the Borrowers (or Company on behalf of the Borrowers), such Eurodollar Rate Loans shall be made or Prime Rate Loans shall be converted to Eurodollar Rate Loans or such Eurodollar Rate Loans shall continue, as the case may be; provided, that, (A) no Default or Event of Default shall exist or have occurred and be continuing, (B) the Borrowers (or Company on behalf of the Borrowers) shall have complied with such customary procedures as are established by Administrative Agent and specified by Administrative Agent to Company from time to time for requests by Borrowers for Eurodollar Rate Loans, (C) no more than four (4) Interest Periods may be in effect at any one time, (D) the aggregate amount of the Eurodollar Rate Loans must be in an amount not less than \$2,500,000 or an integral multiple of \$1,000,000 in excess thereof, (E) the maximum amount of the Eurodollar Rate Loans in the aggregate at any time requested by Borrowers shall not exceed the amount of the Revolving Loans which it is anticipated will be outstanding during the applicable Interest Period, in each case as determined by Administrative Agent in good faith (but with no obligation of Administrative Agent or Lenders to make such Loans), and (F) Administrative Agent and each Lender shall have determined that the Interest Period or Adjusted Eurodollar Rate is available to Administrative Agent and such Lender and can be readily determined as of the date of the request for such Eurodollar Rate Loan by the Borrowers. Any request by or on behalf of the Borrowers for Eurodollar Rate Loans or to convert Prime Rate Loans to Eurodollar Rate Loans or to continue any existing Eurodollar Rate Loans shall be irrevocable. Notwithstanding anything to the contrary contained herein, Administrative Agent and Lenders shall not be required to purchase United States Dollar deposits in the London interbank market or other applicable Eurodollar Rate market to fund any Eurodollar Rate Loans, but the provisions hereof shall be deemed to apply as if Administrative Agent and Lenders had purchased such deposits to fund the Eurodollar Rate Loans.

(c) Any Eurodollar Rate Loans shall automatically convert to Prime Rate Loans upon the last day of the applicable Interest Period, unless the Borrowers request that such Eurodollar Rate Loans continue for an additional Interest Period in accordance with Section 3.1(b). Any Eurodollar Rate Loans shall, at Administrative Agent's option, upon notice by Administrative Agent to Company, be subsequently converted to Prime Rate Loans in the event that this Agreement shall terminate. Borrowers shall pay to Administrative Agent, for the benefit of Lenders, upon demand by Administrative Agent (or Administrative Agent may, at its option, charge any loan account of any Borrower) any amounts required to compensate any Lender or Participant for any loss (including loss of anticipated profits), cost or expense incurred by such person, as a result of the conversion of Eurodollar Rate Loans to Prime Rate Loans pursuant to any conversion as a result of a termination described in the previous sentence.

(d) Interest shall be payable by Borrowers to Administrative Agent, for the account of Administrative Agent and Lenders as applicable, monthly in arrears not later than the first day of each calendar month and shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed. The interest rate on non-contingent Obligations (other than Eurodollar Rate Loans) shall increase or decrease by an amount equal to each increase or decrease in the Prime Rate effective on the date of any change in such Prime Rate. In no event shall charges constituting interest payable by Borrowers to Administrative Agent and Lenders exceed the maximum amount or the rate permitted under any applicable law or regulation, and if any such part or provision of this Agreement is in contravention of any such law or regulation, such part or provision shall be deemed amended to conform thereto.

### 3.2 Fees.

(a) Borrowers shall pay to Administrative Agent, for the account of Lenders, monthly an unused line fee ("Unused Line Fee") at a rate equal to one (1%) percent per annum calculated on the average daily unused portion of the Maximum Credit during the immediately preceding month (or part thereof) while this Agreement is in effect and for so long thereafter as any of the Obligations are outstanding, which fee shall be payable on the first day of each month in arrears. For purposes of this Section 3.2, Swingline Loans shall not be considered usage of the Maximum Credit.

(b) Borrowers shall pay to Administrative Agent, for the account of Lenders, a fee ("Letter of Credit Fee") at a rate equal to five (5%) percent per annum on the average daily maximum amount available to be drawn under all Letters of Credit for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month, computed for each day from the date of issuance to the date of expiration. Borrowers shall pay, at Administrative Agent's option, without notice, the Letter of Credit Fee at a rate two (2%) percent greater than the otherwise applicable rate on such average daily maximum amount for: (i) the period from and after the date of termination hereof until Lenders have received full and final payment of all Obligations (notwithstanding entry of a judgment against any Borrower or Guarantor) and (ii) the period from and after the date of the occurrence of an Event of Default for so long as such Event of Default is continuing. Such letter of credit fees shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed and the obligation of Borrowers to pay such fee shall survive the termination of this Agreement. In addition to the letter of credit fees provided above, Borrowers shall pay to Issuing Bank for its own account (without sharing with Lenders) (A) a letter of credit

fronting and negotiation fee of 0.5% per annum on the average daily maximum amount available to be drawn under each Letter of Credit issued by it and (B) the reasonable and customary charges from time to time of the Issuing Bank with respect to the amendment, transfer, administration, cancellation and conversion of, and drawings under, the Letters of Credit, which fees shall be payable quarterly in arrears on the last Business Day of each calendar quarter.

(c) Borrowers shall pay to Administrative Agent the other fees and amounts set forth in the Fee Letter in the amounts and at the times specified therein. To the extent payment in full of the applicable fee is received by Administrative Agent from Borrowers on or about the date hereof, Administrative Agent shall pay to each Lender its share of such fees in accordance with the terms of the arrangements of Administrative Agent with such Lender.

### 3.3 Changes in Laws and Increased Costs of Loans.

(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 Lender or any banking or financial institution from whom any Lender borrows funds or obtains credit (a "Funding Bank"), or (ii) a Funding Bank or any Lender complies with any future guideline or request from any central bank or other Governmental Authority or (iii) a Funding Bank, any Lender or Issuing Bank 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, any Lender or Issuing Bank 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 Lender's or Issuing Bank's capital as a consequence of its obligations hereunder to a level below that which such Lender or Issuing Bank could have achieved but for such adoption, change or compliance (taking into consideration the Funding Bank's or Lender's or Issuing Bank's policies with respect to capital adequacy) by an amount deemed by such Lender or Issuing Bank 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 Lender or Issuing Bank of funding or maintaining the Loans, the Letters of Credit or its Commitment, then Borrowers and Guarantors shall from time to time upon demand by Administrative Agent pay to Administrative Agent additional amounts sufficient to indemnify such Lender or Issuing Bank, as the case may be, 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 Company by Administrative Agent or the applicable Lender and shall be conclusive, absent manifest error.

(b) If prior to the first day of any Interest Period, (i) Administrative Agent shall have determined in good faith (which determination shall be conclusive and binding upon Borrowers and Guarantors) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Adjusted Eurodollar Rate for such Interest Period, (ii) Administrative Agent has received notice from the Required Lenders that the Adjusted Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to Lenders of making or maintaining Eurodollar Rate Loans during such

Interest Period, or (iii) Dollar deposits in the principal amounts of the Eurodollar Rate Loans to which such Interest Period is to be applicable are not generally available in the London interbank market, Administrative Agent shall give telecopy or telephonic notice thereof to Company as soon as practicable thereafter, and will also give prompt written notice to Company when such conditions no longer exist. If such notice is given (A) any Eurodollar Rate Loans requested to be made on the first day of such Interest Period shall be made as Prime Rate Loans, (B) any Loans that were to have been converted on the first day of such Interest Period to or continued as Eurodollar Rate Loans shall be converted to or continued as Prime Rate Loans and (C) each outstanding Eurodollar Rate Loan shall be converted, on the last day of the then-current Interest Period thereof, to Prime Rate Loans. Until such notice has been withdrawn by Administrative Agent, no further Eurodollar Rate Loans shall be made or continued as such, nor shall any Borrower (or Company on behalf of any Borrower) have the right to convert Prime Rate Loans to Eurodollar Rate Loans.

(c) Notwithstanding any other provision herein, if the adoption of or any change in any law, treaty, rule or regulation or final, non-appealable determination of an arbitrator or a court or other Governmental Authority or in the interpretation or application thereof occurring after the date hereof shall make it unlawful for Administrative Agent or any Lender to make or maintain Eurodollar Rate Loans as contemplated by this Agreement, (i) Administrative Agent or such Lender shall promptly give written notice of such circumstances to Company (which notice shall be withdrawn whenever such circumstances no longer exist), (ii) the commitment of such Lender hereunder to make Eurodollar Rate Loans, continue Eurodollar Rate Loans as such and convert Prime Rate Loans to Eurodollar Rate Loans shall forthwith be canceled and, until such time as it shall no longer be unlawful for such Lender to make or maintain Eurodollar Rate Loans, such Lender shall then have a commitment only to make a Prime Rate Loan when a Eurodollar Rate Loan is requested and (iii) such Lender's Loans then outstanding as Eurodollar Rate Loans, if any, shall be converted automatically to Prime Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Rate Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrowers and Guarantors shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.3(d) below.

(d) Borrowers and Guarantors shall indemnify Administrative Agent and each Lender and to hold Administrative Agent and each Lender harmless from any loss or expense which Administrative Agent or such Lender may sustain or incur as a consequence of (i) default by any Borrower in making a borrowing of, conversion into or extension of Eurodollar Rate Loans after such Borrower (or Company on behalf of such Borrower) has given a notice requesting the same in accordance with the provisions of this Agreement, (ii) default by any Borrower in making any prepayment of a Eurodollar Rate Loan after such Borrower has given a notice thereof in accordance with the provisions of this Agreement, and (iii) the making of a prepayment of Eurodollar Rate Loans on a day which is not the last day of an Interest Period with respect thereto. With respect to Eurodollar Rate Loans, such indemnification may include an amount equal to the excess, if any, of (A) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, converted or extended, for the period from the date of such prepayment or of such failure to borrow, convert or extend to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or extend, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Rate Loans provided for herein over (B) the amount of interest (as determined by such Administrative Agent or such Lender)

which would have accrued to Administrative Agent or such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. This covenant shall survive the termination of this Agreement and the payment of the Obligations.

(e) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.3 shall not constitute a waiver of such Lender's right to demand such compensation; provided, that, the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.3 for any increased costs incurred more than six months prior to the date that such Lender notifies the Borrowers of the change in law giving rise to such increased costs and of such Lender'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).

#### **SECTION 4. CONDITIONS PRECEDENT**

##### **4.1 Conditions Precedent to Initial Loans and Letters of Credit.**

The obligation of Lenders to make the initial Loans or of Issuing Bank to issue the initial Letters of Credit hereunder is subject to the satisfaction of, or waiver of, immediately prior to or concurrently with the making of such Loan or the issuance of such Letter of Credit of each of the following conditions precedent:

(a) Administrative Agent shall have received, in form and substance satisfactory to Administrative Agent, all releases, terminations and such other documents as Administrative Agent may request to evidence and effectuate the termination by the lenders party to the Existing CL Loan Agreement and Wachovia Bank, National Association, as administrative agent and collateral agent for such lenders, of their respective financing arrangements with Borrowers and Guarantors and the termination and release by it or them, as the case may be, of any interest in and to any assets and properties of each Borrower and Guarantor, duly authorized, executed and delivered by it or each of them, including, but not limited to, authorization to file UCC termination statements for all UCC financing statements previously filed by it or any of them or their predecessors, as secured party and any Borrower or Guarantor, as debtor. As used herein "Existing CL Loan Agreement" shall mean the Loan and Security Agreement, dated as of March 9, 2007, by and among the Company, the guarantors party thereto, the lenders party thereto and Wachovia Bank, National Association, as administrative agent and collateral agent for such lenders, as amended or otherwise modified, in connection with providing a term loan facility.

(b) All requisite corporate action and proceedings in connection with this Agreement and the other Financing Agreements shall be satisfactory in form and substance to Administrative Agent (including, without limitation any works' council advice (*ondernemingsraadadvies*)), and Administrative Agent shall have received all information and copies of all documents, including records of requisite corporate action and proceedings which Administrative Agent may have requested in connection therewith, such documents where requested by Administrative Agent or its counsel to be certified by appropriate corporate officers or Governmental Authority (and including a copy of the certificate of incorporation (or foreign equivalent) of each Borrower and Guarantor certified by the Secretary of State (or equivalent Governmental Authority) which shall set forth the same complete corporate name of such Borrower

or Guarantor as is set forth herein and such document as shall set forth the organizational identification number of each Borrower or Guarantor, if one is issued in its jurisdiction of incorporation).

(c) No material adverse change in the business, operations, property or condition (financial or otherwise) of the Company, individually, or the Company and its Subsidiaries, taken as a whole, shall have occurred since the Administrative Agent's field examination dated March 2, 2010, and no pending or threatened litigation, proceeding, bankruptcy or insolvency, injunction, order or claims with respect to any Borrower or any Guarantor shall exist that could reasonably be expected to have a Material Adverse Effect (it being understood that the commencement of the Chapter 11 Case, any defaults under agreements that have no effect under the terms of the Bankruptcy Code as a result of the commencement thereof, reduction in payment terms by suppliers, and reclamation claims shall not be deemed a material adverse change).

(d) Administrative Agent's completion of its business, legal and environmental due diligence, with results satisfactory to Administrative Agent, including (i) receipt and review of a third party inventory appraisal on which Administrative Agent and the Lenders are permitted to rely, in form and containing assumptions and appraisal methods satisfactory to Administrative Agent by an appraiser acceptable to Administrative Agent and the Company, and (ii) field examinations (including the new field examination conducted on or about March 2, 2010 and such other new field examinations conducted at Administrative Agent's discretion (at Borrowers' cost and expense) prior to the Closing Date, but conducted no more frequently than ninety (90) days from the effective date of the previous field exam) of the business and collateral of Borrowers and Guarantors in accordance with Administrative Agent's customary procedures and practices and as otherwise required by the nature and circumstances of the businesses of Borrowers and Guarantors.

(e) Administrative Agent shall have received, in form and substance satisfactory to Administrative Agent, all consents, waivers, acknowledgments and other agreements from third persons which Administrative Agent may reasonably deem necessary or desirable in order to permit, protect and perfect Collateral Agent's security interests in and liens upon the Collateral or to effectuate the provisions or purposes of this Agreement and the other Financing Agreements, including, without limitation, Collateral Access Agreements; provided, however, that, Administrative Agent may elect to allow the Company a limited amount of time after the Closing Date to obtain certain Collateral Access Agreements and/or waive the requirement of Collateral Access Agreements with respect to premises for which Administrative Agent has established a Reserve and, at the request of the Company, not require Collateral Access Agreements for any premises where the Company has elected not to include Inventory in the U.S. Borrowing Base.

(f) Excess Availability (after giving effect to, and subtracting an amount equal to, the Special Availability Reserve) as determined by Administrative Agent, as of the date hereof, shall be not less than \$9,500,000 after giving effect to (i) the initial Loans made or to be made and Letters of Credit issued or to be issued in connection with the initial transactions hereunder, (ii) payment of all fees and expenses in connection therewith and (iii) the proceeds of the term loans made or to be made to the Company on the date hereof by the CL Lenders pursuant to the CL Credit Agreement which are applied to pay the Obligations.

(g) Administrative Agent shall have received a Borrowing Base Certificate setting forth the Borrowing Base as at the date set forth therein and completed in a manner reasonably satisfactory to Administrative Agent and duly authorized, executed and delivered by the Company;

(h) Administrative Agent shall have received, in form and substance satisfactory to Administrative Agent, Account Control Agreements by and among Administrative Agent, each U.S. Borrower and Guarantor, as the case may be, and each bank where such Borrower (or Guarantor) has an account, other than Excluded Deposit Accounts, in each case, duly authorized, executed and delivered by such bank and such Borrower or Guarantor, as the case may be (or Administrative Agent shall be the bank's customer with respect to such deposit account as Administrative Agent may specify).

(i) Administrative Agent shall have received evidence, in form and substance satisfactory to Administrative Agent, that Collateral Agent has a valid perfected first priority security interest in the Priority Collateral and a valid perfected second priority security interest in all of the CL Priority Collateral other than Real Property, subject only to Permitted Liens and the Carve-Out.

(j) Administrative Agent shall have received and reviewed lien and judgment search results for the jurisdiction of organization of each U.S. Borrower and Guarantor, the jurisdiction of the chief executive office of each U.S. Borrower and Guarantor and all jurisdictions in which assets of U.S. Borrowers and Guarantors are located and, to the extent available, comparable searches for the Dutch Borrower in the Netherlands (if any) and any applicable jurisdiction (including Washington, D.C.) in the United States, which search results shall be in form and substance satisfactory to Administrative Agent.

(k) Administrative Agent shall have received searches of ownership of intellectual property in the appropriate governmental offices of such patent/trademark/copyright filings as requested by Administrative Agent.

(l) Administrative Agent shall have received evidence that originals of the stock certificates, if any, representing all of the issued and outstanding shares of the Capital Stock owned by any Borrower or Guarantor, in each case together with stock powers duly executed in blank with respect thereto have been delivered to the Control Agent.

(m) Administrative Agent shall have received evidence that all instruments and chattel paper in possession of any Borrower or Guarantor, together with such allonges or assignments as may be necessary or appropriate to perfect Collateral Agent's security interest in the Collateral that are required to be delivered under Section 5.2(b), have been delivered to the Control Agent.

(n) Administrative Agent shall have received evidence of insurance coverage and lender's loss payee endorsements required hereunder and under the other Financing Agreements, in form and substance reasonably satisfactory to Administrative Agent, and certificates of insurance policies and/or endorsements naming Administrative Agent as loss payee for casualty insurance, including casualty, liability and business interruption insurance.

(o) Administrative Agent shall have received, in form and substance reasonably satisfactory to Administrative Agent, such opinion letters of counsel to Borrowers and Guarantors

(other than NP Cogen) with respect to the Financing Agreements and such other matters as Administrative Agent may request and are customarily required for similar financings.

(p) Administrative Agent shall have received all financial information, projections, budgets, business plans, cash flows and such other information as Administrative Agent shall reasonably request, including, each in form and substance satisfactory to Administrative Agent, (i) the initial Budget, (ii) an income statement and balance sheet as of the end of the most recent fiscal month for each of the US Borrower's operating divisions (RFD, Mills, BCI, NPP and Europe) which will not reflect the impact of the elimination of intercompany transactions, and a comparison of such information to information for the same period in the immediately preceding year; provided, that, if the Chapter 11 Case commences on or prior to the twelfth (12th) business day of any calendar month, such income statement and balance sheet may be as of the end of the fiscal month immediately preceding the most recent fiscal month, (iii) projected monthly consolidated balance sheets, income statements, statements of cash flows and availability of Borrowers and Guarantors for the period through the end of the Termination Date (but not for a period earlier than one hundred and eighty (180) days after the date hereof), in each case as to the projections, with the results and assumptions set forth in all of such projections in form and substance satisfactory to Agent, and an opening pro forma balance sheet for Borrowers and Guarantors in form and substance satisfactory to Agent, (iv) any updates or modifications to the projected financial statements of Borrowers and Guarantors previously received by Administrative Agent, in each case in form and substance satisfactory to Administrative Agent, (v) copies of satisfactory interim unaudited financial statements for each month ended since the last audited financial statements for which financial statements are available and (vi) current agings of receivables, current perpetual inventory records and/or roll-forwards of accounts and inventory through the date of closing, together with supporting documentation, each in form and substance satisfactory to Administrative Agent.

(q) Administrative Agent shall be reasonably satisfied with the corporate and capital structure and management of Borrowers and Guarantors and with all legal, tax, accounting and other matters relating to Borrowers and Guarantors.

(r) No material misstatements in or omissions from the materials previously furnished to Administrative Agent by Borrowers and Guarantors, taken as a whole, shall have been made. Administrative Agent shall be satisfied that any financial statements delivered to it fairly present the business and financial conditions of Borrowers and Guarantors.

(s) No defaults or events of default on the Closing Date under the Financing Agreements and the CL Financing Agreements or on any other material debt or any Material Contract of any Borrower or any Guarantor shall exist (other than any such defaults or events of default that have no effect under the terms of the Bankruptcy Code as a result of the commencement of the Chapter 11 Cases and which are stayed).

(t) (i) All conditions precedent to the closing of the arrangements under the CL Credit Agreement shall have been, or concurrently with the Closing Date and funding of the Loans shall be, satisfied, waived or subject to a post-closing undertaking, (ii) the CL Credit Agreement and the other CL Financing Agreements shall be in form and substance satisfactory to Administrative Agent, (iii) Administrative Agent shall have received evidence, in form and substance reasonably satisfactory to Administrative Agent, that the Company has received the proceeds of a term loan in

the amount of not less than \$110,000,000 pursuant to the CL Financing Agreements, and (iv) Administrative Agent shall have received copies, certified by the chief financial officer of the Company as true and complete, of the CL Financing Agreements as originally executed and delivered, together with all exhibits and schedules thereto.

(u) [Reserved].

(v) At least five (5) Business Days prior to the Closing Date, Administrative Agent shall have received a certificate satisfactory thereto for benefit of itself and the Lenders, provided by the Company that sets forth information required by the Patriot Act including, without limitation, the identity of Borrowers and Guarantors, the name and address of Borrowers and Guarantors and other information that will allow Administrative Agent or any Lender, as applicable, to identify Borrowers and Guarantors in accordance with the Patriot Act.

(w) This Agreement, the Intercreditor Agreement and the other Financing Agreements and all instruments and documents hereunder and thereunder shall have been duly executed and delivered to Administrative Agent, in form and substance reasonably satisfactory to Administrative Agent.

(x) Payment by Borrowers of all fees and expenses owed by them to the Lenders and Administrative Agent, including, without limitation, payment to Administrative Agent and Wells Fargo, as applicable, of the fees set forth in the Fee Letter.

(y) Receipt by Administrative Agent of (i) a statement of sources and uses of funds covering all payments reasonably expected to be made by Borrowers or Guarantors in connection with the transactions contemplated by the Financing Agreements to be consummated on the Closing Date, including an itemized estimate of all fees, expenses and other closing costs and (ii) payment instructions with respect to each wire transfer to be made by Administrative Agent on behalf of the Lenders or the Company or Borrowers or Guarantors on the Closing Date setting forth the amount of such transfer, the purpose of such transfer, the name and number of the account to which such transfer is to be made, the name and ABA number of the bank or other financial institution where such account is located and the name and telephone number of an individual that can be contacted to confirm receipt of such transfer.

(z) Administrative Agent shall have received (i) an update of the existing field examinations of the business and collateral of Borrowers and Guarantors so as to obtain current results within five (5) days prior to closing consistent with Administrative Agent's customary procedures and practices and as otherwise required by the nature and circumstances of the businesses of Borrowers and Guarantors (and including current agings of receivables, current perpetual inventory records and/or rollforwards of accounts and inventory through the date of closing, together with reasonable supporting documentation) and (ii) an updated written appraisal as to the Inventory in form, scope and methodology acceptable to Administrative Agent and by an appraiser acceptable to Agent, addressed to Agent and upon which Administrative Agent and Lenders are expressly permitted to rely.

(aa) Borrowers and Guarantors shall have established a cash management system in form and substance previously approved by, or otherwise reasonably satisfactory to

Administrative Agent, including blocked accounts for collections and the transfer thereof to Administrative Agent, and subject to Account Control Agreements by the banks at which such accounts are maintained, which shall be in form and substance acceptable to Administrative Agent.

(bb) The Company shall have (i) retained the Financial Advisor who shall, among other things, continue to have the authority previously granted to it, continue to perform the duties previously performed by it, and assist Borrowers in the preparation of and compliance with, on an ongoing basis, the Budget and compliance with, on an ongoing basis, the terms and conditions set forth in the Financing Agreements, (ii) retained an investment banking firm who shall continue to have the authority previously granted to it and to perform the duties previously performed by it, and the foregoing engagements under clauses (i) and (ii) shall each have been approved under the Financing Order and (iii) provided such Financial Advisor and investment banking firm with such information as they may require.

(cc) Consolidated EBITDA as determined by Administrative Agent, as of the date hereof, for the most recently ended trailing twelve (12) fiscal month period shall be not less than \$44,000,000, it being understood that Consolidated EBITDA at closing shall include restructuring charges in an amount not to exceed \$24 million; provided, that, if Borrowers demonstrate sufficient liquidity to cover a fixed charge coverage ratio of 1.00 to 1.00, such amount may be reduced, but to an amount not less than \$40,000,000.

(dd) Each of the lenders (other than Wells Fargo) under the Existing Loan Agreement shall have assigned all of their Commitments (as defined in the Existing Loan Agreement) to Wells Fargo.

(ee) US Borrower and Guarantors shall have commenced the Chapter 11 Cases by no later than June 11, 2010.

(ff) The Financing Order shall have been entered in the Chapter 11 Cases by the Bankruptcy Court, in form and substance satisfactory to Administrative Agent, and such Financing Order shall be in full force and effect and shall not have been reversed, stayed, modified or amended without the express written consent of Lender, and no application or motion shall have been made to the Bankruptcy Court for any stay, modification or amendment of such Financing Order and no stay with respect to same shall be pending. Borrowers and Guarantors shall have complied in full with the notice and other requirements of the Bankruptcy Code in a manner acceptable to Administrative Agent and its counsel, with respect to the Financing Order and Administrative Agent shall have received such evidence thereof as it shall reasonably require.

(gg) No trustee, or other disinterested person with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code, shall have been appointed or designated with respect to US Borrower or any Guarantor or their respective business, properties or assets, including with limitation, the Collateral and other property which is security for the Obligations, and no motion shall be pending seeking any such relief.

(hh) All of the first day orders entered by the Bankruptcy Court at the time of the commencement of the Chapter 11 Cases shall be in form and substance reasonably satisfactory to Administrative Agent. A cash management order approving the cash management arrangements of

US Borrower and Guarantors consistent with the requirements under this Agreement shall have been entered, in form and substance reasonably satisfactory to Administrative Agent, and shall be in full force and effect.

(ii) Borrowers shall have delivered to Administrative Agent, on terms and conditions previously approved by, or otherwise reasonably satisfactory to, Administrative Agent, a plan of reorganization (and related Disclosure Statement) which provides for, among other things, either (i) the entry into an exit facility on terms and conditions acceptable to Agent and Lenders or (ii) the indefeasible payment in full of all of the Obligations.

(jj) The solicitation package to solicit acceptances to a prepackaged plan of reorganization on behalf of the Company (the "Solicitation") shall be in form and substance reasonably satisfactory to Administrative Agent.

(kk) Borrowers shall have submitted a Budget to Administrative Agent which has been rolled forward to cover the thirteen (13) week period from and after the Petition Date.

#### 4.2 Conditions Precedent to All Loans and Letters of Credit.

The obligation of Lenders to make the Loans, including the initial Loans, or of Issuing Bank to issue any Letter of Credit, including the initial Letters of Credit, is subject to the further satisfaction of, or waiver of, immediately prior to or concurrently with the making of each such Loan or the issuance of such Letter of Credit of each of the following conditions precedent:

(a) all representations and warranties contained herein and in the other Financing Agreements shall be true and correct with the same effect as though such representations and warranties had been made on and as of the date of the making of each such Loan or providing each such Letter of Credit and after giving effect thereto, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate on and as of such earlier date);

(b) no law, regulation, order, judgment or decree of any Governmental Authority shall exist, and no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or Governmental Authority, which (i) purports to enjoin, prohibit, restrain or otherwise affect (A) the making of the Loans or providing the Letters of Credit, or (B) the consummation of the transactions contemplated pursuant to the terms hereof or the other Financing Agreements or (ii) has or has a reasonable likelihood of having a Material Adverse Effect; and

(c) no Default or Event of Default shall exist or have occurred and be continuing on and as of the date of the making of such Loan or providing each such Letter of Credit and after giving effect thereto.

### **SECTION 5. GRANT AND PERFECTION OF SECURITY INTEREST**

#### 5.1 Grant of Security Interest.

(a) To secure payment and performance of all Obligations, each U.S. Borrower and Guarantor hereby grants to Collateral Agent, for itself and the benefit of other Secured Parties, a continuing security interest in, a lien upon, and a right of set off against, and hereby assigns to Collateral Agent, for itself and the benefit of the other Secured Parties, as security, all personal property, and interests in property, of each U.S. Borrower and Guarantor, whether now owned or hereafter acquired or existing, and wherever located, including:

- (i) all Accounts;
- (ii) all general intangibles, including, without limitation, all Intellectual Property;
- (iii) all goods, including, without limitation, Inventory and Equipment;
- (iv) all present and future claims, rights, interests, assets and properties recovered by or on behalf of any Borrower or any Guarantor, or any successor or assignor of such Borrower or Guarantor, including, without limitation, any trustee of any Borrower or any Guarantor (whether in a Chapter 11 Case or any subsequent case to which any Chapter 11 Case is converted), including, without limitation (A) all such property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to the Bankruptcy Code, applicable law, or otherwise, including without limitation Sections 542, 544, 545, 547, 548, 549, 550, 552 and 553 of the Bankruptcy Code and (B) all claims by or on behalf of Borrower or any Guarantor against any officer, director or other person or party for acts of negligence, misconduct or malfeasance, including, without limitation, breach of fiduciary duty, breach of the duty of loyalty, waste, mismanagement or misconduct of any kind, nature or description, including, a breach of the terms and conditions of any of the Financing Agreements;
- (v) all chattel paper, including, without limitation, all tangible and electronic chattel paper;
- (vi) all instruments, including, without limitation, all promissory notes;
- (vii) all documents;
- (viii) all deposit accounts;
- (ix) all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;
- (x) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of Receivables and other Collateral, including (A) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (B) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (C) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables or other Collateral, including returned, repossessed and reclaimed goods, and (D) deposits by and property of account debtors or other persons securing the obligations of account debtors;

(xi) all (A) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts; provided, that, the Capital Stock of the Subsidiaries of the Company is being pledged pursuant to the Pledge Agreement and/or the Dutch Deed of Pledge and in the event of any conflict between the terms of this Agreement and the terms of the Pledge Agreement or the Dutch Deed of Pledge with respect to such pledge, the terms of the Pledge Agreement or the Dutch Deed of Pledge, as applicable, shall control) and (B) monies, credit balances, deposits and other property of any U.S. Borrower or Guarantor now or hereafter held or received by or in transit to Administrative Agent, Collateral Agent any Lender or its Affiliates or at any other depository or other institution from or for the account of any U.S. Borrower or Guarantor, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

(xii) all commercial tort claims, including, without limitation, those identified in the Information Certificate;

(xiii) to the extent not otherwise described above, all Receivables;

(xiv) all Records; and

(xv) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

(b) To secure payment and performance of all Obligations, each U.S. Borrower and Guarantor hereby grants to Control Agent, for itself and for the benefit of Secured Parties, a continuing security interest in, a lien upon, and a right of setoff against, and hereby assigns to Control Agent, for itself and for the benefit of Secured Parties, all Control Collateral of each U.S. Borrower and Guarantor, whether now owned or hereafter acquired or existing, and wherever located.

(c) For purposes of this Section 5.1, the term "Lender" shall include any Hedge Agreement Provider and any Bank Product Provider. The term "Hedge Agreement Provider" shall mean any Lender or Affiliate of a Lender that provides services or facilities to any Borrower or Guarantor or any of their respective Subsidiaries under a Hedge Agreement permitted by Section 9.9(g). The term "Bank Product Provider" shall mean any Lender or Affiliate of a Lender that provides Bank Products (other than Hedge Agreements) to any Borrower or Guarantor or any of their respective Subsidiaries.

(d) Notwithstanding anything in this Section 5.1 to the contrary, in no event shall the Collateral include or the security interest granted under this Section 5.1 attach to (i) any lease, license, contract, property rights or agreement to which any U.S. Borrower or Guarantor is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (A) the abandonment, invalidation or unenforceability of any right, title or interest of such U.S. Borrower or Guarantor therein or (B) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant

jurisdiction or any other applicable law (including the Code) or principles of equity); (ii) any of the outstanding capital stock of a controlled foreign corporation as defined in Section 957(a) of the Code (a "Controlled Foreign Corporation") in excess of 65% (or such other amount as would result in adverse tax consequences for any U.S. Borrower or Guarantor) of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote.

## 5.2 Perfection of Security Interests.

(a) Each U.S. Borrower and Guarantor irrevocably and unconditionally authorizes Administrative Agent and Collateral Agent (or their respective agents) to file at any time and from time to time such financing statements with respect to the Collateral naming Collateral Agent or its designee as the secured party and such U.S. Borrower or Guarantor as debtor, as Administrative Agent or Collateral Agent may require, and including any other information with respect to such U.S. Borrower or Guarantor or otherwise required by part 5 of Article 9 of the Uniform Commercial Code of such jurisdiction as Administrative Agent or Collateral Agent may determine, together with any amendment and continuations with respect thereto, which authorization shall apply to all financing statements filed on, prior to or after the date hereof. Each U.S. Borrower and Guarantor hereby ratifies and approves all financing statements naming Collateral Agent or its designee as secured party and such U.S. Borrower or Guarantor, as the case may be, as debtor with respect to the Collateral (and any amendments with respect to such financing statements) filed by or on behalf of Collateral Agent prior to the date hereof and ratifies and confirms the authorization of Collateral Agent and Administrative Agent to file such financing statements (and amendments, if any). Each U.S. Borrower and Guarantor hereby authorizes Collateral Agent and Administrative Agent to adopt on behalf of such U.S. Borrower and Guarantor any symbol required for authenticating any electronic filing. In the event that the description of the collateral in any financing statement naming Collateral Agent, Administrative Agent or its designee as the secured party and any U.S. Borrower or Guarantor as debtor includes assets and properties of such U.S. Borrower or Guarantor that do not at any time constitute Collateral, whether hereunder, under any of the other Financing Agreements or otherwise, the filing of such financing statement shall nonetheless be deemed authorized by such U.S. Borrower or Guarantor to the extent of the Collateral included in such description and it shall not render the financing statement ineffective as to any of the Collateral or otherwise affect the financing statement as it applies to any of the Collateral. In no event shall any U.S. Borrower or Guarantor at any time file, or permit or cause to be filed, any correction statement or termination statement with respect to any financing statement (or amendment or continuation with respect thereto) naming Collateral Agent, Administrative Agent or its designee as secured party and such U.S. Borrower or Guarantor as debtor.

(b) Each U.S. Borrower and Guarantor does not have any chattel paper (whether tangible or electronic) or instruments as of the date hereof, except as set forth in the Information Certificate. In the event that any U.S. Borrower or Guarantor shall be entitled to or shall receive any chattel paper or instrument with an individual value of more than \$300,000 or an aggregate value of more than \$5,000,000 after the date hereof, U.S. Borrowers and Guarantors shall promptly notify Administrative Agent thereof in writing. Promptly upon the receipt thereof by or on behalf of any U.S. Borrower or Guarantor (including by any agent or representative), such U.S. Borrower or Guarantor shall deliver, or cause to be delivered to Collateral Agent, all tangible chattel paper and instruments with an individual value of more than \$300,000 or an aggregate value of more than \$5,000,000 that such U.S. Borrower or Guarantor has or may at any time acquire, accompanied by

such instruments of transfer or assignment duly executed in blank as Collateral Agent or Administrative Agent may from time to time specify, in each case except as Administrative Agent may otherwise agree. At Administrative Agent's option, each U.S. Borrower and Guarantor shall, or Administrative Agent may at any time on behalf of any U.S. Borrower or Guarantor, cause the original of any such instrument or chattel paper to be conspicuously marked in a form and manner previously approved by, or otherwise reasonably acceptable to Administrative Agent with the following legend referring to chattel paper or instruments as applicable: "This [chattel paper][instrument] is subject to the security interest of Wells Fargo Bank, National Association and any sale, transfer, assignment or encumbrance of this [chattel paper][instrument] violates the rights of such secured party."

(c) In the event that any U.S. Borrower or Guarantor shall at any time hold or acquire an interest in any electronic chattel paper or any "transferable record" (as such term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction) with an individual value of more than \$300,000 or an aggregate value of more than \$5,000,000, such U.S. Borrower or Guarantor shall promptly notify Administrative Agent thereof in writing. Promptly upon Administrative Agent's request, such U.S. Borrower or Guarantor shall take, or cause to be taken, such actions as Administrative Agent may request to give Collateral Agent or Control Agent control of such electronic chattel paper under Section 9-105 of the UCC and control of such transferable record under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as in effect in such jurisdiction.

(d) Each U.S. Borrower and Guarantor does not have any deposit accounts as of the date hereof, except as set forth in the Information Certificate. U.S. Borrowers and Guarantors shall not, directly or indirectly, after the date hereof open, establish or maintain any deposit account unless each of the following conditions is satisfied: (i) Administrative Agent shall have received not less than five (5) Business Days prior written notice of the intention of any U.S. Borrower or Guarantor to open or establish such account which notice shall specify in reasonable detail and specificity previously approved by, or otherwise reasonably acceptable to Administrative Agent the name of the account, the owner of the account, the name and address of the bank at which such account is to be opened or established, the individual at such bank with whom such U.S. Borrower or Guarantor is dealing and the purpose of the account, (ii) the bank where such account is opened or maintained shall be acceptable to Administrative Agent, and (iii) on or before the opening of such deposit account, such U.S. Borrower or Guarantor shall as Administrative Agent may specify either (A) deliver to Administrative Agent a Deposit Account Control Agreement with respect to such deposit account duly authorized, executed and delivered by such U.S. Borrower or Guarantor and the bank at which such deposit account is opened and maintained or (B) arrange for Administrative Agent or Collateral Agent to become the customer of the bank with respect to the deposit account on terms and conditions acceptable to Administrative Agent. The terms and representations of this subsection (d) shall not apply to (1) deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any U.S. Borrower's or Guarantor's employees, (2) other zero balance accounts and (3) other deposit accounts so long as at any time the balance in any such account does not exceed \$250,000 and the aggregate balance in all such accounts does not exceed \$1,000,000 (the deposit accounts described in clauses (1), (2) and (3) being referred to collectively as the "Excluded Deposit Accounts").

(e) No U.S. Borrower or Guarantor owns or holds, directly or indirectly, beneficially or as record owner or both, any investment property, as of the date hereof, or have any investment account, securities account, commodity account or other similar account with any bank or other financial institution or other securities intermediary or commodity intermediary as of the date hereof, in each case except as set forth in the Information Certificate.

(i) In the event that any U.S. Borrower or Guarantor shall be entitled to or shall at any time after the date hereof hold or acquire any certificated securities, such U.S. Borrower or Guarantor shall promptly endorse, assign and deliver the same to Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as Administrative Agent or Collateral Agent may from time to time specify, or, in respect of the Dutch Borrower, if not permitted by applicable law, provide security thereover in form and substance satisfactory to Agent. If any securities, now or hereafter acquired by any U.S. Borrower or Guarantor are uncertificated and are issued to such U.S. Borrower or Guarantor or its nominee directly by the issuer thereof, such U.S. Borrower or Guarantor shall immediately notify Administrative Agent thereof and shall as Administrative Agent may specify, either (A) cause the issuer to agree to comply with instructions from Collateral Agent as to such securities, without further consent of any U.S. Borrower or Guarantor or such nominee, or (B) arrange for Administrative Agent or Collateral Agent to become the registered owner of the securities.

(ii) U.S. Borrowers and Guarantors shall not, directly or indirectly, after the date hereof open, establish or maintain any investment account, securities account, commodity account or any other similar account (other than a deposit account) with any securities intermediary or commodity intermediary unless each of the following conditions is satisfied: (A) Administrative Agent shall have received not less than five (5) Business Days prior written notice of the intention of such U.S. Borrower or Guarantor to open or establish such account which notice shall specify in reasonable detail and specificity previously approved by, or otherwise reasonably acceptable to Administrative Agent the name of the account, the owner of the account, the name and address of the securities intermediary or commodity intermediary at which such account is to be opened or established, the individual at such intermediary with whom such U.S. Borrower or Guarantor is dealing and the purpose of the account, (B) the securities intermediary or commodity intermediary (as the case may be) where such account is opened or maintained shall be acceptable to Administrative Agent, and (C) on or before the opening of such investment account, securities account or other similar account with a securities intermediary or commodity intermediary, such U.S. Borrower or Guarantor shall as Administrative Agent may specify either (1) execute and deliver, and cause to be executed and delivered to Administrative Agent, an Investment Property Control Agreement with respect thereto duly authorized, executed and delivered by such U.S. Borrower or Guarantor and such securities intermediary or commodity intermediary or (2) arrange for Administrative Agent or Collateral Agent to become the entitlement holder with respect to such investment property on terms and conditions acceptable to Administrative Agent.

(f) U.S. Borrowers and Guarantors are not the beneficiary or otherwise entitled to any right to payment under any letter of credit, banker's acceptance or similar instrument as of the date hereof with an individual value of more than \$250,000 or an aggregate value of more than \$1,000,000, except as set forth in the Information Certificate. In the event that any U.S. Borrower or Guarantor shall be entitled to or shall receive any right to payment under any letter of credit, banker's acceptance or any similar instrument with an individual value of more than \$250,000 or an

aggregate value of more than \$1,000,000, whether as beneficiary thereof or otherwise after the date hereof, such U.S. Borrower or Guarantor shall promptly notify Administrative Agent thereof in writing. Such U.S. Borrower or Guarantor shall immediately, as Administrative Agent may specify, either (i) deliver, or cause to be delivered to Administrative Agent, with respect to any such letter of credit, banker's acceptance or similar instrument, the written agreement of the issuer and any other nominated person obligated to make any payment in respect thereof (including any confirming or negotiating bank), in form and substance satisfactory to Administrative Agent, consenting to the assignment of the proceeds of the letter of credit to Collateral Agent by such U.S. Borrower or Guarantor and agreeing to make all payments thereon directly to Collateral Agent or as Administrative Agent may otherwise direct or (ii) cause Administrative Agent or Collateral Agent to become, at U.S. Borrowers' expense, the transferee beneficiary of the letter of credit, banker's acceptance or similar instrument (as the case may be).

(g) U.S. Borrowers and Guarantors do not have any commercial tort claims as of the date hereof, except as set forth in the Information Certificate. In the event that any U.S. Borrower or Guarantor shall at any time after the date hereof have any commercial tort claims with an amount in controversy in excess of \$500,000, such U.S. Borrower or Guarantor shall promptly notify Administrative Agent thereof in writing, which notice shall (i) set forth in reasonable detail the basis for and nature of such commercial tort claim and (ii) include the express grant by such U.S. Borrower or Guarantor to Administrative Agent of a security interest in such commercial tort claim (and the proceeds thereof). In the event that such notice does not include such grant of a security interest, the sending thereof by such U.S. Borrower or Guarantor to Administrative Agent shall be deemed to constitute such grant to Administrative Agent. Upon the sending of such notice, any commercial tort claim described therein shall constitute part of the Collateral and shall be deemed included therein. Without limiting the authorization of Administrative Agent or Collateral Agent provided in Section 5.2(a) hereof or otherwise arising by the execution by such U.S. Borrower or Guarantor of this Agreement or any of the other Financing Agreements, Administrative Agent and Collateral Agent are hereby irrevocably authorized from time to time and at any time to file such financing statements naming Collateral Agent or its designee as secured party and such U.S. Borrower or Guarantor as debtor, or any amendments to any financing statements, covering any such commercial tort claim as Collateral. In addition, each U.S. Borrower and Guarantor shall promptly upon Administrative Agent's request, execute and deliver, or cause to be executed and delivered, to Administrative Agent such other agreements, documents and instruments as Administrative Agent may require in connection with such commercial tort claim.

(h) U.S. Borrowers and Guarantors do not have any goods, documents of title or other Collateral in the custody, control or possession of a third party as of the date hereof, except as set forth in the Information Certificate and except for goods located in the United States in transit to a location of a U.S. Borrower or Guarantor permitted herein in the ordinary course of business of such U.S. Borrower or Guarantor in the possession of the carrier transporting such goods. In the event that any goods, documents of title or other Collateral with a value in the aggregate in excess of \$250,000 are at any time after the date hereof in the custody, control or possession of any other person not referred to in the Information Certificate or such carriers, U.S. Borrowers and Guarantors shall promptly notify Administrative Agent thereof in writing. Promptly upon Administrative Agent's request, U.S. Borrowers and Guarantors shall deliver to Administrative Agent a Collateral Access Agreement duly authorized, executed and delivered by such person and U.S. Borrower or Guarantor that is the owner of such Collateral.

(i) U.S. Borrowers and Guarantors shall take any other actions reasonably requested by Administrative Agent or Collateral Agent from time to time to cause the attachment, perfection and, with respect to the Priority Collateral, first priority (subject to Permitted Liens) and, with respect to the CL Priority Collateral (other than the Real Property), second priority (behind only the liens in favor of the CL Administrative Agent permitted by Section 9.8(l), and other Permitted Liens, of, and the ability of Collateral Agent to enforce, the security interest of Collateral Agent in any and all of the Collateral, including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC or other applicable law, to the extent, if any, that any U.S. Borrower's or Guarantor's signature thereon is required therefor, (ii) causing Collateral Agent's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of Collateral Agent to enforce, the security interest of Collateral Agent in such Collateral (it being agreed that as of the Closing Date the Administrative Agent does not intend to require the title to any vehicles or aircraft owned by any Borrower or Guarantor to be marked with Collateral Agent's name), (iii) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Collateral Agent to enforce, the security interest of Collateral Agent in such Collateral, and (iv) obtaining the consents and approvals of any Governmental Authority or third party, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, and taking all actions required by any earlier versions of the UCC or by other law, as applicable in any relevant jurisdiction.

### 5.3 Control Collateral Held by Control Agent.

Notwithstanding any provision to the contrary herein, any Collateral that constitutes Control Collateral that is held by Collateral Agent or Administrative Agent hereunder shall be deemed to be held by the Control Agent in accordance with the Intercreditor Agreement.

### 5.4 Intercreditor Provisions.

Notwithstanding anything herein to the contrary, the lien and security interest granted to Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by Collateral Agent or Administrative Agent hereunder are subject to the provisions of the Intercreditor Agreement, as the same may be amended, supplemented, modified or replaced from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern.

### 5.5 Effect of Financing Order.

(a) The liens and security interests referred to in this Agreement and the other Financing Agreements with respect to Borrowers and Guarantors shall be deemed valid and perfected by entry of the Financing Order.

(b) The liens, security interests, lien priorities, administrative priorities and other rights and remedies granted to Collateral Agent pursuant to this Agreement, the Financing Agreements and the Financing Order (specifically including but not limited to the existence, perfection and priority of the liens and security interests 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 debt by Borrowers or Guarantors (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Chapter 11 Cases, or by any other act or omission whatever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(i) except (A) for the amounts included in the Carve-Out, including amounts payable to professional persons and costs of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto to the extent of the Carve-Out, (B) the liens of CL Administrative Agent under the CL Credit Agreement to secure the CL Obligations and that are subject to the Intercreditor Agreement, and (C) liens of record as of the date of the commencement of the Chapter 11 Cases that are set forth in Schedule 8.4 to the Information Certificate, no priority claims, are or will be prior to or on a parity with any claim in respect of any of the Obligations;

(ii) the liens and security interests in favor of Collateral Agent set forth herein, and in the other Financing Agreements, shall constitute valid and perfected first priority liens and security interests and shall be prior to all other liens and interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatever (other than liens, security interests and encumbrances permitted hereunder to the extent that such liens, security interests and encumbrances have priority under applicable law and other than the liens, security interests and encumbrances in favor of CL Administrative Agent with respect to the CL Priority Collateral to secure the CL Obligations and the Carve-Out), and

(iii) subject to the Intercreditor Agreement, the security interests and liens upon the Collateral in favor of Collateral Agent as set forth in this Agreement and in the other Financing Agreements shall constitute valid and perfected first priority security interests in all of Priority Collateral and valid perfected second priority security interests in all of the CL Priority Collateral, without the necessity that Collateral Agent file financing statements or otherwise perfect its liens and security interests under applicable non-bankruptcy law.

(c) The security interests of Collateral Agent hereunder and under the other Financing Agreements shall be subordinate to the payment of the following (such amounts being the "Carve-Out"): (i) fees pursuant to Section 1930 of Title 28 of the United States Code and to the Clerk of the Bankruptcy Court, and (ii) allowed and unpaid claims of professionals whose retention is approved by the Bankruptcy Court during the Chapter 11 Case pursuant to Sections 327 and 1103 of the Bankruptcy Code for unpaid fees and expenses that are approved by order of the Bankruptcy Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code; provided, that, (A) such allowed fees and expenses incurred, in accordance with the Budget, after an Event of Default shall not exceed \$2,000,000 (plus any retainers remitted by any Borrower or Guarantor prior to the Closing Date that have not been exhausted, in accordance with the terms of the Financing Order) in the aggregate, for purposes of constituting a part of the Carve-Out, (B) the Carve-Out shall not include, apply to, or be available for any fees or expenses incurred by any party, including any Borrower or Guarantor, any committee or any professional, in connection with (1) the investigation, initiation or prosecution of any claims or defenses against Administrative Agent, Collateral Agent or any Lender, or preventing, hindering, or delaying the assertion of enforcement of any lien, claim,

right or security interest or realization upon any Collateral by Administrative Agent, Collateral Agent or any Lender, (2) a request to use cash collateral (as such term is defined in Section 363 of the Bankruptcy Code) without the prior written consent of Administrative Agent, (3) a request, without the prior written consent of Administrative Agent, for authorization to obtain Debtor-in-possession financing or other financial accommodations pursuant to Section 364(c) or (d) of the Bankruptcy Code that does not indefeasibly repay in full in cash the Obligations on terms and conditions acceptable to Administrative Agent, or (4) any act which has the effect of materially or adversely modifying or compromising the rights and remedies of Administrative Agent, Collateral Agent or any Lender as set forth herein and in the other Financing Agreements, or which results in the occurrence of an Event of Default and (C) in the event of any inconsistency in the definition of Carve-Out between the provisions of this Agreement and the Financing Order, the Financing Order shall govern. The foregoing shall not be construed as consent to the allowance of any fees and expenses referred to above and shall not affect the right of Administrative Agent to object to the allowance and payment of such amounts.

## **SECTION 6. COLLECTION AND ADMINISTRATION**

### **6.1 Borrowers' Loan Accounts.**

Administrative Agent shall maintain one or more loan account(s) on its books in which shall be recorded (a) all Loans, Letters of Credit and other Obligations and the Collateral, (b) all payments made by or on behalf of any Borrower or Guarantor and (c) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest. All entries in the loan account(s) shall be made in accordance with Administrative Agent's customary practices as in effect from time to time.

### **6.2 Statements.**

Administrative Agent shall render to Company each month a statement setting forth the balance in Borrowers' loan account(s) maintained by Administrative Agent for Borrowers pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall be subject to subsequent adjustment by Administrative Agent but shall, absent manifest errors or omissions, be considered correct and deemed accepted by Borrowers and Guarantors and conclusively binding upon Borrowers and Guarantors as an account stated except to the extent that Administrative Agent receives a written notice from Company of any specific exceptions of Company thereto within thirty (30) days after the date such statement has been received by the Company. Until such time as Administrative Agent shall have rendered to Company a written statement as provided above, the balance in any Borrower's loan account(s) shall be presumptive evidence of the amounts due and owing to Administrative Agent and Lenders by Borrowers and Guarantors.

### **6.3 Collection of Accounts.**

(a) Borrowers shall establish and maintain, at their expense, blocked accounts or lockboxes and related blocked accounts (in either case, "Control Accounts"), as Administrative Agent may reasonably specify, with such banks as are acceptable to Administrative Agent into which Borrowers shall promptly deposit and direct their respective account debtors to directly remit

all payments on Receivables and all payments constituting proceeds of Inventory or other Collateral in the identical form in which such payments are made, whether by cash, check or other manner. Borrowers shall deliver, or cause to be delivered to Administrative Agent an Account Control Agreement duly authorized, executed and delivered by each bank where a Control Account is maintained as provided in Section 5.2 or at any time and from time to time Administrative Agent may become the bank's customer with respect to any of the Control Accounts and promptly upon Administrative Agent's request, Borrowers shall execute and deliver such agreements and documents as Administrative Agent may reasonably require in connection therewith. Each Borrower and Guarantor agrees that all payments made to such Control Accounts or other funds received and collected by Administrative Agent or any Lender, whether in respect of the Receivables, as proceeds of Inventory or other Collateral or otherwise shall be treated as payments to Administrative Agent and Lenders in respect of the Obligations and therefore shall constitute the property of Administrative Agent and Lenders to the extent of the then outstanding Obligations. In addition to such payments applied in respect of the Obligations, Borrowers shall have the right to repay Loans in whole or in part from time to time as described in Section 2.1(d).

(b) For purposes of calculating the amount of the Loans available to Borrowers, such payments will be applied (conditional upon final collection) to the Obligations on the Business Day of receipt by Administrative Agent of immediately available funds in the Agent Payment Account provided such payments and notice thereof are received in accordance with Administrative Agent's usual and customary practices as in effect from time to time and within sufficient time to credit such Borrower's loan account on such day, and if not, then on the next Business Day.

(c) Each Borrower and Guarantor and their respective employees, agents and Subsidiaries shall, acting as trustee for Administrative Agent, receive, as the property of Administrative Agent, any monies, checks, notes, drafts or any other payment relating to and/or proceeds of Accounts 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 Control Accounts, or remit the same or cause the same to be remitted, in kind, to Administrative Agent. In no event shall the same be commingled with any Borrower's or Guarantor's own funds. Borrowers agree to reimburse Administrative Agent on demand for any amounts owed or paid to any bank or other financial institution at which a Control Account or any other deposit account or investment account is established or any other bank, financial institution or other person involved in the transfer of funds to or from the Control Accounts arising out of Administrative Agent's payments to or indemnification of such bank, financial institution or other person. The obligations of Borrowers to reimburse Administrative Agent for such amounts pursuant to this Section 6.3 shall survive the termination of this Agreement.

(d) Intentionally Deleted.

#### 6.4 Payments.

(a) All Obligations shall be payable to the Agent Payment Account as provided in Section 6.3 or such other place as Administrative Agent may designate from time to time. Subject to the other terms and conditions contained herein, Administrative Agent shall apply payments received or collected from any Borrower or Guarantor or for the account of any Borrower or Guarantor (including the monetary proceeds of collections or of realization upon any Collateral) as follows:

first, to pay any fees, indemnities or expense reimbursements then due to Administrative Agent, Collateral Agent, Lenders, Swingline Lender and Issuing Bank from any Borrower or Guarantor pursuant to the terms of the Financing Agreements; second, to pay interest due in respect of any Loans (and including any Special Administrative Agent Advances) and Letter of Credit Obligations; third, to pay or prepay principal in respect of Special Administrative Agent Advances; fourth, to pay principal due in respect of the Loans and to pay Obligations then due arising under or pursuant to any Bank Product Debt (including breakage and termination payments due under Hedge Agreements) solely to the extent that Administrative Agent has established a Reserve therefor and such Bank Product Debt constitutes Obligations secured pursuant to Section 5.1; fifth, to pay or prepay any other Obligations (including obligations in respect of Bank Products for which Reserves have not been established by Administrative Agent which constitute Obligations secured pursuant to Section 5.1) whether or not then due, in such order and manner as Administrative Agent determines and at any time an Event of Default exists or has occurred and is continuing, to provide cash collateral for any Letter of Credit Obligations to the extent provided in Section 10; sixth, to pay or prepay any Bank Product Debt constituting Obligations not secured pursuant to Section 5.1; and seventh, to the Company as agent for the U.S. Borrowers. Notwithstanding anything to the contrary contained in this Agreement, (i) unless so directed by Company, or unless an Event of Default shall exist or have occurred and be continuing, Administrative Agent shall not apply any payments which it receives to any Eurodollar Rate Loans, except (A) on the expiration date of the Interest Period applicable to any such Eurodollar Rate Loans or (B) in the event that there are no outstanding Prime Rate Loans and (ii) to the extent any Borrower uses any proceeds of the Loans or Letters of Credit to acquire rights in or the use of any Collateral or to repay any Indebtedness used to acquire rights in or the use of any Collateral, payments in respect of the Obligations shall be deemed applied first to the Obligations arising from Loans and Letters of Credit that were not used for such purposes and second to the Obligations arising from Loans and Letters of Credit the proceeds of which were used to acquire rights in or the use of any Collateral in the chronological order in which such Borrower acquired such rights in or the use of such Collateral. Amounts distributed with respect to any Bank Product Debt shall be the lesser of the applicable Bank Product Amount last reported to the Administrative Agent or the actual Bank Product Debt as calculated by the methodology reported to Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Bank Product Debt, but may rely upon written notice of the amount (setting forth a reasonably detailed calculation) from the applicable Secured Party. In the absence of such notice, the Administrative Agent may assume the amount to be distributed is the Bank Product Amount last reported to it. Without limiting the generality of the foregoing, Administrative Agent may, in its discretion, to the extent not previously paid and satisfied in full on the Closing Date, apply any such payments or proceeds first to the Obligations (as defined in the Existing Loan Agreement) until such Obligations are paid and satisfied in full.

(b) At Administrative Agent's option, all principal, interest, fees, costs, expenses and other charges provided for in this Agreement or the other Financing Agreements may be charged directly to the loan account(s) of any Borrower maintained by Administrative Agent. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, Administrative Agent, any Lender, Swingline Lender or Issuing Bank is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by Administrative Agent or such Lender. Borrowers and Guarantors shall be liable to pay to

Administrative Agent, and do hereby indemnify and hold Administrative Agent and Lenders harmless for the amount of any payments or proceeds surrendered or returned. This Section 6.4(b) shall remain effective notwithstanding any contrary action which may be taken by Administrative Agent or any Lender in reliance upon such payment or proceeds. This Section 6.4 shall survive the payment of the Obligations and the termination of this Agreement.

6.5 Taxes.

(a) Except as provided in Section 6.5(g), any and all payments to any Lender, Swingline Lender, Issuing Bank or Administrative Agent by or on account of any of the Obligations shall be made free and clear of and without deduction or withholding for or on account of, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any Governmental Authority or by any political subdivision or taxing authority thereof or therein with respect to such payments, excluding (i) in the case of each Lender, Swingline Lender, Issuing Bank and Administrative Agent (A) taxes imposed on or measured by its net income, and franchise taxes imposed on it, by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender, Swingline Lender, Issuing Bank or Administrative Agent (as the case may be) is organized and (B) any United States withholding taxes payable with respect to payments under the Financing Agreements under laws (including any statute, treaty or regulation) in effect on the date hereof (or, in the case of an Eligible Transferee, the date of the Assignment and Acceptance) applicable to such Lender, Swingline Lender, Issuing Bank or Administrative Agent, as the case may be, but not excluding any United States withholding taxes payable as a result of any change in such laws occurring after the date hereof (or the date of such Assignment and Acceptance) and (ii) in the case of each Lender and Swingline Lender, taxes imposed on or measured by its net income, and franchise taxes imposed on it as a result of a present or former connection between such Lender and the jurisdiction of the Governmental Authority imposing such tax or any taxing authority thereof or therein (all such non-excluded taxes, levies, imposts, fees, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes").

(b) If any Taxes shall be required by law to be deducted from or in respect of any sum payable in respect of the Obligations to any Lender, Swingline Lender, Issuing Bank or Administrative Agent then (i) except as provided in Section 6.5(g), the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 6.5), such Lender, Swingline Lender, Issuing Bank or 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 Borrower or Guarantor shall make such deductions, (iii) the relevant Borrower or Guarantor shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law and (iv) the relevant Borrower or Guarantor shall deliver to Administrative Agent evidence of such payment.

(c) In addition, each Borrower and Guarantor agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies of the United States or any political subdivision thereof or any applicable foreign jurisdiction, and all liabilities with respect thereto, in each case arising from any payment made hereunder or under any of the other Financing Agreements or from the execution, delivery or registration of, or otherwise

with respect to, this Agreement or any of the other Financing Agreements (collectively, “Other Taxes”).

(d) Except as provided in Section 6.5(g), each Borrower and Guarantor shall indemnify each Lender, Swingline Lender, Issuing Bank and Administrative Agent for the full amount of Taxes and Other Taxes (including any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 6.5) paid by such Lender, Swingline Lender, Issuing Bank or 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 Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days from the date such Lender, Swingline Lender, Issuing Bank or Administrative Agent (as the case may be) makes written demand therefor. A certificate as to the amount of such payment or liability delivered to Company by a Lender, Swingline Lender, Issuing Bank (with a copy to Administrative Agent) or by Administrative Agent on its own behalf or on behalf of a Lender, Swingline Lender or Issuing Bank, shall be conclusive absent manifest error.

(e) As soon as practicable after any payment of Taxes or Other Taxes by any Borrower or Guarantor, such Borrower or Guarantor shall furnish to Administrative Agent, at its address referred to herein, the original or a certified copy of a receipt evidencing payment thereof.

(f) Without prejudice to the survival of any other agreements of any Borrower or Guarantor hereunder or under any of the other Financing Agreements, the agreements and obligations of such Borrower or Guarantor contained in this Section 6.5 shall survive the termination of this Agreement and the payment in full of the Obligations.

(g) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the applicable Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any of the other Financing Agreements shall deliver to Company (with a copy to Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by Company or Administrative Agent (in such number of copies as is reasonably requested by the recipient), whichever of the following is applicable (but only if such Foreign Lender is legally entitled to do so): (i) duly completed copies of Internal Revenue Service Form W-8BEN (or any successor form) claiming exemption from, or a reduction to, withholding tax under an income tax treaty; (ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any successor form) claiming exemption from withholding because the income is effectively connected with the conduct of a United States trade or business; (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Sections 871(h) or 881(c) of the Code, (A) a certificate of the Lender to the effect that such Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of a Borrower within the meaning of Section 881(c)(3)(B) of the Code or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN (or any successor form) claiming exemption from withholding under the portfolio interest exemption; or (iv) any other applicable form, certificate or document prescribed by applicable law as a basis for claiming exemption from or a reduction in United States withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit a Borrower to determine the withholding or deduction required to be made. In addition, each Foreign Lender agrees that it will

deliver upon any Borrower's request updated versions of the foregoing, as applicable, whenever the previous certification has become obsolete or inaccurate in any material respect, together with such other forms as may be required in order to confirm or establish the entitlement of such Foreign Lender to a continued exemption from or reduction in United States withholding tax with respect to payments under this Loan and Security Agreement and any Obligation. Notwithstanding the foregoing provisions of this Section 6.5, but subject to the immediately following sentence, (A) each Borrower shall be entitled, to the extent it is required to do so by law, to deduct or withhold Taxes imposed by the United States (or any political subdivision or taxing authority thereof or therein) from interest, fees or other amounts payable hereunder for the account of any Foreign Lender to the extent that such Foreign Lender has not provided to such Borrower U.S. Internal Revenue Service Forms that establish a complete exemption from such deduction or withholding and (B) such Borrower shall not be obligated pursuant to this Section 6.5 to indemnify or otherwise pay such Foreign Lender in respect of Taxes imposed by the United States if such Foreign Lender has not provided to such Borrower the U.S. Internal Revenue Service Forms required to be provided to such Borrower pursuant to this Section 6.5 or to the extent that such Forms do not establish a complete exemption from withholding of such Taxes. Notwithstanding anything to the contrary contained in the preceding sentence or elsewhere in this Section 6.5, the Borrowers, jointly and severally, agree to pay additional amounts and to indemnify each Lender in the manner set forth in Sections 6.5(a) and 6.5(d) (without regard to the identity of the jurisdiction requiring the deduction or withholding) in respect of any amounts deducted or withheld by it as described in the immediately preceding sentence as a result of any changes after the Closing Date in any applicable law, treaty, governmental rule, regulation, guideline or order, or in the interpretation thereof.

(h) Any Lender claiming any additional amounts payable pursuant to this Section 6.5 shall use its reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its applicable lending office and to take any other action if such change or other action would avoid the need for, or reduce the amount of, any such additional amounts that would be payable or may thereafter accrue pursuant to Section 6.5 and would not, in the sole determination of such Lender, be otherwise disadvantageous in any material respect to such Lender.

(i) If Administrative Agent, any Lender, Swingline Lender or the Issuing Bank determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by a Borrower or Guarantor or with respect to which a Borrower or Guarantor has paid additional amounts pursuant to this Section 6.5, it shall pay over such refund to the applicable Borrower or Guarantor (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower or Guarantor under this Section 6.5 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of Administrative Agent, such Lender, Swingline Lender or the Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant governmental authority with respect to such refund); provided, that, each Borrower and Guarantor, upon the request of Administrative Agent, such Lender, Swingline Lender or the Issuing Bank, agrees to repay the amount paid over to such Borrower or Guarantor (plus any penalties, interest or other charges imposed by the relevant governmental authority) to Administrative Agent, such Lender or the Issuing Bank in the event Administrative Agent, such Lender, Swingline Lender or the Issuing Bank is required to repay such refund to such governmental authority. This Section 6.5 shall not be construed to require Administrative Agent, any Lender, Swingline Lender or the

Issuing Bank to make available its tax returns (or any other information relating to its taxes which it deems confidential) to any Borrower, Guarantor or any other Person.

6.6 Authorization to Make Loans.

Administrative Agent and Lenders are authorized to make the Loans based upon written instructions received from an Authorized Officer of the Company or, at the discretion of Administrative Agent, if such Loans are necessary to satisfy any Obligations. All requests for Loans or Letters of Credit hereunder shall specify (i) the applicable Borrower, (ii) the date on which the requested advance is to be made (which day shall be a Business Day) and (iii) the amount and currency of the requested Loan. Requests received after 1:00 p.m., Charlotte, North Carolina time on any day shall be deemed to have been made as of the opening of business on the immediately following Business Day. Requests for Prime Rate Loans may be made on the day of the requested borrowing if received by Administrative Agent by 1:00 p.m., Charlotte, North Carolina time. Requests for Eurodollar Rate Loans must be made as set forth in Section 3.1(b). All Loans and Letters of Credit under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, any Borrower or Guarantor when deposited to the credit of any Borrower or Guarantor or otherwise disbursed or established in accordance with the instructions of any Borrower or Guarantor or in accordance with the terms and conditions of this Agreement.

6.7 Use of Proceeds.

Borrowers shall use the initial proceeds of the Loans and Letters of Credit hereunder only for: (a) satisfaction of existing Obligations (as defined in the Existing Loan Agreement), (b) to pay any costs, fees and expenses associated with this Agreement and the other Financing Agreements which have been approved by order of the Bankruptcy Court, including, but not limited to, adequate protection payments consistent with the Budget which shall be payable to the CL Administrative Agent for the benefit of the pre-petition CL Lenders, (c) costs, expenses and fees in connection with the Chapter 11 Cases, (d) to pay pre-petition claims in the ordinary course of business to the extent approved by the Bankruptcy Court in connection with the Chapter 11 Case, and (e) for working capital and other general corporate purposes of Borrowers and Guarantors. All other Loans made or Letters of Credit provided to or for the benefit of any Borrower pursuant to the provisions hereof shall be used by such Borrower only for general operating, working capital and other proper corporate purposes of such Borrower not otherwise prohibited by the terms hereof. None of the proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any margin security or for the purposes of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended. No portion of the administrative expenses or priority claims in the Chapter 11 Cases, other than those directly attributable to the operation of the business of Borrowers, including professional fees (subject to the terms of the Financing Order and this Agreement), as set forth in the Budget or to which Administrative Agent has specifically agreed, shall be funded with the Revolving Loans or Letters of Credit and the percentages and categories of permitted allocations of such claims and expenses shall be approved by Administrative Agent. Notwithstanding the foregoing, proceeds shall not be used by Borrowers or Guarantors to affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to

impair or object to the validity, extent, enforceability or priority of Administrative Agent's, Collateral Agent's and Lenders' pre-petition and/or post-petition liens, claims and rights.

6.8 Appointment of Company as Administrative Agent for Requesting Loans and Receipts of Loans and Statements.

(a) Each Borrower hereby irrevocably appoints and constitutes Company as its agent and attorney-in-fact to request and receive Loans and Letters of Credit pursuant to this Agreement and the other Financing Agreements from Administrative Agent or any Lender in the name or on behalf of such Borrower. Administrative Agent and Lenders may disburse the Loans to such bank account of Company or a Borrower or otherwise make such Loans to a Borrower and provide such Letters of Credit to a Borrower as Company may designate or direct, without notice to any other Borrower or Guarantor. Notwithstanding anything to the contrary contained herein, Administrative Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Company hereby accepts the appointment by Borrowers to act as agent and attorney-in-fact of Borrowers pursuant to this Section 6.8. Company shall ensure that the disbursement of any Loans to each Borrower or the issuance of any Letter of Credit for a Borrower hereunder, shall be paid to or for the account of such Borrower.

(c) Each Borrower and other Guarantor hereby irrevocably appoints and constitutes Company as its agent to receive statements on account and all other notices from Administrative Agent and Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Agreements.

(d) Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any other Borrower or any Guarantor by Company shall be deemed for all purposes to have been made by such Borrower or Guarantor, as the case may be, and shall be binding upon and enforceable against such Borrower or Guarantor to the same extent as if made directly by such Borrower or Guarantor.

(e) No purported termination of the appointment of Company as agent as aforesaid shall be effective, except after ten (10) days' prior written notice to Administrative Agent.

6.9 Pro Rata Treatment.

Except to the extent otherwise provided in this Agreement or as otherwise agreed by Lenders: (a) the making and conversion of Revolving Loans shall be made among the Lenders based on their respective Pro Rata Shares as to the Revolving Loans and (b) each payment on account of any Obligations to or for the account of one or more of Lenders in respect of any Obligations due on a particular day shall be allocated among the Lenders entitled to such payments based on their respective Pro Rata Shares and shall be distributed accordingly.

6.10 Sharing of Payments, Etc.

(a) Each Borrower and Guarantor agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim Administrative Agent or any Lender

may otherwise have, each Lender shall be entitled, at its option (but subject, as among Administrative Agent and Lenders, to the provisions of Section 12.3(b) hereof), to offset balances held by it for the account of such Borrower or Guarantor at any of its offices, in dollars or in any other currency, against any principal of or interest on any Loans owed to such Lender or any other amount payable to such Lender hereunder, that is not paid when due (regardless of whether such balances are then due to such Borrower or Guarantor), in which case it shall promptly notify Company and Administrative Agent thereof; provided, that, such Lender's failure to give such notice shall not affect the validity thereof.

(b) If any Lender (including Administrative Agent) shall obtain from any Borrower or Guarantor payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any of the other Financing Agreements through the exercise of any right of setoff, banker's lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received more than its Pro Rata Share of the principal of the Loans or more than its share of such other amounts then due hereunder or thereunder by any Borrower or Guarantor to such Lender than the percentage thereof received by any other Lender, it shall promptly pay to Administrative Agent, for the benefit of Lenders, the amount of such excess and simultaneously purchase from such other Lenders a participation in the Loans or such other amounts, respectively, owing to such other Lenders (or such interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) in accordance with their respective Pro Rata Shares or as otherwise agreed by Lenders. To such end all Lenders shall make appropriate adjustments among themselves (by the resale of participation sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) Each Borrower and Guarantor agrees that any Lender purchasing a participation (or direct interest) as provided in Section 2.5 or Section 13.7 may exercise, in a manner consistent with this Section, all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any right of setoff, banker's lien, counterclaims or similar rights or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other Indebtedness or obligation of any Borrower or Guarantor. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, assign such rights to Administrative Agent for the benefit of Lenders and, in any event, exercise its rights in respect of such secured claim in a manner consistent with the rights of Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

#### 6.11 Settlement Procedures.

(a) In order to administer the Credit Facility in an efficient manner and to minimize the transfer of funds between Administrative Agent and Lenders, Administrative Agent

may, at its option, subject to the terms of this Section, make available, on behalf of Lenders, including the Swing Line Lender, the full amount of the Revolving Loans or Swing Line Loans requested or charged to any Borrower's loan account(s) or otherwise to be advanced by Lenders pursuant to the terms hereof, without requirement of prior notice to Lenders of the proposed Loans.

(b) With respect to all Revolving Loans made by Administrative Agent on behalf of Lenders, the amount of each Lender's Pro Rata Share of the outstanding Loans shall be computed weekly, and shall be adjusted upward or downward on the basis of the amount of the outstanding Revolving Loans as of 5:00 p.m. on the Business Day immediately preceding the date of each settlement computation; provided, that, Administrative Agent retains the absolute right at any time or from time to time to make the above described adjustments at intervals more frequent than weekly, but in no event more than twice in any week. With respect to Swing Line Loans made by Swing Line Lender or Administrative Agent on behalf of Swing Line Lender, Swing Line Lender (or Administrative Agent on behalf of Swing Line Lender) may settle on the Swing Line Loans from time to time as it determines. Administrative Agent (or Swing Line Lender as to Swing Line Loans) shall deliver to each of the Lenders after the end of each week, or at such period or periods as Administrative Agent (or Swing Line Lender as to Swing Line Loans) shall determine, a summary statement of the amount of outstanding Loans (whether Revolving Loans, Swing Line Loans or both, as applicable) for such period (such week or other period or periods being hereinafter referred to as a "Settlement Period"). If the summary statement is sent by Administrative Agent (or Swing Line Lender in the case of Swing Line Loans) and received by a Lender prior to 12:00 p.m., then such Lender shall make the settlement transfer described in this Section by no later than 3:00 p.m. on the same Business Day and if received by a Lender after 12:00 p.m., then such Lender shall make the settlement transfer by not later than 3:00 p.m. on the next Business Day following the date of receipt. If, as of the end of any Settlement Period, the amount of a Lender's Pro Rata Share of the outstanding Revolving Loans is more than such Lender's Pro Rata Share of the outstanding Revolving Loans as of the end of the previous Settlement Period, then such Lender shall forthwith (but in no event later than the time set forth in the preceding sentence) transfer to Administrative Agent by wire transfer in immediately available funds the amount of the increase. Alternatively, if the amount of a Lender's Pro Rata Share of the outstanding Revolving Loans in any Settlement Period is less than the amount of such Lender's Pro Rata Share of the outstanding Revolving Loans for the previous Settlement Period, Administrative Agent shall forthwith transfer to such Lender by wire transfer in immediately available funds the amount of the decrease. Each Lender shall forthwith (but in no event later than the time set forth in the preceding sentence) transfer to Swing Line Lender (or upon its request to Administrative Agent) by wire transfer in immediately available funds the amount of such Lender's Pro Rata Share of the outstanding Swing Line Loans as set forth in the summary statement provided to such Lender as provided above. Amounts transferred to Swing Line Lender (or Administrative Agent as the case may be) in respect to a settlement of Swing Line Loans shall be applied to the payment of the Swing Line Loans and shall constitute Revolving Loans of such Lenders. The obligation of each of the Lenders to transfer such funds and effect such settlement shall be irrevocable and unconditional and without recourse to or warranty by Administrative Agent and may occur at any time a Default or Event of Default exists or has occurred and whether or not the conditions set forth in Section 4.2 are satisfied (except if there is an Event of Default under Section 10.1(g) and 10.1(h), in which case the funds shall be in respect of each Lender's participation). Administrative Agent and each Lender agrees to mark its books and records at the end of each Settlement Period to show at all times the dollar amount of its Pro Rata Share of the outstanding Loans and Letters of Credit. Each Lender shall only be entitled to receive interest on

its Pro Rata Share of the Loans to the extent such Loans have been funded by such Lender. Because the Administrative Agent on behalf of Lenders may be advancing and/or may be repaid Loans prior to the time when Lenders will actually advance and/or be repaid such Loans, interest with respect to Loans shall be allocated by Administrative Agent in accordance with the amount of Loans actually advanced by and repaid to each Lender and the Administrative Agent and shall accrue from and including the date such Loans are so advanced to but excluding the date such Loans are either repaid by Borrowers or actually settled with the applicable Lender as described in this Section.

(c) To the extent that Administrative Agent has made any such amounts available and the settlement described above shall not yet have occurred, upon repayment of any Loans by a Borrower, Administrative Agent may apply such amounts repaid directly to any amounts made available by Administrative Agent pursuant to this Section. In lieu of settlements, Administrative Agent may, at its option, at any time require each Lender to provide Administrative Agent with immediately available funds representing its Pro Rata Share of each Loan, prior to Administrative Agent's disbursement of such Loan to a Borrower. In such event, Administrative Agent shall notify each Lender promptly after Administrative Agent's receipt of the request for the Loans from a Borrower or any deemed request hereunder and each Lender shall provide its Pro Rata Share of such requested Loan to the account specified by Administrative Agent in immediately available funds not later than 2:00 p.m. on the requested funding date, so that all such Loans shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares. No Lender shall be responsible for any default by any other Lender in the other Lender's obligation to make a Loan requested hereunder nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in the other Lender's obligation to make a Loan hereunder.

(d) Upon the making of any Loan by Administrative Agent as provided herein, without further action by any party hereto, each Lender shall be deemed to have irrevocably and unconditionally purchased and received from Administrative Agent, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Pro Rata Share in such Loan. To the extent that there is no settlement in accordance with the terms hereof, Administrative Agent may at any time require the Lenders to fund their participations. From and after the date, if any, on which any Lender has funded its participation in any such Loan, Administrative Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest received by Administrative Agent in respect of such Loan.

(e) As to any Loan funded by Administrative Agent on behalf of a Lender (including Swing Line Lender) whether pursuant to Sections 6.11(a), 6.11(b) or 6.11(c) above, Administrative Agent may assume that each Lender will make available to Administrative Agent such Lender's Pro Rata Share of the Loan requested or otherwise made on such day in the case of Loans funded pursuant to Section 6.11(c) above or otherwise on the applicable settlement date. If Administrative Agent makes amounts available to a Borrower and such corresponding amounts are not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount 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. on that day by each of the three leading brokers of Federal funds

transactions in New York 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 3.1 hereof applicable to Base Rate Loans. During the period in which such Lender has not paid such corresponding amount to Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any of the other Financing Agreements, the amount so advanced by Administrative Agent to or for the benefit of any Borrower shall, for all purposes hereof, be a Loan made by Administrative Agent for its own account.

(f) Upon any failure by a Lender to pay Administrative Agent (or Swing Line Lender) pursuant to the settlement described in Section 6.11(b) above or to pay Administrative Agent pursuant to Section 6.11(c), 6.11(d) or Section 6.11(e), Administrative Agent shall promptly thereafter notify the Company of such failure and Borrowers shall pay such corresponding amount to Administrative Agent for its own account within five (5) Business Days of the Company's receipt of such notice. The term "Defaulting Lender" shall mean (i) any Lender that has failed to fund any portion of the Revolving Loans, participations in Letter of Credit Obligations or participations in Swing Line Loans required to be funded by it hereunder within one (1) Business Day of the date required to be funded by it hereunder, or has otherwise failed to pay over to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date when due, (ii) any Lender that has notified Administrative Agent, any Lender, Issuing Bank, or any Borrower or Guarantor in writing that it will not or 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 will not or does not intend to comply with its funding obligations under this Agreement or under other agreements in which it has agreed to make loans or provide other financial accommodations, or (iii) any Lender that becomes or is insolvent or has a parent company that has become or is insolvent or becomes the subject of a bankruptcy or insolvency proceeding, or has a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment and has not obtained all required orders, approvals or consents of any court or other Governmental Authority to continue to fulfill its obligations hereunder, in form and substance satisfactory to Administrative Agent.

(g) Administrative Agent shall not be obligated to transfer to a Defaulting Lender any payments received by Administrative Agent for the Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder (including any principal, interest or fees). For purposes of voting or consenting to matters with respect to this Agreement and the other Financing Agreements and determining Pro Rata Shares, such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero (0). So long as there is a Defaulting Lender, the maximum amount of the Loans and Letters of Credit shall not exceed the aggregate amount of the Commitments of the Lenders that are not Defaulting Lenders plus the Pro Rata Share of the Defaulting Lender (determined immediately prior to its being a Defaulting Lender) of the Loans and Letters of Credit outstanding as of the date that the Defaulting Lender has become a Defaulting Lender. At any time that there is a Defaulting Lender, payments received for application to the Obligations payable to Lenders in accordance with the terms of this Agreement shall be distributed to Lenders based on their Pro Rata Shares calculated after giving effect to the reduction of the Defaulting Lender's Commitment to zero as provided herein or at Administrative Agent's option, Administrative Agent may instead receive and retain such amounts that would be otherwise attributable to the Pro Rata Share of a Defaulting Lender (which for such purpose shall be such Pro Rata Share as in effect immediately prior to its being a Defaulting Lender).

To the extent that Administrative Agent elects to receive and retain such amounts, Administrative Agent may hold such amounts (which shall not accrue interest) and, in its reasonable discretion, relend such amounts to a Borrower. To the extent that Administrative Agent exercises its option to relend such amounts, such amounts shall be treated as Revolving Loans for the account of Administrative Agent in addition to the Revolving Loans that are made by the Lenders other than a Defaulting Lender based on their respective Pro Rata Shares as calculated after giving effect to the reduction of such Defaulting Lender's Commitment to zero (0) as provided herein but shall be repaid in the same order of priority as the principal amount of the Loans on a pro rata basis for purposes of Section 6.4 hereof. Administrative Agent shall determine whether any Revolving Loans requested shall be made from relending such amounts or from Revolving Loans from the Lenders (other than a Defaulting Lender) and any allocation of requested Revolving Loans between them. The rights of a Defaulting Lender shall be limited as provided herein until such time as the Defaulting Lender has made all payments to Administrative Agent of the amounts that it had failed to pay causing it to become a Defaulting Lender and such Lender is otherwise in compliance with the terms of this Agreement (including making any payments as it would have been required to make as a Lender during the period that it was a Defaulting Lender other than in respect of the principal amount of Revolving Loans, which payments as to the principal amount of Revolving Loans shall be made based on the outstanding balance thereof on the date of the cure by Defaulting Lender or at such other time thereafter as Administrative Agent may specify) or has otherwise provided evidence in form and substance satisfactory to Administrative Agent that such Defaulting Lender will be able to fund its Pro Rata Share (as in effect immediately prior to its being a Defaulting Lender) in accordance with the terms hereof. Upon the cure by Defaulting Lender of the event that is the basis for it to be a Defaulting Lender by making such payment or payments and such Lender otherwise being in compliance with the terms hereof, such Lender shall cease to be a Defaulting Lender and shall only be entitled to payment of interest accrued during the period that such Lender was a Defaulting Lender to the extent previously received and retained by Administrative Agent from or for the account of Borrowers on the funds constituting Loans funded by such Lender prior to the date of it being a Defaulting Lender (and not previously paid to such Lender) and shall otherwise, on and after such cure, make Loans and settle in respect of the Loans and other Obligations in accordance with the terms hereof. The existence of a Defaulting Lender and the operation of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, or relieve or excuse the performance by any Borrower or Guarantor of its duties and obligations hereunder (including, but not limited to, the obligation of such Borrower or Guarantor to make any payments hereunder, whether in respect of Loans by a Defaulting Lender or otherwise.

(h) Notwithstanding anything to the contrary contained in this Agreement, in the event that there is a Defaulting Lender, if there are any Letters of Credit outstanding, within one (1) Business Day after the written request of Issuing Bank, Borrowers shall pay to Administrative Agent an amount equal to the Pro Rata Share of the Defaulting Lender (calculated as in effect immediately prior to such Lender becoming a Defaulting Lender) of the Letter of Credit Obligations then outstanding to be held by Administrative Agent on terms and conditions satisfactory to Administrative Agent and Issuing Bank as cash collateral for the Obligations and for so long as there is a Defaulting Lender, Issuing Bank shall not be required to issue any Letter of Credit, or increase or extend or otherwise amend any Letter of Credit, unless upon the request of Issuing Bank, Administrative Agent has cash collateral from Borrowers in an amount equal to the Pro Rata Share of the Defaulting Lender (calculated as in effect immediately prior to such Lender becoming a Defaulting Lender) of the Letter of Credit Obligations outstanding after giving effect to any such

requested Letter of Credit (or increase, extension or other amendment) to be held by Administrative Agent on its behalf on terms and conditions satisfactory to Administrative Agent and Issuing Bank or there are other arrangements reasonably satisfactory to Issuing Bank with respect to the participation in Letters of Credit by such Defaulting Lender. Such cash collateral shall be applied first to the Letter of Credit Obligations before application to any other Obligations, notwithstanding anything to the contrary contained in Section 6.4 hereof.

(i) Nothing in this Section or elsewhere in this Agreement or the other Financing Agreements shall be deemed to require Administrative Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitment hereunder or to prejudice any rights that any Borrower may have to commence any legal action against a Lender as a result of any default by such Lender hereunder in fulfilling its Commitment.

**6.12 Obligations Several; Independent Nature of Lenders' Rights.**

The obligation of each Lender hereunder is several, and no Lender shall be responsible for the obligation or commitment of any other Lender hereunder. Nothing contained in this Agreement or any of the other Financing Agreements and no action taken by the Lenders pursuant hereto or thereto shall be deemed to constitute the Lenders to be a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and subject to Section 12.3 hereof, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

**6.13 Exchange Rates; Currency Equivalents.**

(a) Administrative Agent shall determine the Spot Rates as of each Revaluation Date to be used for calculating the Dollar Amounts of Extensions of Credit and other amounts outstanding hereunder denominated in Euros. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by the Company hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency for purposes of the Financing Agreements shall be such Dollar Amount as so determined by Administrative Agent.

(b) Wherever in this Agreement in connection with an Extension of Credit, conversion, continuation or prepayment of a Loan, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Extension of Credit is denominated in Euros, such amount shall be the relevant Foreign Currency Equivalent of such Dollar amount (rounded to the nearest 1,000 units of Euros), as determined by Administrative Agent.

**SECTION 7. COLLATERAL REPORTING AND COVENANTS**

**7.1 Collateral Reporting.**

(a) The Company shall provide Administrative Agent with the following documents in a form reasonably satisfactory to Administrative Agent:

(i) on the Friday of each week (or more frequently as Administrative Agent may request at any time that an Event of Default exists or has occurred and is continuing), covering the immediately prior seven (7) calendar days, (A) domestic inventory reports by location and such other information related to domestic inventory as Agent may request and (B) a report of the amount of the accrued and unpaid amounts entitled to the benefit of the Carve-Out as of the last day of the immediately preceding calendar week;

(ii) as soon as possible after the end of each month (but in any event within fifteen (15) Business Days after the end thereof), on a monthly basis or more frequently as Administrative Agent may request, (A) except as set forth in subsection (a)(i) above, inventory reports by location and category (and including the amounts of Inventory and the value thereof at any leased locations and at premises of warehouses, processors or other third parties), (B) agings of accounts receivable and (C) a summary report of agings of accounts payable on a category-by-category basis;

(iii) on a daily basis, a Borrowing Base Certificate, in a form satisfactory to Administrative Agent, duly completed and certified by the Company's chief executive officer or chief financial officer. Each such Borrowing Base Certificate shall contain, among other things, (A) a weekly roll forward of accounts receivable with major categories of ineligible (as determined by Administrative Agent) in respect thereof updated on a monthly basis or more frequently as Administrative Agent may request and (B) a weekly analysis of inventory on Friday of each week, which shall include (1) mill raw material value updated each Friday based on the physical inventory taken on the immediately preceding Monday (with the weight of waste paper determined in accordance with the Company's current practices) with the value per ton derived from the most current RFD pricing letter issued on or about the 8th of every month, (2) mill finished goods tonnage and value updated each Friday derived from the actual tons on hand multiplied by the average cost per ton value that will be reported on the second Friday of each month and (3) converted raw material value and converted finished goods tonnage, in each case, with respect to each of the book cover division ("BCI") and Newark Paper Board Products ("NPP") updated each Friday based on the actual cost per ton updated for BCI and NPP by the second Friday of each month. All categories of inventory ineligible in respect of the items in subsection (B) above shall be updated in the Borrowing Base Certificate on the last day of every month. The inventory recovery factors for all raw materials and finished goods will, at Administrative Agent's option, be updated monthly based on the criteria outlined in the most recent inventory appraisal that has been received by Administrative Agent and which is acceptable to Agent;

(iv) in addition to any other reports required to be delivered by the Company pursuant to this Agreement, the Company shall provide to Administrative Agent, in form and substance satisfactory to Administrative Agent, (A) on a daily basis, a report indicating the amount of cash (and where located) of the Company and each of its Domestic Subsidiaries as of the immediately preceding day (other than with respect to cash in the following accounts: (1) account numbers 208000134716, 410804007 and 4518152780 maintained at Wells Fargo, (2) account number 5190086847 maintained at Royal Bank of Canada, (3) account number 4200148377 maintained at Regions Bank and (4) the account maintained at Commerce Bank) and (B) on Friday of each week, a report indicating the amount of cash (and where located) of Dutch Borrower and each of the Company's Foreign Subsidiaries as of the immediately preceding Friday.

(v) in addition to any other reports required to be delivered by the Company pursuant to this Agreement, the Company shall provide to Administrative Agent, (A) on Friday of each week (or more frequently as Administrative Agent may request at any time that an Event of Default exists or has occurred and is continuing) covering the immediately following calendar week, a report, in form and substance satisfactory to Administrative Agent, which shall include daily (1) cash receipts for all operations in the United States (hereinafter referred to as, the “Domestic Operations”), (2) disbursements with respect to the Domestic Operations, (3) Eligible Accounts availability for the Domestic Operations, (4) Eligible Inventory availability for the Domestic Operations, (5) outstanding Loans, Letters of Credit and other Obligations (including swap liability exposure), (6) Excess Availability and (7) payable float for the Domestic Operations and (B) on Friday of each week (or more frequently as Administrative Agent may request at any time that an Event of Default exists or has occurred and is continuing) covering the immediately following calendar week, a report, in form and substance satisfactory to Administrative Agent, which shall include daily (1) cash receipts for all operations outside of the United States (hereinafter referred to as, the “International Operations”), (2) disbursements with respect to the International Operations, (3) outstanding principal amount of all existing Indebtedness of the Dutch Borrower and each of the Company’s Foreign Subsidiaries, (4) outstanding principal amount of all intercompany loans from the Company to Dutch Borrower and (5) liquidity of the International Operations;

(vi) in addition to any other reports required to be delivered by the Company pursuant to this Agreement, the Company shall provide to Administrative Agent, (A) on Tuesday of each week (or more frequently as Administrative Agent may request at any time that an Event of Default exists or has occurred and is continuing), a report, in a form satisfactory to Administrative Agent, certified by the Company’s chief executive officer, chief financial officer or treasurer which specifies all material changes to or deviations from any of the Projected Information for the immediately preceding week set forth in any Budget previously delivered to Administrative Agent, compared to the actual results for such week and (B) on the 3rd day of each month (or more frequently as Administrative Agent may request at any time that an Event of Default exists or has occurred and is continuing), a copy of any management report prepared by the management of Borrowers that has been delivered to the Board of Directors of any Borrower during the immediately preceding month;

(vii) the reports as set forth in Section 8.31(d) hereof;

(viii) upon Administrative Agent’s request, (A) copies of customer statements, purchase orders, sales invoices, credit memos, remittance advices and reports, and copies of deposit slips and bank statements, (B) copies of shipping and delivery documents, (C) copies of purchase orders, invoices and delivery documents for Inventory and Equipment acquired by any Borrower or Guarantor and (D) perpetual inventory reports, in each case, within a reasonable period of time following such request;

(ix) such other reports as to the Collateral as Administrative Agent shall reasonably request from time to time, within a reasonable period of time following such request.

(b) If any Borrower’s or Guarantor’s records or reports of the Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, such Borrower and Guarantor hereby irrevocably authorizes such service, contractor, shipper or agent to deliver

such records, reports, and related documents to Administrative Agent and to follow Administrative Agent's instructions with respect to further services at any time that an Event of Default exists or has occurred and is continuing.

7.2 Accounts Covenants.

(a) Borrowers shall notify Administrative Agent promptly of: (i) any material delay in any Borrower's performance of any of its material obligations to any account debtor or the assertion of any material claims, offsets, defenses or counterclaims by any account debtor, or any material disputes with account debtors, or any settlement, adjustment or compromise thereof, (ii) all material adverse information known to any Borrower or Guarantor relating to the financial condition of any account debtor whose accounts are included in Eligible Accounts and (iii) any event or circumstance which, to the best of any Borrower's or Guarantor's knowledge, would cause Administrative Agent to consider any then existing Accounts as no longer constituting Eligible Accounts. No credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor whose accounts are included in Eligible Accounts without Administrative Agent's consent, except in the ordinary course of a Borrower's or Guarantor's business in accordance with practices and policies previously disclosed in writing to Administrative Agent and except as set forth in the schedules delivered to Administrative Agent pursuant to Section 7.1(a) above. So long as no Event of Default exists or has occurred and is continuing, Borrowers and Guarantors shall settle, adjust or compromise any claim, offset, counterclaim or dispute with any account debtor. At any time that an Event of Default exists or has occurred and is continuing, Administrative Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with account debtors or grant any credits, discounts or allowances.

(b) With respect to each Account: (i) the amounts shown on any invoice delivered to Administrative Agent or schedule thereof delivered to Administrative Agent shall be true and complete, (ii) no payments shall be made thereon except payments immediately delivered to Administrative Agent pursuant to the terms of this Agreement, (iii) no credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor whose accounts are included in Eligible Accounts except as reported to Administrative Agent in accordance with this Agreement and except for credits, discounts, allowances or extensions made or given in the ordinary course of each Borrower's business in accordance with practices and policies previously disclosed to Administrative Agent, (iv) there shall be no setoffs, deductions, contras, defenses, counterclaims or disputes existing or asserted with respect to any Accounts included in Eligible Accounts except as reported to Administrative Agent in accordance with the terms of this Agreement, (v) none of the transactions giving rise thereto will violate any applicable foreign, Federal, State or local 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) Administrative Agent shall have the right at any time or times, in Administrative Agent's name or in the name of a nominee of Administrative Agent, to verify the validity, amount or any other matter relating to any Receivables or other Collateral, by mail, telephone, facsimile transmission or otherwise.

### 7.3 Inventory Covenants.

With respect to the Inventory:

(a) each Borrower and Guarantor shall at all times maintain inventory records reasonably satisfactory to Administrative Agent, keeping correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, such Borrower's or Guarantor's cost therefor and daily withdrawals therefrom and additions thereto, it being acknowledged that the manner in which inventory records are maintained as of the Closing Date is satisfactory to Administrative Agent;

(b) Borrowers and Guarantors shall conduct a physical count of the Inventory at least once each year but at any time or times as Administrative Agent may request during the continuance of an Event of Default, and promptly following such physical inventory shall supply Administrative Agent with a report in the form and with such specificity as may be reasonably satisfactory to Administrative Agent concerning such physical count;

(c) Borrowers and Guarantors shall not remove any Inventory from the locations set forth or permitted herein except (i) Inventory with a book value of up to \$500,000 in the aggregate and (ii) Inventory with a book value in excess of \$500,000 in the aggregate for all such Inventory; provided, that, the applicable Borrower or Guarantor shall have given thirty (30) days prior written notice to Administrative Agent, (iii) sales of Inventory in the ordinary course of its business, (iv) movement of Inventory directly from one location set forth or permitted herein to another such location, and (v) Inventory shipped from the manufacturer thereof to such Borrower or Guarantor which is in transit to the locations set forth or permitted herein;

(d) upon Administrative Agent's request, Borrowers shall deliver or cause to be delivered to Administrative Agent written appraisals as to the Inventory in form, scope and methodology acceptable to Administrative Agent and by an appraiser acceptable to Administrative Agent, addressed to Administrative Agent and Lenders and upon which Administrative Agent and Lenders are expressly permitted to rely (i) at their expense, no more than one (1) time in any twelve (12) month period, but at any time or times as Administrative Agent may request (A) on or after the occurrence of an Event of Default or (B) after Excess Availability falls below \$10,000,000, and (ii) additionally, at Administrative Agent's expense, at Administrative Agent's request, one (1) such full appraisal and one (1) "desktop" appraisal in any twelve (12) month period;

(e) Borrowers and Guarantors shall produce, use, store and maintain the Inventory with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws (including, to the extent applicable, the requirements of the Federal Fair Labor Standards Act of 1938, as amended and all rules, regulations and orders related thereto);

(f) none of the Inventory or other Collateral constitutes farm products or the proceeds thereof;

(g) each Borrower and Guarantor assumes all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Inventory;

(h) Borrowers and Guarantors shall not sell Inventory to any customer on approval, or any other basis which entitles the customer to return or may obligate any Borrower or Guarantor to repurchase such Inventory;

(i) Borrowers and Guarantors shall keep the Inventory in good and marketable condition; and

(j) Borrowers and Guarantors shall not, without prior written notice to Administrative Agent or the specific identification of such Inventory in a report with respect thereto provided by Company to Administrative Agent pursuant to Section 7.1(a) hereof, acquire or accept any Inventory on consignment or approval.

#### 7.4 Equipment Covenants.

With respect to the Equipment: (a) Borrowers and Guarantors shall keep the Equipment in good order, repair, running and marketable condition (ordinary wear and tear excepted); (b) the Equipment is now and shall remain personal property and Borrowers and Guarantors shall not permit any material piece, or pieces, of Equipment to be or become a part of or affixed to real property, other than real property owned by a Borrower or Guarantor which has been mortgaged to Administrative Agent to secure the Obligations; (c) each Borrower and Guarantor assumes all responsibility and liability arising from the use of the Equipment; (d) Borrowers and Guarantors shall use the Equipment with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with all applicable laws; (e) the Equipment is and shall be used in the business of Borrowers and Guarantors and not for personal, family, household or farming use; (f) Borrowers and Guarantors shall not remove any Equipment from the locations set forth or permitted herein, except to the extent necessary to have any Equipment repaired or maintained in the ordinary course of its business or to move Equipment directly from one location set forth or permitted herein to another such location and except for the movement of motor vehicles used by or for the benefit of such Borrower or Guarantor in the ordinary course of business; and (g) each Borrower and Guarantor assumes all responsibility and liability arising from the use of the Equipment.

#### 7.5 Power of Attorney.

Each Borrower and Guarantor hereby irrevocably designates and appoints Administrative Agent (and all persons designated by Administrative Agent) as such Borrower's and Guarantor's true and lawful attorney-in-fact, and authorizes Administrative Agent, in such Borrower's, Guarantor's or Administrative Agent's name, to: (a) at any time an Event of Default exists or has occurred and is continuing (i) demand payment on Receivables or other Collateral, (ii) enforce payment of Receivables by legal proceedings or otherwise, (iii) exercise all of such Borrower's or Guarantor's rights and remedies to collect any Receivable or other Collateral, (iv) sell or assign any Receivable upon such terms, for such amount and at such time or times as Administrative Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Receivable, (vii) prepare, file and sign such Borrower's or Guarantor's name on any proof of claim in bankruptcy or other similar document against an account debtor or other obligor in respect of any Receivables or other Collateral, (viii) notify the post office authorities to change the address for delivery of remittances from account debtors or other obligors in respect of Receivables

or other proceeds of Collateral to an address designated by Administrative Agent, and open and dispose of all mail addressed to such Borrower or Guarantor and handle and store all mail relating to the Collateral endorse such Borrower's or Guarantor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Receivable or any goods pertaining thereto or any other Collateral, including any warehouse or other receipts, or bills of lading and other negotiable or non-negotiable documents, (ix) clear Inventory the purchase of which was financed with a Letter of Credit through U.S. Customs or foreign export control authorities in such Borrower's or Guarantor's name Administrative Agent's name or the name of Administrative Agent's designee, and to sign and deliver to customs officials powers of attorney in such Borrower's or Guarantor's name for such purpose, and to complete in such Borrower's or Guarantor's or Administrative Agent's name, any order, sale or transaction, obtain the necessary documents in connection therewith and collect the proceeds thereof; and (x) do all acts and things which are necessary, in Administrative Agent's reasonable determination, to fulfill such Borrower's or Guarantor's obligations under this Agreement and the other Financing Agreements and (b) at any time after the occurrence, and during the continuance, of an Event of Default, to (i) take control in any manner of any item of payment in respect of Receivables or constituting Collateral or otherwise received in or for deposit in the Blocked Accounts or otherwise received by Administrative Agent or any Lender, (ii) have access to any lockbox or postal box into which remittances from account debtors or other obligors in respect of Receivables or other proceeds of Collateral are sent or received, (iii) endorse such Borrower's or Guarantor's name upon any items of payment in respect of Receivables or constituting Collateral or otherwise received by Administrative Agent and any Lender and deposit the same in Administrative Agent's account for application to the Obligations, and (iv) sign such Borrower's or Guarantor's name on any verification of Receivables and notices thereof to account debtors or any secondary obligors or other obligors in respect thereof. Each Borrower and Guarantor hereby releases Administrative Agent and Lenders and their respective officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of Administrative Agent's or any Lender's own gross negligence or willful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

#### 7.6 Right to Cure.

Administrative Agent may, at its option, upon reasonable notice to Company, (a) cure any default by any Borrower or Guarantor under any material agreement with a third party that affects the Collateral, its value or the ability of Administrative Agent to collect, sell or otherwise dispose of the Collateral or exercise the rights and remedies of Administrative Agent or any Lender therein or the ability of any Borrower or Guarantor to perform its obligations hereunder or under any of the other Financing Agreements, (b) pay or bond on appeal any judgment entered against any Borrower or Guarantor, (c) discharge taxes, liens, security interests or other encumbrances at any time levied on or existing with respect to the Collateral, other than Permitted Liens and (d) pay any amount, incur any expense or perform any act which, in Administrative Agent's reasonable judgment, is necessary or appropriate to preserve, protect, insure or maintain the Collateral and the rights of Collateral Agent, Administrative Agent and Lenders with respect thereto. Administrative Agent may add any amounts so expended to the Obligations and charge any Borrower's account therefor, such amounts to be repayable by Borrowers on demand. Administrative Agent and Lenders shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of any Borrower or Guarantor. Any payment made or other

action taken by Administrative Agent or any Lender under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.

**7.7 Access to Premises.**

From time to time as requested by Administrative Agent, at the cost and expense of Borrowers, (a) Administrative Agent or its designee shall have complete access to all of each Borrower's and Guarantor's premises during normal business hours and after reasonable notice to Company, or at any time and without notice to Company if an Event of Default exists or has occurred and is continuing, for the purposes of inspecting, verifying and auditing the Collateral and all of each U.S. Borrower's and Guarantor's books and records, including the Records, and (b) each U.S. Borrower and Guarantor shall promptly furnish to Administrative Agent such copies of such books and records or extracts therefrom as Administrative Agent may request, and Administrative Agent or any Lender or Administrative Agent's designee may use during normal business hours such of any U.S. Borrower's and Guarantor's personnel, equipment, supplies and premises as may be reasonably necessary for the foregoing and if an Event of Default exists or has occurred and is continuing for the collection of Receivables and realization of other Collateral. Administrative Agent, in its sole discretion, reserves the right to conduct (i) up to two (2) field exams in any twelve (12) month period at the Company's expense, but an unlimited number of field exams will be permitted at the Company's expense at any time or times as Administrative Agent may request (A) on or after the occurrence of an Event of Default or (B) after Excess Availability falls below \$10,000,000, and (ii) additional field exams at Administrative Agent's expense.

**SECTION 8. REPRESENTATIONS AND WARRANTIES**

Each Borrower and Guarantor hereby represents and warrants to Administrative Agent, Lenders, Swingline Lender and Issuing Bank the following (which shall survive the execution and delivery of this Agreement):

**8.1 Corporate Existence, Power and Authority.**

Each Borrower and Guarantor is a duly organized and in good standing (or the foreign equivalent, if any) under the laws of its jurisdiction of organization and is duly qualified as a foreign corporation and in good standing (or the foreign equivalent, if any) in all states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary, except for those jurisdictions in which the failure to so qualify would not have a Material Adverse Effect. The execution, delivery and performance of this Agreement, the other Financing Agreements and the transactions contemplated hereunder and thereunder (a) are all within each Borrower's and Guarantor's powers, (b) have been duly authorized, (c) are not in contravention of law or the terms of any Borrower's or Guarantor's organizational documentation (or foreign equivalent), (d) are not in contravention of any enforceable provision of any material indenture, agreement or undertaking to which any Borrower or Guarantor is a party or by which any Borrower or Guarantor or its property are bound and (e) will not result in the creation or imposition of, or require or give rise to any obligation to grant, any lien, security interest, charge or other encumbrance upon any property of any Borrower or Guarantor (other than Permitted Liens). This Agreement and the other Financing Agreements to which any Borrower or Guarantor is a party constitute legal, valid and binding obligations of such Borrower and Guarantor enforceable in

accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar law and by general equitable principles. The Dutch Borrower has taken all action required to comply with the Works Councils Act of the Netherlands (*Wet op de ondernemingsraden*) and obtained an unconditional advice (*advies*) from the competent works council(s).

8.2 Name; State of Organization; Chief Executive Office; Collateral Locations.

(a) The exact legal name of each Borrower and Guarantor is as set forth on the signature page of this Agreement and in the Information Certificate. No Borrower or Guarantor has, during the five years prior to the date of this Agreement, been known by or used any other corporate name, been known in any material respect by any fictitious name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any material portion of its property or assets out of the ordinary course of business, except as set forth in the Information Certificate.

(b) Each Borrower and Guarantor is an organization of the type and organized in the jurisdiction set forth in the Information Certificate. The Information Certificate accurately sets forth the organizational identification number of each Borrower and Guarantor or accurately states that such Borrower or Guarantor has none and accurately sets forth the federal employer identification number of each Borrower and Guarantor.

(c) The chief executive office and mailing address of each Borrower and Guarantor and each U.S. Borrower's and Guarantor's Records concerning Accounts are located only at the addresses identified as such in Schedule 8.2 to the Information Certificate and its only other places of business and the only other locations of Collateral, if any, are the addresses set forth in Schedule 8.2 to the Information Certificate, subject to the rights of any Borrower or Guarantor to establish new locations in accordance with Section 9.2 below. The Information Certificate correctly identifies any of such locations which are not owned by a Borrower or Guarantor and, to each Borrower's and Guarantor's knowledge, sets forth the owners and/or operators thereof.

8.3 Financial Statements; No Material Adverse Change.

All financial statements relating to any Borrower or Guarantor which have been or may hereafter be delivered by any Borrower or Guarantor to Administrative Agent and Lenders have been prepared in accordance with GAAP (except as to any interim financial statements, to the extent such statements are subject to normal year-end adjustments and do not include any notes) and fairly present in all material respects the financial condition and the results of operation of such Borrower and Guarantor as at the dates and for the periods set forth therein. Except (a) as disclosed in any interim financial statements furnished by Borrowers and Guarantors to Administrative Agent prior to the date of this Agreement and (b) the commencement of the Chapter 11 Cases, there has been no act, condition or event which has had or is reasonably likely to have a Material Adverse Effect since the date of the most recent audited financial statements of any Borrower or Guarantor furnished by any Borrower or Guarantor to Administrative Agent prior to the date of this Agreement. The projections for the fiscal years ending 2011 through 2014 that have been delivered to Administrative Agent or any projections hereafter delivered to Administrative Agent have been prepared in light of the past operations of the businesses of Borrowers and Guarantors and are based upon estimates and

assumptions stated therein, all of which Borrowers and Guarantors have determined to be reasonable and fair in light of the then current conditions and current facts and reflect the good faith and reasonable estimates of Borrowers and Guarantors of the future financial performance of Company and its Subsidiaries and of the other information projected therein for the periods set forth therein.

#### 8.4 Priority of Liens; Title to Properties.

The security interests and liens granted to Collateral Agent or Administrative Agent under this Agreement and the other Financing Agreements constitute valid and perfected (a) first priority liens and security interests in and upon the Priority Collateral and (b) second priority liens and security interest in and upon the CL Priority Collateral (other than Real Property, in which Collateral Agent does not have a security interest), in each case, subject only to the liens indicated on Schedule 8.4 to the Information Certificate and the other liens permitted under Section 9.8 hereof. Each Borrower and Guarantor has good, valid and merchantable title to all of its other properties and assets subject to no liens, mortgages, pledges, security interests, encumbrances or charges of any kind, except those granted to Collateral Agent and such others as are specifically listed on Schedule 8.4 to the Information Certificate or permitted under Section 9.8 hereof.

#### 8.5 Tax Returns.

Each Borrower and Guarantor has filed, or caused to be filed, all tax returns (federal, state, local and foreign) required to be filed and paid (a) all amounts of taxes shown thereon to be due (including interest and penalties) and (b) all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes (i) that are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP. Borrower nor any Guarantor is aware as of the Closing Date of any proposed tax assessments against any of them which, individually or in the aggregate, could reasonably be expected to have Material Adverse Effect.

#### 8.6 Litigation.

(a) There is no investigation by any Governmental Authority pending, or to the best of any Borrower's or Guarantor's knowledge threatened, against or affecting any Borrower or Guarantor, its or their assets or business and (b) there is no action, suit, proceeding or claim by any Person pending, or to the best of any Borrower's or Guarantor's knowledge threatened, against any Borrower or Guarantor or its or their assets or goodwill, or against or affecting any transactions contemplated by this Agreement, in each case, which if adversely determined against such Borrower or Guarantor has or could reasonably be expected to have a Material Adverse Effect. The only such litigation pending by or against any Borrower or Guarantor or any of their Subsidiaries is identified on Schedule 8.6 to the Information Certificate (as may be updated by Borrowers concurrently with the delivery, in accordance herewith, of any Borrowing Base Certificate or otherwise in writing to Administrative Agent).

#### 8.7 Compliance with Other Agreements and Applicable Laws.

(a) Borrowers and Guarantors are not in default in any respect under, or in violation in any respect of the terms of, any Material Contract. Borrowers and Guarantors are in

compliance with the requirements of all material applicable laws, rules, regulations and orders of any Governmental Authority relating to their respective businesses, including, without limitation, those set forth in or promulgated pursuant to the Occupational Safety and Health Act of 1970, as amended, the Fair Labor Standards Act of 1938, as amended, ERISA, the Code, as amended, and the rules and regulations thereunder, and all Environmental Laws, other than as set forth on Schedule 8.8 to the Information Certificate.

(b) Borrowers and Guarantors have obtained all permits, licenses, approvals, consents, certificates, orders or authorizations of any Governmental Authority required for the lawful conduct of its business, the absence of which could reasonably be expected to cause a Material Adverse Effect (the "Permits"); provided, that, the Company is aware of certain environmental permitting issues disclosed on Schedule 8.8 to the Information Certificate, none of which the Company believes could reasonably be expected to cause a Material Adverse Effect. All of such permits are valid and subsisting and in full force and effect. There are no actions, claims or proceedings pending or to the best of any Borrower's or Guarantor's knowledge, threatened that seek the revocation, cancellation, suspension or modification of any of the Permits.

#### 8.8 Environmental Compliance.

(a) Except as set forth on Schedule 8.8 to the Information Certificate, Borrowers, Guarantors and any Subsidiary of any Borrower or Guarantor have not generated, used, stored, treated, transported, manufactured, handled, produced, released or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which violates in any material respect any applicable Environmental Law or Permit, and the operations of Borrowers, Guarantors and any Subsidiary of any Borrower or Guarantor complies in all material respects with all Environmental Laws and all Permits.

(b) Except as set forth on Schedule 8.8 to the Information Certificate (as may be updated by Borrowers concurrently with the delivery, in accordance herewith, of any Borrowing Base Certificate or otherwise in writing to Administrative Agent), there has been no investigation by any Governmental Authority to the best of any Borrower's or Guarantor's knowledge or any proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other person nor is any pending or to the best of any Borrower's or Guarantor's knowledge threatened, with respect to any non compliance with or violation of the requirements of any Environmental Law by any Borrower or Guarantor and any Subsidiary of any Borrower or Guarantor or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which, in each case, adversely affects or could reasonably be expected to adversely affect in any material respect any Borrower or Guarantor or its or their business, operations or assets or any properties at which such Borrower or Guarantor has transported, stored or disposed of any Hazardous Materials. All Hazardous Materials used and/or stored at locations owned and/or leased by the Borrowers and Guarantors are used and/or stored (i) in the ordinary course of their business and (ii) by the Borrowers and Guarantors in compliance with all applicable Environmental Laws.

(c) Except as set forth on Schedule 8.8 to the Information Certificate, Borrowers, Guarantors and their Subsidiaries have no material liability (contingent or otherwise) in connection

with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials.

(d) Borrowers, Guarantors and their Subsidiaries have all Permits required to be obtained or filed in connection with the operations of Borrowers and Guarantors under any Environmental Law and all of such licenses, certificates, approvals or similar authorizations and other Permits the absence of which could reasonably be expected to cause a Material Adverse Effect are valid and in full force and effect; provided, that, the Company is aware of certain environmental permitting issues disclosed on Schedule 8.8 to the Information Certificate, none of which the Company believes could reasonably be expected to cause a Material Adverse Effect.

#### 8.9 Employee Benefits.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or State law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service and to the best of any Borrower's or Guarantor's knowledge, nothing has occurred which could reasonably be expected to cause the loss of such qualification. Each Borrower and its ERISA Affiliates have made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending, or to the best of any Borrower's or Guarantor's knowledge, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan (excluding routine audits). To the best of any Borrower's or Guarantor's knowledge, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which could reasonably be expected to have a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) based on the latest valuation of each Pension Plan and on the actuarial methods and assumptions employed for such valuation (determined in accordance with the assumptions used for funding such Pension Plan pursuant to Section 412 of the Code), the aggregate current value of accumulated benefit liabilities of such Pension Plan under Section 4001(a)(16) of ERISA does not exceed the aggregate current value of the assets of such Pension Plan by an amount which could reasonably be expected to have a Material Adverse Effect; (iii) each Borrower and Guarantor, and their ERISA Affiliates, have not incurred and do not reasonably expect to incur, any liability to the PBGC under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) each Borrower and Guarantor, and their ERISA Affiliates, have not incurred and do not reasonably expect to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) each Borrower and Guarantor, and their ERISA Affiliates, have not engaged in a transaction that would be subject to 4212(c) of ERISA.

#### 8.10 Bank Accounts.

All of the deposit accounts, investment accounts or other accounts in the name of or used by any Borrower or Guarantor maintained at any bank or other financial institution are set forth on Schedule 8.10 to the Information Certificate, subject to the right of each Borrower and Guarantor to establish new accounts in accordance with Section 5.2.

#### 8.11 Intellectual Property.

Each Borrower and Guarantor owns or licenses or otherwise has the right to use all Intellectual Property necessary for the operation of its business as presently conducted or proposed to be conducted. As of the date hereof, Borrowers and Guarantors do not have any Intellectual Property registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those described in Schedule 8.11 to the Information Certificate and has not granted any licenses with respect thereto other than as set forth in Schedule 8.11 to the Information Certificate. No event has occurred which permits or would permit after notice or passage of time or both, the revocation, suspension or termination of the right to use all Intellectual Property necessary for the operation of its business as presently conducted or proposed to be conducted. To the best of any Borrower's and Guarantor's knowledge, no slogan or other advertising device, product, process, method, substance or other Intellectual Property or goods bearing or using any material Intellectual Property presently contemplated to be sold by or employed by any Borrower or Guarantor infringes any patent, trademark, servicemark, tradename, copyright, license or other Intellectual Property owned by any other Person presently and no claim or litigation is pending or threatened against or affecting any Borrower or Guarantor contesting its right to sell or use any such Intellectual Property. Schedule 8.11 to the Information Certificate sets forth all of the material agreements or other arrangements of each Borrower and Guarantor pursuant to which such Borrower or Guarantor has a license or other right to use any trademarks, logos, designs, representations or other Intellectual Property owned by another person as in effect on the date hereof and the dates of the expiration of such agreements or other arrangements of such Borrower or Guarantor as in effect on the date hereof (collectively, together with such agreements or other arrangements as may be entered into by any Borrower or Guarantor after the date hereof, collectively, the "License Agreements" and individually, a "License Agreement"). No trademark, servicemark, copyright or other Intellectual Property at any time used by any Borrower or Guarantor which is owned by another person, or owned by such Borrower or Guarantor subject to any security interest, lien, collateral assignment, pledge or other encumbrance in favor of any person other than Collateral Agent and/or "Collateral Agent" (as defined in the CL Credit Agreement), is affixed to any Eligible Inventory, except (a) to the extent permitted under the term of the license agreements listed on Schedule 8.11 to the Information Certificate and (b) to the extent the sale of Inventory to which such Intellectual Property is affixed is permitted to be sold by such Borrower or Guarantor under applicable law (including the United States Copyright Act of 1976).

#### 8.12 Subsidiaries; Affiliates; Capitalization; Solvency.

(a) Each Borrower and Guarantor does not have any direct or indirect Subsidiaries or Affiliates (excluding Affiliates of any shareholders of the Company) and is not engaged in any joint venture or partnership except as set forth in Schedule 8.12 to the Information Certificate (as may be updated by Borrowers concurrently with the delivery, in accordance herewith,

of any Borrowing Base Certificate or otherwise in writing to Administrative Agent, provided, that, any such Subsidiary shall be formed only to the extent permitted under this Agreement).

(b) Each Borrower and Guarantor is the record and beneficial owner of all of the issued and outstanding shares of Capital Stock of each of the Subsidiaries listed on Schedule 8.12 to the Information Certificate as being owned by such Borrower or Guarantor and there are no proxies, irrevocable or otherwise, with respect to such shares and no equity securities of any of the Subsidiaries are or may become required to be issued by reason of any options, warrants, rights to subscribe to, calls or commitments of any kind or nature and there are no contracts, commitments, understandings or arrangements by which any Subsidiary is or may become bound to issue additional shares of it Capital Stock or securities convertible into or exchangeable for such shares.

(c) The issued and outstanding shares of Capital Stock of each Borrower and Guarantor are directly and beneficially owned and held by the persons indicated in the Information Certificate, and in each case all of such shares have been duly authorized and are fully paid and non-assessable, free and clear of all claims, liens, pledges and encumbrances of any kind, except as disclosed in writing to Administrative Agent prior to the date hereof.

#### 8.13 Labor Disputes.

(a) Set forth on Schedule 8.13 to the Information Certificate is a list (including dates of termination) of all collective bargaining or similar agreements between or applicable to each Borrower and Guarantor and any union, labor organization or other bargaining agent in respect of the employees of any Borrower or Guarantor on the date hereof.

(b) There is (i) no significant unfair labor practice complaint pending against any Borrower or Guarantor or, to the best of any Borrower's or Guarantor's knowledge, threatened against it, before the National Labor Relations Board, and no significant grievance or significant arbitration proceeding arising out of or under any collective bargaining agreement is pending on the date hereof against any Borrower or Guarantor or, to best of any Borrower's or Guarantor's knowledge, threatened against it, and (ii) no significant strike, labor dispute, slowdown or stoppage is pending against any Borrower or Guarantor or, to the best of any Borrower's or Guarantor's knowledge, threatened against any Borrower or Guarantor.

#### 8.14 Restrictions on Subsidiaries.

Except for restrictions contained in this Agreement or any other agreement with respect to Indebtedness of any Borrower or Guarantor permitted hereunder as in effect on the date hereof, there are no contractual or consensual restrictions on any Borrower or Guarantor or any of its Subsidiaries which prohibit or otherwise restrict (a) the transfer of cash or other assets (i) between any Borrower or Guarantor and any of its or their Subsidiaries or (ii) between any Subsidiaries of any Borrower or Guarantor or (b) the ability of any Borrower or Guarantor or any of its or their Subsidiaries to incur Indebtedness or grant security interests to Collateral Agent or any Lender in the Collateral.

#### 8.15 Material Contracts.

Schedule 8.15 to the Information Certificate sets forth all Material Contracts to which any Borrower or Guarantor is a party or is bound as of the date hereof. Borrowers and Guarantors have

delivered true, correct and complete copies of such Material Contracts to Administrative Agent on or before the date hereof. Other than with respect to the Senior Subordinated Note Indenture, Borrowers and Guarantors are not in breach or in default (other than a breach or default caused solely as the result of the commencement of the Chapter 11 Cases and which is stayed) in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

8.16 Payable Practices.

Each Borrower and Guarantor have not made any material change in the historical accounts payable practices from those in effect immediately prior to the date hereof.

8.17 Accuracy and Completeness of Information.

All information furnished by or on behalf of any Borrower or Guarantor in writing to Administrative Agent or any Lender in connection with this Agreement or any of the other Financing Agreements or any transaction contemplated hereby or thereby, including all information on the Information Certificate is true and correct in all material respects on the date as of which such information is dated or certified and does not omit any material fact necessary in order to make such information not misleading. No event or circumstance has occurred which has had or could reasonably be expected to have a Material Adverse Affect, which has not been fully and accurately disclosed to Administrative Agent in writing prior to the date hereof.

8.18 Survival of Warranties; Cumulative.

All representations and warranties contained in this Agreement or any of the other Financing Agreements shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to Administrative Agent and Lenders on the date of each additional borrowing or other credit accommodation hereunder as though made on and as of such date, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate on and as of such earlier date) and shall be conclusively presumed to have been relied on by Administrative Agent and Lenders regardless of any investigation made or information possessed by Administrative Agent or any Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which any Borrower or Guarantor shall now or hereafter give, or cause to be given, to Administrative Agent or any Lender.

8.19 Investment Company Act.

No Borrower or Guarantor is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. No Borrower or Guarantor is a subject to regulation under the Federal Power Act, the Interstate Commerce Act, or any federal or state statute or regulation limiting its ability to incur the Obligations.

8.20 Indebtedness.

Except as otherwise permitted under Section 9.9, Borrowers, Guarantors and their Subsidiaries have no Indebtedness.

8.21 Investments.

All investments of each of Borrowers, Guarantors and its Subsidiaries are Permitted Investments.

8.22 No Burdensome Restrictions.

None of Borrowers, Guarantors or their Subsidiaries is a party to any agreement or instrument or subject to any other obligation or any charter or corporate restriction or any provision of any applicable law, rule or regulation which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

8.23 Brokers' Fees.

None of Borrowers, Guarantors or their Subsidiaries has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with any of the transactions contemplated under the Financing Agreements other than the closing and other fees payable pursuant to this Agreement and as set forth in the Fee Letter and to any fees payable to Jeffries & Co. pursuant to and in accordance with the Fee Letter, dated April 23, 2010, between Jeffries & Co and the Company.

8.24 Security Documents.

This Agreement and the Security Documents create valid security interests in, and liens on, the Collateral purported to be covered thereby. Except as set forth herein and in the Security Documents, such security interests and liens are currently (or will be, upon (a) the filing of appropriate financing statements with the Secretary of State of the state of incorporation or organization for each Borrower and Guarantor, the filing of appropriate assignments or notices with the United States Patent and Trademark Office and the United States Copyright Office, in each case in favor of Collateral Agent, on behalf of itself, Administrative Agent and the Lenders, and (b) Collateral Agent (or Control Agent) obtaining Control (as defined in the Security Agreement) or possession over those items of Collateral in which a security interest is perfected through Control or possession) perfected security interests and liens, prior to all other liens other than Permitted Liens.

8.25 Classification of Senior Indebtedness.

The Obligations constitute "Senior Debt", "Senior Indebtedness", "Designated Senior Indebtedness" or any similar designation under and as defined in any agreement governing any Subordinated Debt and the subordination provisions set forth in each such agreement are legally valid and enforceable against the parties thereto.

8.26 Anti-Terrorism Laws.

No Borrower, Guarantor or any of their Subsidiaries is an “enemy” or an “ally of the enemy” within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 et seq.), as amended. No Borrower, Guarantor or any of their Subsidiaries is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. No Borrower, Guarantor or any of their Subsidiaries (i) is a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

8.27 Compliance with OFAC Rules and Regulations.

None of Borrowers, Guarantors or their Subsidiaries or their respective officers, directors or Affiliates (a) is a Sanctioned Person, (b) has more than 15% of its assets in Sanctioned Countries, or (c) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries. No part of the proceeds of any Extension of Credit hereunder will be used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country.

8.28 Compliance with FCPA.

Each of Borrowers and Guarantors and their Subsidiaries is in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., and any foreign counterpart thereto. None of Borrowers, Guarantors or their Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Borrower, Guarantor or its Subsidiary or to any other Person, in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq.

8.29 Commercial Activity; Absence of Immunity.

The Dutch Borrower is subject to civil and commercial law with respect to its obligations under this Agreement and each of the other Financing Agreements to which it is intended to be a party. The execution, delivery and performance by the Dutch Borrower of this Agreement and each of such other Financing Agreements constitute private and commercial acts rather than public or governmental acts. Neither the Dutch Borrower, nor any of its properties or revenues, is entitled to any right of immunity in any jurisdiction from suit, court jurisdiction, judgment, attachment (whether before or after judgment), set off or execution of a judgment or from any other legal process or remedy relating to the obligations of the Dutch Borrower under this Agreement or any of such other Financing Agreement.

8.30 Assets Owned by Certain Subsidiaries.

The only material asset held by NP Cogen on the Closing Date is a natural gas reciprocating engine and generator with a fair market value of less than \$2,000,000. The only material asset owned by JD Corp. on the Closing Date is the real property located at 20 Jackson Drive, Cranford, New Jersey 07016 (the "Jackson Drive Real Property"), which Borrowers believe to have a fair market value of less than \$3,000,000 on the date hereof, which is encumbered by a first mortgage securing approximately \$2,160,000 of loans (outstanding, as of November 30, 2009) from Liberty Commercial Mortgage Corporation to JD Corp. Borrowers represent and warrant that such mortgage encumbering the Jackson Drive Real Property prohibits JD Corp. from further encumbering the Jackson Drive Real Property with an additional mortgage.

8.31 Budget.

(a) Borrowers have prepared and delivered to Administrative Agent and Lenders an updated thirteen (13) week Budget covering the information set forth in this subsection (a) (including any updates to such Budget as set forth in Section 8.31(b) below), which has been thoroughly reviewed by Borrowers, its management and the Financial Advisor. The Budget will set forth, among other things: (i) projected weekly operating cash receipts in the United States for each week commencing with the week ending as of June 12, 2010, (ii) projected weekly disbursements in the United States for each week commencing with the week ending as of June 12, 2010, (iii) projected net weekly cash flow in the United States for each week commencing with the week ending as of June 12, 2010, (iv) projected weekly net sales in the United States for each week commencing with the week ending as of June 12, 2010, (v) projected Eligible Accounts availability for each week commencing with the week ending as of June 12, 2010, (vi) projected Eligible Inventory availability for each week commencing with the week ending as of June 12, 2010, (vi) projected weekly Value of Eligible Inventory commencing with the week ending as of June 12, 2010, (vii) projected aggregate principal amount of outstanding Loans, Letters of Credit and other Obligations (including Bank Product Debt) for each week commencing with the week ending as of June 12, 2010, (viii) projected outstanding principal amount of all intercompany loans from the Company to Dutch Borrower for each week commencing with the week ending as of June 12, 2010 and (ix) projected Excess Availability for each week commencing with the week ending as of June 12, 2010 (collectively, the "Projected Information").

(b) Borrowers hereby covenant and agree to deliver, in form and substance satisfactory to Administrative Agent, an updated thirteen (13) week Budget to Administrative Agent on the Tuesday of each week which sets forth, among other things, the Projected Information for the week immediately following the last week reflected in the immediately prior Budget.

(c) [Reserved].

(d) Borrowers shall deliver to Administrative Agent, in form and substance reasonably satisfactory to Administrative Agent, a weekly Budget variance report/reconciliation on Tuesday of each week for the prior week and the prior trailing four (4) week period (i) showing actual results for the following items: (A) net cash flow, (B) Excess Availability and (C) outstanding Loans, Letters of Credit and other Obligations (including Bank Product Debt), noting therein variances from values set forth for such periods in the Budget and (ii) an explanation for all material

variances, certified by the chief financial officer of the Company. Such report/reconciliation shall also note any variances with values set forth in the Budget as of the day of such report/reconciliation.

(e) Notwithstanding any approval by Administrative Agent or any Lender of the initial Budget or any subsequent or amended Budget(s), Administrative Agent and Lenders will not, and shall not be required to, provide any Loans or Letters of Credit to Borrowers pursuant to the Budget, but shall only provide Loans and Letters of Credit in accordance with the terms and conditions set forth in this Agreement, the other Financing Agreements and the Financing Order. Each Budget shall have been thoroughly reviewed by Borrowers, its management and the Financial Advisor and sets forth a good faith estimate of each of the items set forth therein for the period covered thereby. Administrative Agent, Collateral Agent and Lenders are relying upon the Borrowers' delivery of the Budgets in accordance with this Section 8.31 in determining to enter into the post-petition financing arrangements provided for herein.

#### 8.32 Engagement of Financial Advisor.

(a) The Company, as of the date hereof, has retained (and continues to retain) the financial advisor engaged by the Company just prior to the effectiveness of this Agreement (the "Financial Advisor") with authority and duties consistent with those previously performed by the Financial Advisor at all times during which the Obligations remain outstanding, at the sole cost and expense of Borrowers, pursuant to a retention agreement reasonably acceptable to Agent (a true, correct and complete copy of which has been delivered to Agent), and subject to approval of the Bankruptcy Court. The Financial Advisor shall, among other things, assist Borrowers in the preparation of and compliance with, on an ongoing basis, the Budget and compliance with the terms and conditions set forth in the Financing Agreements. The Financial Advisor shall report directly to the Chief Executive Officer and the Board of Directors of the Company.

(b) Borrowers hereby irrevocably authorize and direct the Financial Advisor to consult with Administrative Agent and to share with Administrative Agent, Collateral Agent and Lenders all budgets, records, projections, financial information, reports and other information prepared by or in the possession of the Financial Advisor relating to the Collateral or the financial condition or operations of the businesses of Borrowers; provided, that, in no event shall the foregoing require the Financial Advisor to disclose the contents of any privileged discussions with the Borrowers and/or Borrowers' legal counsel. Borrowers agree to provide the Financial Advisor with complete access to all of the books and records of Borrowers and Guarantors, all of premises of Borrowers and Guarantors and to all management and employees of Borrowers and Guarantors as and when deemed necessary by the Financial Advisor.

(c) Borrowers shall not amend, modify or terminate the retention agreement with the Financial Advisor without the prior written consent of Administrative Agent. Borrowers and Guarantors acknowledge and agree that Borrowers shall cause the Financial Advisor to keep Administrative Agent, Collateral Agent and Lenders (i) fully informed of the progress of the business and operations of Borrowers and Guarantors and respond fully to any inquiries of Administrative Agent, Collateral Agent and Lenders regarding the business and operations of Borrowers and Guarantors and (ii) communicate and fully cooperate with Administrative Agent, Collateral Agent and Lenders and share all information with Administrative Agent, Collateral Agent and Lenders regarding Borrowers and Guarantors, and the business and operations of Borrowers and

Guarantors; provided, that, in no event shall the foregoing require the Financial Advisor to disclose the contents of any privileged discussions with the Borrowers and/or Borrowers' legal counsel.

(d) If the Financial Advisor resigns, Borrowers shall immediately notify Administrative Agent in writing and provide Administrative Agent with a copy of any notice of resignation immediately upon the sending of such notice by such Financial Advisor. Any replacement or successor Financial Advisor shall be acceptable to Administrative Agent and shall be retained pursuant to a new retention agreement on terms and conditions acceptable to Administrative Agent within ten (10) Business Days immediately following the notice of resignation of the resigning Financial Advisor. Failure to comply with the terms and conditions of this Section 8.32 shall constitute an Event of Default.

#### 8.33 Retention of Investment Banker.

(a) The Company, as of the date hereof, has retained (and continues to retain) the investment banker engaged by the Company just prior to the effectiveness of this Agreement (the "Investment Banker") with authority and duties consistent with those previously performed by the Investment Banker at all times during which the Obligations remain outstanding, at the sole cost and expense of Borrowers, pursuant to a retention agreement reasonably acceptable to Agent (a true, correct and complete copy of which has been delivered to Agent), and subject to approval of the Bankruptcy Court.

(b) Borrowers shall assist and cooperate with Investment Banker in connection with the due diligence of Investment Banker and other work contemplated by the retention agreement. Borrowers shall cause the Investment Banker to communicate and fully cooperate with Administrative Agent, Collateral Agent and Lenders and share all information with respect to Borrowers and Guarantors; provided, that, in no event shall the foregoing require the Investment Banker to disclose the contents of any privileged discussions with the Borrowers and/or Borrowers' legal counsel.

#### 8.34 Financing Order.

The Financing Order has been duly entered, is valid, subsisting and continuing and except as otherwise expressly consented to by Administrative Agent, has not been vacated, modified, reversed on appeal, or vacated or modified by any Bankruptcy Judge or District Court Judge and is not subject to any pending stay and on and after the date any other Financing Order is entered by the Bankruptcy Court, such other Financing Order shall have been duly entered, valid, subsisting and continuing and shall not have been vacated, modified, reversed on appeal, or vacated or modified by any Bankruptcy Judge or District Court Judge and shall not be subject to any pending stay.

#### 8.35 Super-Priority Administrative Expense.

All Obligations incurred during the pendency of the Chapter 11 Cases or thereafter shall, in addition to being secured by the Collateral, constitute claims entitled to super-priority under Section 364(c)(1) of the Bankruptcy Code, as more fully set forth in the Financing Order, with the priority of such super-priority subject to the Carve-Out to the extent set forth in the Financing Order.

## **SECTION 9. AFFIRMATIVE AND NEGATIVE COVENANTS**

### **9.1 Maintenance of Existence.**

(a) Each Borrower and Guarantor shall at all times preserve, renew and keep in full force and effect its corporate existence and rights and franchises with respect thereto and maintain in full force and effect all licenses, trademarks, trade names, approvals, authorizations, leases, contracts and Permits the absence of which could reasonably be expected to have a Material Adverse Effect, except as to any Guarantor as permitted in Section 9.7 hereto. Notwithstanding the foregoing, the Company shall not be required to have obtained the Amended Environmental Permit for so long as it is complying with the requirements of the Settlement Agreement.

(b) No Borrower or Guarantor shall change its name unless each of the following conditions is satisfied: (i) Administrative Agent shall have received not less than thirty (30) days prior written notice from Company of such proposed change in its corporate name, which notice shall accurately set forth the new name; and (ii) Administrative Agent shall have received a copy of the amendment to the Certificate of Incorporation (or foreign equivalent) of such Borrower or Guarantor providing for the name change certified by the Secretary of State of the jurisdiction of incorporation or organization of such Borrower or Guarantor as soon as it is available.

(c) No Borrower or Guarantor shall change its chief executive office or its mailing address or organizational identification number (or if it does not have one, shall not acquire one) unless Administrative Agent shall have received not less than thirty (30) days' prior written notice from Company of such proposed change, which notice shall set forth such information with respect thereto as Administrative Agent may require and Administrative Agent shall have received such agreements as Administrative Agent may reasonably require in connection therewith. No Borrower or Guarantor shall change its type of organization, jurisdiction of organization or other legal structure.

### **9.2 New Collateral Locations.**

Each Borrower and Guarantor may only open any new location within the continental United States provided such Borrower or Guarantor (a) gives Administrative Agent thirty (30) days prior written notice of the intended opening of any such new location at which Inventory will be located having a value of more than \$100,000 and (b) executes and delivers, or causes to be executed and delivered, to Administrative Agent such agreements, documents, and instruments as Administrative Agent may deem reasonably necessary or desirable to protect its interests in the Collateral at such location.

### **9.3 Compliance with Laws, Regulations, Etc.**

(a) Each Borrower and Guarantor shall, and shall cause any Subsidiary to, at all times, comply in all material respects with all laws, rules, regulations, licenses, approvals, orders and other Permits applicable to it and duly observe all requirements of any foreign, Federal, State or local Governmental Authority the violation of which could reasonably be expected to have a Material Adverse Effect; provided, that, the Company may be in noncompliance with certain environmental permitting issues as described on Schedule 8.8 to the Information Certificate so long as it is in compliance with the terms of the Settlement Agreement.

(b) Borrowers and Guarantors shall give written notice to Administrative Agent immediately upon any Borrower's or Guarantor's receipt of any notice of, or any Borrower's or Guarantor's otherwise obtaining knowledge of, (i) the occurrence of any event involving the material release, spill or discharge, threatened or actual, of any Hazardous Material or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice with respect to: (A) any non-compliance with or violation of any Environmental Law by any Borrower or Guarantor or (B) the material release, spill or discharge, threatened or actual, of any Hazardous Material other than in the ordinary course of business and other than as permitted under any applicable Environmental Law. Copies of all environmental surveys, audits, assessments, feasibility studies and results of remedial investigations shall be promptly furnished, or caused to be furnished, by such Borrower or Guarantor to Administrative Agent. Each Borrower and Guarantor shall take prompt action to respond to any material non-compliance with any of the Environmental Laws and shall regularly report to Administrative Agent on such response.

(c) Without limiting the generality of the foregoing, whenever Administrative Agent reasonably determines that there is non-compliance, or any condition which requires any action by or on behalf of any Borrower or Guarantor in order to avoid any non compliance, with any Environmental Law, Borrowers shall, at Administrative Agent's request and Borrowers' expense: (i) cause an independent environmental professional reasonably acceptable to Administrative Agent to conduct such tests of the site where non-compliance or alleged non compliance with such Environmental Laws has occurred as to such non-compliance and prepare and deliver to Administrative Agent a report as to such non-compliance setting forth the results of such tests, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof and (ii) provide to Administrative Agent a supplemental report of such engineer whenever the scope of such non-compliance, or such Borrower's or Guarantor's response thereto or the estimated costs thereof, shall change in any material respect.

(d) Each Borrower and Guarantor shall indemnify and hold harmless Administrative Agent and Lenders and their respective directors, officers, employees, agents, invitees, representatives, successors and assigns, from and against any and all losses, claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and expenses) directly or indirectly arising out of or attributable to the use, generation, manufacture, storage, release, threatened release, spill, discharge, disposal or presence of a Hazardous Material, including the costs of any required or necessary repair, cleanup or other remedial work with respect to any property of any Borrower or Guarantor and the preparation and implementation of any closure, remedial or other required plans. All representations, warranties, covenants and indemnifications in this Section 9.3 shall survive the payment of the Obligations and the termination of this Agreement.

#### 9.4 Payment of Taxes and Claims.

Each Borrower and Guarantor shall, and shall cause any Subsidiary to, duly pay and discharge all taxes, assessments, contributions and governmental charges upon or against it or its properties or assets, except for taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Borrower, Guarantor or Subsidiary, as the case may be, and with respect to which adequate reserves have been set aside on its books to the extent required by GAAP.

9.5 Insurance.

Each Borrower and Guarantor shall, and shall cause any Subsidiary to, at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by corporations of established reputation engaged in the same or similar businesses and similarly situated. Said policies of insurance shall be reasonably satisfactory to Administrative Agent as to form, amount and insurer (Administrative Agent hereby acknowledges that the insurance of the Company and its Affiliates as of the Closing Date meets this standard). Borrowers and Guarantors shall furnish certificates, policies or endorsements to Administrative Agent or the applicable Control Agent as Administrative Agent shall reasonably require as proof of such insurance, and, if any Borrower or Guarantor fails to do so after reasonable notice, Administrative Agent is authorized, but not required, to obtain such insurance at the expense of Borrowers. All policies shall provide for at least thirty (30) days prior written notice to the applicable Control Agent of any cancellation or reduction of coverage and that the applicable Control Agent or Administrative Agent may act as attorney for each Borrower and Guarantor in obtaining, and at any time an Event of Default exists or has occurred and is continuing, adjusting, settling, amending and canceling such insurance. Borrowers and Guarantors shall cause the applicable Control Agent to be named as a loss payee and an additional insured (but without any liability for any premiums) under such insurance policies and Borrowers and Guarantors shall obtain non-contributory lender's loss payable endorsements to all insurance policies in form and substance reasonably satisfactory to Administrative Agent. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to the applicable Control Agent as its interests may appear and further specify that the applicable Control Agent shall be paid regardless of any act or omission by any Borrower, Guarantor or any of its or their officers, directors or Affiliates. Without limiting any other rights of Control Agent, Administrative Agent or Lenders, any insurance proceeds related to Priority Collateral received by Administrative Agent at any time may be applied to payment of the Obligations, whether or not then due, in any order and in such manner as Administrative Agent may determine; provided, however, that, insurance proceeds related to Inventory received by Administrative Agent shall be held in a non-interest bearing deposit account in Administrative Agent's name for sixty (60) days during which time the applicable Borrower or Guarantor shall have the right to reinvest all or a portion of such proceeds in replacement Inventory. Upon application of such proceeds to the Revolving Loans, Revolving Loans may be available subject and pursuant to the terms hereof to be used for the costs of repair or replacement of the Collateral lost or damages resulting in the payment of such insurance proceeds. Without limiting any other rights of Control Agent, Administrative Agent or Lenders, any insurance proceeds related to CL Priority Collateral received by CL Administrative Agent at any time may be applied to payment of the CL Obligations in accordance with the terms of the CL Credit Agreement. Notwithstanding anything to the contrary contained in the foregoing (but without limiting any of the provisions set forth in the immediately preceding sentence), any proceeds of insurance and any awards for condemnation of any Collateral shall be paid to Control Agent for distribution in accordance with the terms of the Intercreditor Agreement.

9.6 Financial Statements and Other Information.

(a) Each Borrower and Guarantor shall, and shall cause any Subsidiary to, keep proper books and records in which true and complete entries shall be made of all dealings or

transactions of or in relation to the Collateral and the business of such Borrower, Guarantor and its Subsidiaries. Borrowers and Guarantors shall promptly furnish to Administrative Agent and Lenders all such financial and other information as Administrative Agent shall reasonably request relating to the Collateral and the assets, business and operations of Borrowers and Guarantors, and Borrower shall notify the auditors and accountants of Borrowers and Guarantors that Administrative Agent is authorized to obtain such information directly from them. Without limiting the foregoing, Borrowers shall furnish or cause to be furnished to Administrative Agent, the following:

(i) Within forty-five (45) days after the end of each fiscal quarter, quarterly unaudited consolidated financial statements and unaudited consolidating financial statements (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), all in reasonable detail, fairly presenting in all material respects the financial position and the results of the operations of Company and its consolidated Subsidiaries as of the end of and through such fiscal quarter, together with a summary comparison as of the end of and for the previous fiscal quarter and budgeted amounts, in form and substance reasonably acceptable to Administrative Agent, certified to be correct by the chief financial officer of Company, subject to normal quarter and year-end adjustments and accompanied by a compliance certificate substantially in the form of Exhibit C hereto (a "Compliance Certificate"), along with a schedule in form reasonably satisfactory to Administrative Agent of the calculations used in determining, as of the end of such quarter, whether Borrowers and Guarantors were in compliance with the covenants set forth in Sections 9.17, 9.18 and 9.19 of this Agreement for such quarter.

(ii) As soon as available and in any event within thirty (30) days after the end of each fiscal month (other than at the end of a fiscal quarter, in which case 45 days after the end thereof, or a fiscal year, in which case 90 days after the end thereof), monthly unaudited consolidated financial statements and unaudited consolidating financial statements (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), all in reasonable detail, fairly presenting in all material respects the financial position and the results of the operations of Company and its consolidated Subsidiaries as of the end of and through such fiscal month, together with a summary comparison as of the end of and for the previous fiscal quarter and budgeted amounts, in form and substance reasonably acceptable to Administrative Agent, certified to be correct by the chief financial officer of Company, subject to normal quarter and year-end adjustments and accompanied by a Compliance Certificate, along with a schedule in form reasonably satisfactory to Administrative Agent of the calculations used in determining, as of the end of such month, whether Borrowers and Guarantors were in compliance with the covenants set forth in Sections 9.17, 9.18 and 9.19 of this Agreement for such month.

(iii) Within ninety (90) days after the end of each fiscal year, audited consolidated financial statements and unaudited consolidating financial statements of Company and its consolidated Subsidiaries (including in each case balance sheets, statements of income and loss, statements of cash flow and statements of shareholders' equity), and the accompanying notes thereto, all in reasonable detail, fairly presenting in all material respects the financial position and the results of the operations of Company and its Subsidiaries as of the end of and for such fiscal year, the unqualified opinion of independent certified public accountants with respect to the audited consolidated financial statements, which accountants shall be Deloitte & Touche or another independent accounting firm selected by Company and reasonably acceptable to Administrative Agent, that such audited consolidated financial statements have been prepared in accordance with

GAAP, and present fairly in all material respects the results of operations and financial condition of Company and its Subsidiaries as of the end of and for the fiscal year then ended.

(iv) At such time as available, but in no event later than ninety (90) days after the end of each fiscal year, projected consolidated financial statements (including in each case, forecasted balance sheets and statements of income and loss, statements of cash flow, and statements of shareholders' equity) of Company and its consolidated Subsidiaries for the next fiscal year, all in reasonable detail, and in a format consistent with the projections delivered by Borrowers to Administrative Agent prior to the date hereof, together with such supporting information as Administrative Agent may reasonably request. Such projected financial statements shall be prepared on a monthly basis for the next succeeding year. Such projections shall represent the reasonable best estimate by Borrowers and Guarantors of the future financial performance of Company and its Subsidiaries for the periods set forth therein and shall have been prepared on the basis of the assumptions set forth therein which Borrowers and Guarantors believe are fair and reasonable as of the date of preparation in light of current and reasonably foreseeable business conditions (it being understood that actual results may differ from those set forth in such projected financial statements).

(b) Borrowers and Guarantors shall promptly notify Administrative Agent in writing upon any executive officer of the Company becoming aware of, or having reason to be aware of, the details of (i) any loss, damage, investigation, action, suit, proceeding or claim relating to Collateral and having a value of more than \$1,000,000 with respect to Priority Collateral or more than \$5,000,000 with respect to CL Priority Collateral or which if adversely determined could reasonably be expected to have a Material Adverse Effect, (ii) any Material Contract being terminated or amended in any way adverse to the interests of the Borrowers or Guarantors or any new Material Contract entered into (in which event Borrowers and Guarantors shall provide Administrative Agent with a copy of such Material Contract), (iii) any order, judgment or decree in excess of \$1,000,000 shall have been entered against any Borrower or Guarantor any of its or their properties or assets, (iv) any notification of a material violation of laws or regulations received by any Borrower or Guarantor which could reasonably be expected to have a Material Adverse Effect, (v) any ERISA Event, (vi) the occurrence of any Default or Event of Default of which any executive officer of any Borrower or Guarantor is aware or has reason to be aware, and in any event within three Business Days, (vii) any default, event of default or material breach under (A) any contractual obligation of any Borrower or Guarantor or any of their Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of \$1,000,000 and/or (B) the CL Financing Agreements; (viii) promptly, any litigation, or any investigation or proceeding known to any executive officer of any Borrower or Guarantor (A) affecting any Borrower or Guarantor or any of their Subsidiaries which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of \$1,000,000 (unless covered by insurance, in which case in excess of \$2,500,000), (B) affecting or with respect to this Agreement or any other Financing Agreement or (C) involving an environmental claim or potential liability under Environmental Laws in excess of \$1,000,000 and (ix) promptly, any other development or event which could reasonably be expected to have a Material Adverse Effect.

(c) Promptly after the sending or filing thereof, Borrowers shall (i) send to Administrative Agent copies of all reports which Company or any of its Subsidiaries sends to its security holders generally, (ii) notify Administrative Agent of the filing of all reports and registration

statements which Company or any of its Subsidiaries files with the Securities Exchange Commission, any national or foreign securities exchange or the National Association of Securities Dealers, Inc., and, if requested by Administrative Agent, send to Administrative Agent electronic copies of any such filings, (iii) send to Administrative Agent copies of all press releases and (iv) send to Administrative Agent copies of all other statements concerning material changes or developments in the business of a Borrower or Guarantor made available by any Borrower or Guarantor to the public.

(d) Borrowers and Guarantors shall furnish or cause to be furnished to Administrative Agent such budgets, forecasts, projections and other information respecting the Collateral and the business of Borrowers and Guarantors, as Administrative Agent may, from time to time, reasonably request. Administrative Agent is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of Borrowers and Guarantors to any court or other Governmental Authority or to any Lender or Participant or prospective Lender or Participant (excluding any Person known to Administrative Agent to be a competitor of any Borrower or Guarantor) or any Affiliate of any Lender or Participant. Each Borrower and Guarantor hereby irrevocably authorizes and directs all accountants or auditors to deliver to Administrative Agent, at Borrowers' expense, copies of the financial statements of any Borrower and Guarantor and any reports or management letters prepared by such accountants or auditors on behalf of any Borrower or Guarantor and to disclose to Administrative Agent and Lenders such information as they may have regarding the business of any Borrower and Guarantor. Any documents, schedules, invoices or other papers delivered to Administrative Agent or any Lender may be destroyed or otherwise disposed of by Administrative Agent or such Lender one (1) year after the same are delivered to Administrative Agent or such Lender, except as otherwise designated by Company to Administrative Agent or such Lender in writing.

(e) Each Borrower and Guarantor shall also provide Administrative Agent with copies of all financial reports, schedules and other materials and information at any time furnished by or on behalf of any Borrower or Guarantor to the Bankruptcy Court, or the U.S. Trustee or to any creditors' committee, concurrently with the delivery thereof to the Bankruptcy Court, creditors' committee or U.S. Trustee, as the case may be.

(f) Each Borrower and Guarantor shall also provide Administrative Agent with a monthly report setting forth the amount of professional fees that have been accrued and paid by Borrowers and Guarantors and, to US Borrower's knowledge, the official committee of unsecured creditors.

#### 9.7 Sale of Assets, Consolidation, Merger, Dissolution, Etc.

Each Borrower and Guarantor shall not, and shall not permit any Subsidiary to, directly or indirectly,

(a) dissolve, liquidate or wind up its affairs, sell, transfer, lease or otherwise dispose of its property or assets (including, without limitation, assume, reject or assign any leasehold interest or enter into any agreement to return Inventory to vendor, whether pursuant to section 546 of the Bankruptcy Code or otherwise, without the prior written consent of Administrative Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by Administrative

Agent or any Lender)) or agree to do so at a future time except the following, without duplication, shall be expressly permitted:

(i) Specified Sales;

(ii) the sale, transfer, lease or other disposition of property or assets (A) subject to subsection (vii) below, to an unrelated party not in the ordinary course of business (other than Specified Sales and Scheduled Asset Dispositions), where and to the extent that they are the result of a Recovery Event or (B) the sale, lease, transfer or other disposition of machinery, parts and equipment no longer used or useful in the conduct of the business of Borrowers, Guarantors or any of their Subsidiaries, as appropriate, in its reasonable discretion, so long as and the net proceeds therefrom are used to repair or replace damaged property or to purchase or otherwise acquire new assets or property; provided, that, such purchase or acquisition is committed to within 180 days of receipt of the net proceeds and such purchase or acquisition is consummated within 270 days of receipt of such proceeds;

(iii) [Reserved];

(iv) the sale, lease or transfer, in the ordinary course of business, of gas by NP Cogen to the Company d/b/a Newark Pacific in an aggregate amount not to exceed \$1,000,000 during any calendar year in connection with the transactions permitted under Section 9.12(b)(iii) hereof;

(v) Scheduled Asset Dispositions;

(vi) the sale of Inventory by the Company to any of its Foreign Subsidiaries organized in Canada or Spain; provided, that, (A) the amount owing to the Company from such Foreign Subsidiary organized in Canada in connection with such sales shall not exceed the aggregate amount of \$600,000 outstanding at any time, (B) the amount owing to the Company from such Foreign Subsidiary organized in Spain in connection with such sales shall not exceed the aggregate amount of \$600,000 outstanding at any time, (C) each such sale shall be for fair market value, in the ordinary course of business and consistent with past practices, (D) the purchase price related to any such sale shall be paid in cash on terms that the Company provides to its customers in the ordinary course of business and (E) no Event of Default then exists or shall result from such sale;

(vii) the sale, lease or transfer of property or assets (other than Priority Collateral, Specified Sales, Scheduled Asset Dispositions and the sale, lease or transfer of property or assets referenced in Sections 9.7(a)(ii)(B), (a)(iv) and (a)(vi) hereof) not to exceed \$2,000,000 in the aggregate during the term of this Agreement so long as the Net Cash Proceeds of any such sale, lease or transfer shall be promptly applied to the Obligations and the CL Obligations in accordance with Section 2.6(b) hereof, subject to the terms of the Intercreditor Agreement;

provided, that, with respect to clauses (ii), (v), (vi) and (vii) above (unless the consent of Administrative Agent is received, which consent shall not be unreasonably withheld), in each case (1) at least 75% of the consideration received therefor by such Borrower or Guarantor or any such Subsidiary is in the form of cash or Cash Equivalents, (2) the total consideration received by such Borrower or Guarantor or any such Subsidiary is greater than or equal to the fair market value of the assets sold, transferred, leased or otherwise disposed of, and (3) no Event of Default then exists or

shall result from such asset disposition; provided, further, that, with respect to sales of assets permitted hereunder only, Collateral Agent shall be entitled, without the consent of the Required Lenders, to release its liens relating to the particular assets sold; or

(b) (i) purchase, lease or otherwise acquire (in a single transaction or a series of related transactions) the property or assets of any Person (other than purchases or other acquisitions of inventory, leases, materials, property and equipment in the ordinary course of business, except as otherwise limited or prohibited herein) or (ii) enter into any transaction of merger or consolidation, except for investments or acquisitions permitted pursuant to Section 9.10.

#### 9.8 Encumbrances.

Each Borrower and Guarantor shall not, and shall not permit any Subsidiary to, create, incur, assume or suffer to exist any security interest, mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of its assets or properties, including the Collateral, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any security interest or lien with respect to any such assets or properties, except ("Permitted Liens"):

(a) the security interests and liens of Collateral Agent for itself and the benefit of the other Secured Parties;

(b) liens securing the payment of taxes, assessments or other governmental charges or levies either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Borrower, or Guarantor or Subsidiary, as the case may be and with respect to which adequate reserves have been set aside on its books or that arose prior to the commencement of the Chapter 11 Cases so long as any action by any Governmental Authority or the person to whom such taxes are owed as to Borrowers or Guarantors or any of their respective assets is at all times effectively stayed pursuant to Section 362 of the Bankruptcy Code;

(c) non-consensual statutory liens (other than liens securing the payment of taxes) arising in the ordinary course of such Borrower's, Guarantor's or Subsidiary's business to the extent: (i) such liens secure Indebtedness which is not overdue or (ii) such liens secure Indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued and available to such Borrower, Guarantor or such Subsidiary, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books;

(d) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of Real Property which do not interfere in any material respect with the use of such Real Property or ordinary conduct of the business of such Borrower, Guarantor or such Subsidiary as presently conducted thereon or materially impair the value of the Real Property which may be subject thereto;

(e) purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on Real Property to secure Indebtedness permitted under Section 9.9(d) hereof;

(f) pledges and deposits of cash by any Borrower or Guarantor after the date hereof in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security benefits consistent with the current practices of such Borrower or Guarantor as of the date hereof;

(g) pledges and deposits of cash by any Borrower or Guarantor after the date hereof to secure the performance of tenders, bids, leases, trade contracts (other than for the repayment of Indebtedness), statutory obligations and other similar obligations in each case in the ordinary course of business consistent with the current practices of such Borrower or Guarantor as of the date hereof; provided, that, in connection with any performance bonds issued by a surety or other person, the issuer of such bond shall have waived in writing any rights in or to, or other interest in, any of the Collateral in an agreement, in form and substance satisfactory to Administrative Agent;

(h) liens arising from (i) operating leases and the precautionary UCC financing statement filings in respect thereof and (ii) equipment or other materials which are not owned by any Borrower or Guarantor located on the premises of such Borrower or Guarantor (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with current practices of such Borrower or Guarantor and the precautionary UCC financing statement filings in respect thereof;

(i) liens or rights of set-off arising from the operation of law on retainers remitted by Borrower and Guarantors to certain of its professionals;

(j) judgments and other similar liens arising in connection with court proceedings that do not constitute an Event of Default provided, that, (i) such liens are being contested in good faith and by appropriate proceedings diligently pursued, (ii) adequate reserves or other appropriate provision, if any, as are required by GAAP have been made therefor, (iii) a stay of enforcement of any such liens is in effect and (iv) Administrative Agent may establish a Reserve with respect thereto;

(k) (i) the security interests and liens set forth on Schedule 8.4 to the Information Certificate and (ii) the mortgage granted by JD Corp. to Liberty Commercial Mortgage Corporation with respect to the Jackson Drive Real Property securing Indebtedness in the approximate outstanding principal amount of \$2,160,000 as of November 30, 2009;

(l) liens (included liens as provided for in the Financing Order) securing the CL Obligations (and the liens securing the Parallel Debts, as defined in the CL Credit Agreement), so long as the Intercreditor Agreement or a replacement intercreditor agreement satisfactory to Administrative Agent and the Required Lenders is in effect;

(m) liens on the assets of the Company's Foreign Subsidiaries incurred in connection with Indebtedness permitted under Section 9.9 hereof;

(n) liens on the assets of Newark Paperboard Products, Ltd. securing Indebtedness of Newark Paperboard Products, Ltd. to TD Mortgage, to the extent permitted by the terms of Section 9.9 hereof;

(o) liens incurred by the Company on any unearned insurance premiums paid by the Company or any return of the premium for such policy, pursuant to the Indebtedness described in Section 9.9(k) hereof;

(p) to the extent described in Section 5.5(c) hereof, the claim to assets and properties of the Company and Guarantors for (1) unpaid fees pursuant to Section 1930 of Title 28 of the United States Code and to the Clerk of the Bankruptcy Court, and (2) accrued and unpaid fees and disbursements incurred by the Court-appointed professionals of the Company and Guarantors in the Chapter 11 Cases and any committee appointed by the U.S. Trustee in the Chapter 11 Cases, in each case allowed by the Bankruptcy Court, in the aggregate amount not to exceed \$2,000,000; and

(q) any security created pursuant to the general conditions of a bank operating in the Netherlands based on the general conditions drawn up by the Netherlands Bankers' Association (*Nederlandse Vereniging van Banken*) and the Consumer Union (*Consumentenbond*).

#### 9.9 Indebtedness.

Each Borrower and Guarantor shall not, and shall not permit any Subsidiary to, incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any Indebtedness, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly), the Indebtedness, performance, obligations or dividends of any other Person, except:

(a) the Obligations and the Parallel Debts;

(b) the CL Obligations (and Parallel Debts, as defined in the CL Credit Agreement) of the Company in an aggregate principal amount not to exceed the CL Cap Amount; provided, that, except as permitted under Section 2.6 herein, Borrowers and Guarantors shall not, directly or indirectly, make any payments in respect of such Indebtedness, except, that, Borrowers and Guarantors may make regularly scheduled payments of interest, and payments of fees, costs and expenses, in respect of such Indebtedness as set forth in the Budget and subject to the approval of the Bankruptcy Court;

(c) Indebtedness of Borrowers and Guarantors and their Subsidiaries existing as of the Closing Date as referenced in the financial statements delivered to Administrative Agent and as set out more specifically in Schedule 9.9 to the Information Certificate;

(d) purchase money Indebtedness (including Capital Leases) arising after the date hereof to the extent secured by purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on Real Property not to exceed **\$[amount currently outstanding]** in the aggregate at any time outstanding so long as such security interests and mortgages do not apply to any property of such Borrower, Guarantor or Subsidiary other than the Equipment or Real Property so acquired, and the Indebtedness secured thereby does not exceed the cost of the Equipment or Real Property so acquired, as the case may be;

(e) unsecured intercompany Indebtedness among Borrowers and Guarantors (other than the intercompany loan made by the Company to the Dutch Borrower pursuant to the B.V. Intercompany Notes) and their Domestic Subsidiaries; provided, that, any such Indebtedness owed to any Borrower or Guarantor by any Person that is not a Borrower or Guarantor shall be (i) fully

subordinated to the Obligations hereunder on terms reasonably satisfactory to Administrative Agent and (ii) if requested by Administrative Agent and, in any event, if in an amount greater than \$5,000,000, evidenced by promissory notes which shall be pledged to Administrative Agent as Collateral for the Obligations;

(f) Indebtedness of Foreign Subsidiaries (excluding the Dutch Borrower) in an aggregate amount not to exceed \$3,000,000 in excess of the Indebtedness permitted under Section 9.9(c) hereof at any time outstanding;

(g) Bank Product Debt and unsecured Indebtedness and obligations owing under Hedge Agreements and not for speculative purposes;

(h) Guaranty Obligations in respect of Indebtedness of a Borrower or Guarantor to the extent such Indebtedness is permitted to exist or be incurred pursuant to this Section 9.9;

(i) unsecured Indebtedness owing under the Senior Subordinated Notes;

(j) other unsecured Indebtedness in an aggregate amount not to exceed \$25,000,000 at any time outstanding;

(k) Indebtedness of the Company in connection with the financing of insurance premiums in respect of unearned premiums payable on certain insurance policies maintained by Borrower, provided, that, (i) in no event shall the total amount of such Indebtedness outstanding at any time exceed \$125,000, (ii) such Indebtedness shall be unsecured except to the extent of any unearned premiums paid by the Company or any return of the premium for such policy, and (iii) the Company shall furnish to Administrative Agent all material notices or demands in connection with such Indebtedness either received by the Company on its behalf after the receipt thereof, or sent by the Company or on its behalf, concurrently with the sending thereof, as the case may be;

(l) Indebtedness of the Foreign Subsidiaries (other than the Dutch Borrower) owing to the Dutch Borrower to the extent such loan by the Dutch Borrower is permitted pursuant to Permitted Investments;

(m) Indebtedness of Newark Paperboard Products, Ltd. to the Company in an aggregate amount not to exceed CDN\$6,292,638 at any time outstanding;

(n) [Reserved];

(o) [Reserved];

(p) [Reserved]; and

(q) other Indebtedness of Borrowers, Guarantors and their Subsidiaries (excluding Guaranty Obligations of any Borrower or Guarantor in favor of any Foreign Subsidiary) which does not exceed \$250,000 in the aggregate at any time outstanding.

#### 9.10 Loans, Investments, Etc.

Each Borrower and Guarantor shall not, and shall not permit any Subsidiary to, directly or indirectly, make any loans or advance money or property to any person, or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the Capital Stock or Indebtedness or all or a substantial part of the assets or property of any person, or form or acquire any Subsidiaries, or agree to do any of the foregoing, except the following, (other than with respect to subsections (b), (e) and (l) below and other than (i) the cash managed by Foreign Subsidiaries in foreign accounts and investments in cash and Cash Equivalents in connection therewith which may continue after the date hereof and (ii) investments in cash and Cash Equivalents upon a sale of Term Loan Priority Collateral, to the extent such sale is permitted under the Intercreditor Agreement, as set forth in the CL Credit Agreement, which may continue after the date hereof) only to the extent made, invested in or purchased prior to the date hereof (the "Permitted Investments"):

- (a) cash and Cash Equivalents;
- (b) receivables owing to the Company, the Dutch Borrower or any of their Subsidiaries and advances to suppliers, including, without limitation, notes receivable owing from customers, in each case if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;
- (c) investments in and loans to any Borrower (other than the Dutch Borrower) or Guarantor; provided, however, that, investments in and loans to NP Cogen shall be limited to those in existence on the Closing Date;
- (d) loans and advances to employees in existence as of the Closing Date in an aggregate amount not to exceed \$1,000,000;
- (e) investments received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;
- (f) only to the extent made, invested in or purchased prior to the date hereof investments, acquisitions or transactions permitted under Section 9.7;
- (g) Hedge Agreements to the extent permitted pursuant to Section 9.9;
- (h) [Reserved];
- (i) the Investment in and loan to the Dutch Borrower by the Company existing as of the Closing Date and evidenced by the Second Amended and Restated Promissory Note, dated October 13, 2009, by Dutch Borrower payable to the Company in the original principal amount of €6,563,295.99 and the Promissory Note, dated as of March 9, 2007, by Dutch Borrower payable to the Company in the original principal amount of €14,034,497.36 (collectively, the "B.V. Intercompany Notes") in an aggregate principal amount outstanding as of the Closing Date of €20,597,793.35, as such notes are in effect on the Closing Date and as such amount may be reduced from time to time;
- (j) [Reserved];

(k) [Reserved];

(l) loans and advances by the Company to, and investments by the Company in, Foreign Subsidiaries (other than the Dutch Borrower) in an aggregate Dollar Amount outstanding at any time not to exceed \$5,000,000 (excluding the intercompany loans existing as of the Closing Date made by the Company to Newark Paperboard Products, Ltd. in the amount of \$6,292,638.60), provided, that, each of the following conditions have been satisfied: (i) as of the date of any such loan, advance or investment and after giving effect thereto, Excess Availability shall be not less than \$20,000,000 and (ii) as of the date of any such loan, advance or investment and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing; and

(m) investments in and loan to Dutch Borrower and other Foreign Subsidiaries by and from the Dutch Borrower or other Foreign Subsidiaries as set forth in Schedule 9.9 to the Information Certificate.

#### 9.11 Restricted Payments.

Borrowers and Guarantors will not, nor will they permit any Subsidiary to, directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment, except as (a) permitted by order of the Bankruptcy Court in the connection with the Chapter 11 Case, (b) as otherwise approved in writing by Administrative Agent, (c) as contemplated in the Budget or (d) otherwise permitted under the terms of this Agreement.

#### 9.12 Transactions with Affiliates.

(a) Each Borrower and Guarantor shall not, directly or indirectly, enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any of its officers, directors or other Affiliates (each, an "Affiliate Transaction"), other than:

(i) Affiliate Transactions permitted by paragraph (b) below; and

(ii) Affiliate Transactions on terms that are no less favorable than those that might reasonably have been obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an officer, director or Affiliate of the Borrower or Guarantor.

All Affiliate Transactions (and each series of related Affiliate Transactions which are similar or part of a common plan) involving aggregate payments or other property with a fair market value in excess of \$5,000,000 will be approved by the Board of Directors (or comparable governing body) of the applicable Borrower or Guarantor, such approval to be evidenced by resolutions stating that the Board of Directors (or comparable governing body) has determined that such transaction complies with the foregoing provisions. If the any Borrower or Guarantor enters into an Affiliate Transaction (or a series of related Affiliate Transactions related to a common plan) that involves an aggregate fair market value of more than \$10,000,000, the Company will, prior to the consummation thereof, obtain an opinion from an Independent Financial Advisor stating that such transaction or series of related transactions are fair to the applicable Borrower or Guarantor, as the case may be, from a financial point of view.

(b) The restrictions set forth in Section 9.12(a) shall not apply to:

(i) reasonable fees and compensation paid to and indemnity provisions on behalf of the officers, directors or employees of any Borrower or Guarantor as determined in good faith by the applicable Borrower's or Guarantor's Board of Directors (or comparable governing body);

(ii) transactions exclusively between or among the Borrowers and the Guarantors; provided, that, (A) such transactions are not otherwise prohibited by this Agreement and (B) the aggregate market value of all such transactions (other than transactions contemplated in clause (iii) below) shall not exceed \$1,000,000 in the aggregate during the term of this Agreement;

(iii) the purchase of gas by NP Cogen on behalf of the Company d/b/a Newark Pacific in an aggregate amount not to exceed \$1,000,000 during the term of this Agreement;

(iv) the purchase or transfer of wastepaper by Integrated Paper Recyclers (a joint venture in which the Company maintains a 50% interest) to the Company d/b/a Newark America in an aggregate amount (or the aggregate value of which shall) not to exceed \$6,000,000 during the term of this Agreement;

(v) any agreement or instrument in effect as of the Closing Date or any amendment or replacement thereof or any transaction contemplated thereby (including pursuant to any amendment or replacement thereof) so long as any such amendment or replacement agreement or instrument is, in the good faith judgment of the Board of Directors (or comparable governing body) of the applicable Borrower or Guarantor, not more disadvantageous to the Lenders in any material respect than the original agreement or instrument as in effect on the Closing Date;

(vi) transactions exclusively between or among the Dutch Borrower and the other Foreign Subsidiaries which are not otherwise prohibited by this Agreement; and

(vii) Restricted Payments and Permitted Investments permitted by this Agreement and Indebtedness arising pursuant to Sections 9.9(b) and (p) of this Agreement.

#### 9.13 Compliance with ERISA.

Each Borrower (other than the Dutch Borrower) and Guarantor shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal and State law; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; (c) not terminate any Pension Plan so as to incur any material liability to the Pension Benefit Guaranty Corporation; (d) not knowingly allow or suffer to exist any prohibited transaction involving any Plan or any trust created thereunder which would subject such Borrower, Guarantor or such ERISA Affiliate to a material tax or other liability on prohibited transactions imposed under Section 4975 of the Code or ERISA; (e) make all required contributions to any Plan which it is obligated to pay under Section 302 of ERISA, Section 412 of the Code or the terms of such Plan; (f) not allow or suffer to exist any accumulated funding deficiency, whether or not waived, with respect to any such Pension Plan; (g) not engage in a transaction with respect to a Pension Plan that could be subject to Section 4069 or 4212(c) of ERISA; or (g) not allow or suffer to exist any occurrence of a Reportable Event or any

other event or condition which presents a material risk of termination by the Pension Benefit Guaranty Corporation of any Plan that is a single employer plan, which termination could result in any material liability to the Pension Benefit Guaranty Corporation.

9.14 End of Fiscal Years.

No Borrower or Guarantor will, nor will they permit any of their Subsidiaries to, change their fiscal year.

9.15 Change in Business.

Each Borrower and Guarantor shall not engage in any business other than the business of such Borrower or Guarantor on the date hereof and any business reasonably related, ancillary or complimentary to the business in which such Borrower or Guarantor is engaged on the date hereof.

9.16 Limitation of Restrictions Affecting Subsidiaries.

Each Borrower and Guarantor shall not, directly, or indirectly, create or otherwise cause or suffer to exist any encumbrance or restriction which prohibits or limits the ability of any Subsidiary of such Borrower or Guarantor to (a) pay dividends or make other distributions or pay any Indebtedness owed to such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor; (b) make loans or advances to such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor, (c) transfer any of its properties or assets to such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor; (d) create, incur, assume or suffer to exist any lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or (e) act as a Guarantor and pledge its assets pursuant to the Financing Agreements or any renewals, refinancings, exchanges, refundings or extension thereof, other than encumbrances and restrictions arising under (i) applicable law, (ii) this Agreement, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor, (iv) customary restrictions on dispositions of real property interests found in reciprocal easement agreements of such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor, (v) any agreement relating to permitted Indebtedness incurred by a Subsidiary of such Borrower or Guarantor prior to the date on which such Subsidiary was acquired by such Borrower or such Guarantor and outstanding on such acquisition date, (vi) the extension or continuation of contractual obligations in existence on the date hereof; provided, that, any such encumbrances or restrictions contained in such extension or continuation are no less favorable to Administrative Agent and Lenders than those encumbrances and restrictions under or pursuant to the contractual obligations so extended or continued, (vii) any document or instrument governing Indebtedness incurred pursuant to Section 9.9(d); provided, that, any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith or (viii) any Permitted Lien or any document or instrument governing any Permitted Lien; provided, that, any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien (with the exception of certain negative pledges set forth in the CL Credit Agreement with respect to Borrower's and Guarantor's Real Property which is not encumbered by a mortgage in favor of the CL Administrative Agent).

9.17 Minimum Excess Availability.

Borrowers shall, at all times during each period set forth below, maintain Excess Availability (after giving effect to, and subtracting an amount equal to, the Special Availability Reserve) of not less than the amount set forth below opposite such period:

<u>Period</u>	<u>Minimum Excess Availability</u>
From the date hereof through and including May 13, 2010	\$5,000,000
From May 14, 2010 through and including May 27, 2010	\$6,000,000
From May 28, 2010 and at all times thereafter	\$7,000,000

9.18 Consolidated EBITDA.

The Consolidated EBITDA of U.S. Borrower, for the twelve-month period ending as of each fiscal month end set forth below, shall be greater than or equal to the amount set forth below opposite each such fiscal month end:

<b>Fiscal Month Ending</b>	<b>Consolidated EBITDA</b>
July 31, 2010	\$36,300,000
August 31, 2010	\$37,900,000
September 30, 2010	\$37,800,000
October 31, 2010	\$37,700,000
November 30, 2010	\$38,800,000
December 31, 2010	\$41,900,000
January 31, 2011 and the last day of each month thereafter	\$44,000,000

9.19 [Reserved].

9.20 License Agreements.

(a) Each Borrower and Guarantor shall (i) promptly and faithfully observe and perform all of the material terms, covenants, conditions and provisions of the material License Agreements to which it is a party to be observed and performed by it, at the times set forth therein, if any, (ii) not do, permit, suffer or refrain from doing anything that could reasonably be expected to result in a default under or breach of any of the terms of any material License Agreement, (iii) not cancel, surrender, modify, amend, waive or release any material License Agreement in any material respect or any term, provision or right of the licensee thereunder in any material respect, or consent to or permit to occur any of the foregoing; except, that, subject to Section 9.19(b) below, such Borrower or Guarantor may cancel, surrender or release any material License Agreement in the ordinary course of the business of such Borrower or Guarantor; provided, that, such Borrower or Guarantor (as the case may be) shall give Administrative Agent not less than thirty (30) days prior

written notice of its intention to so cancel, surrender and release any such material License Agreement, (iv) give Administrative Agent prompt written notice of any material License Agreement entered into by such Borrower or Guarantor after the date hereof, together with a true, correct and complete copy thereof and such other information with respect thereto as Administrative Agent may request, (v) give Administrative Agent prompt written notice of any material breach of any obligation, or any default, by any party under any material License Agreement, and deliver to Administrative Agent (promptly upon the receipt thereof by such Borrower or Guarantor in the case of a notice to such Borrower or Guarantor and concurrently with the sending thereof in the case of a notice from such Borrower or Guarantor) a copy of each notice of default and every other notice and other communication received or delivered by such Borrower or Guarantor in connection with any material License Agreement which relates to the right of such Borrower or Guarantor to continue to use the property subject to such License Agreement, and (vi) furnish to Administrative Agent, promptly upon the request of Administrative Agent, such information and evidence as Administrative Agent may reasonably require from time to time concerning the observance, performance and compliance by such Borrower or Guarantor or the other party or parties thereto with the material terms, covenants or provisions of any material License Agreement.

(b) Each Borrower and Guarantor will either exercise any option to renew or extend the term of each material License Agreement to which it is a party in such manner as will cause the term of such material License Agreement to be effectively renewed or extended for the period provided by such option and give prompt written notice thereof to Administrative Agent or give Administrative Agent prior written notice that such Borrower or Guarantor does not intend to renew or extend the term of any such material License Agreement or that the term thereof shall otherwise be expiring, not less than sixty (60) days prior to the date of any such non-renewal or expiration. In the event of the failure of such Borrower or Guarantor to extend or renew any material License Agreement to which it is a party, Administrative Agent shall have, and is hereby granted, the irrevocable right and authority, at its option, to renew or extend the term of such material License Agreement, whether in its own name and behalf, or in the name and behalf of a designee or nominee of Administrative Agent or in the name and behalf of such Borrower or Guarantor, as Administrative Agent shall determine at any time that an Event of Default shall exist or have occurred and be continuing. Administrative Agent may, but shall not be required to, perform any or all of such obligations of such Borrower or Guarantor under any of the License Agreements, including, but not limited to, the payment of any or all sums due from such Borrower or Guarantor thereunder. Any sums so paid by Administrative Agent shall constitute part of the Obligations.

#### 9.21 Foreign Assets Control Regulations, Etc.

None of the requesting or borrowing of the Loans or the requesting or issuance, extension or renewal of any Letter of Credit or the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 USC §1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (including, but not limited to (a) Executive order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56). None of Borrowers or any of their

Subsidiaries or any of their respective officers, directors or Affiliates is or will become a “blocked person” as described in the Executive Order, the Trading with the Enemy Act or the Foreign Assets Control Regulations or engages or will engage in any dealings or transactions, or be otherwise associated, with any such “blocked person”.

#### 9.22 Costs and Expenses.

Borrowers and Guarantors shall pay to Administrative Agent and Arranger on demand all reasonable costs, expenses, filing fees and taxes paid or payable in connection with the preparation, negotiation, execution, delivery, recording, syndication, administration, collection, liquidation, enforcement and defense of the Obligations, Administrative Agent’s rights in the Collateral, this Agreement, the other Financing Agreements and all other documents related hereto or thereto, including any amendments, supplements or consents which may hereafter be requested by the Company or required by the Administrative Agent (whether or not executed) or entered into in respect hereof and thereof, including: (a) all costs and expenses of filing or recording (including Uniform Commercial Code financing statement filing taxes and fees, documentary taxes, intangibles taxes and fees, if applicable); (b) to the extent Administrative Agent is authorized in any Financing Agreement to conduct such activities at Borrower’s or Guarantor’s expense, costs and expenses and fees for insurance premiums, environmental audits, title insurance premiums, surveys, assessments, engineering reports and inspections, appraisal fees and search fees, background checks, (c) costs and expenses of remitting loan proceeds, collecting checks and other items of payment, and establishing and maintaining the Control Accounts, together with Administrative Agent’s customary charges and fees with respect thereto; (d) charges, fees or expenses charged by any Issuing Bank in connection with any Letter of Credit; (e) costs and expenses of preserving and protecting the Collateral; (f) reasonable costs and expenses paid or incurred in connection with obtaining payment of the Obligations, enforcing the security interests and liens of Collateral Agent, selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of this Agreement and the other Financing Agreements or defending any claims made or threatened against Administrative Agent, Collateral Agent or any Lender arising out of the transactions contemplated hereby and thereby (including preparations for and consultations concerning any such matters) other than claims arising solely out of their gross negligence or willful misconduct, as determined by a court of competent jurisdiction; (g) all out-of-pocket expenses and costs heretofore and from time to time hereafter incurred by Administrative Agent during the course of periodic field examinations of the Collateral and such Borrower’s or Guarantor’s operations, plus a per diem charge at Administrative Agent’s then standard rate for Administrative Agent’s examiners in the field and office (which rate as of the date hereof is \$1,000 per person per day); and (h) the reasonable fees and disbursements of one counsel (including legal assistants) to Administrative Agent, Collateral Agent and Arranger in connection with any of the foregoing.

#### 9.23 Additional Borrowers and Guarantors.

Upon any Person becoming a direct or indirect Subsidiary of the Company, Borrowers and Guarantors will provide Administrative Agent with written notice thereof setting forth information in reasonable detail describing all of the assets of such Person and shall (a) cause any such Person that is a Domestic Subsidiary to execute and deliver to Administrative Agent a Borrower Joinder Agreement in substantially the form of Exhibit D, causing such Subsidiary to become a party to this Credit Agreement, as a joint and several “Borrower”, and (b) deliver such other documentation as

Administrative Agent may reasonably request in connection with the foregoing, including, without limitation, appropriate UCC-1 financing statements, certified resolutions and other organizational and authorizing documents of such Person and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above), all in form, content and scope reasonably satisfactory to Administrative Agent; provided, however, in lieu of the foregoing, at the option of Administrative Agent, Borrowers and Guarantors shall cause such Person to execute and deliver to Administrative Agent a Guarantor Joinder Agreement in substantially the form of Exhibit E causing such Subsidiary to become a party to this Agreement, as a joint and several "Guarantor", as applicable and with the same effect set forth above. If required by Administrative Agent, Company shall cause any of its Foreign Subsidiaries (whether in existence on the Closing Date or formed or acquired thereafter) to execute and deliver to Administrative Agent a Guarantor Joinder Agreement in substantially the form of Exhibit E causing such Subsidiary to become a party to this Agreement as a joint and several "DO Guarantor".

#### 9.24 Pledged Assets.

Each of Borrowers and Guarantors will cause, subject to Permitted Liens, (a) the Priority Collateral, to be subject at all times to a first priority, perfected lien in favor of the Control Agent, Collateral Agent or Administrative Agent, in each case for the benefit of the Secured Parties, pursuant to the terms and conditions of the Security Documents or such other security documents as Control Agent, Collateral Agent or Administrative Agent shall reasonably request, and (b) the CL Priority Collateral (other than Real Property, in which Collateral Agent does not have a security interest) to be subject at all times to a second priority, perfected lien in favor of Control Agent, Collateral Agent or Administrative Agent, in each case for the benefit of the Secured Parties, pursuant to the terms and conditions of the Security Documents or such other security documents as Control Agent, Collateral Agent or Administrative Agent shall reasonably request.

#### 9.25 Amendment of Subordinated Debt; CL Financing Agreements.

(a) Borrowers and Guarantors will not, nor will they permit any Subsidiary to, without the prior written consent of the Required Lenders, amend, modify, waive or extend or permit the amendment, modification, waiver or extension of any term of any document governing or relating to any Subordinated Debt.

(b) Borrowers and Guarantors will not, nor will they permit any Subsidiary to, amend, replace, refinance, refund, restructure, amend, supplement, extend or otherwise modify the CL Credit Agreement (i) to violate the provisions of the Intercreditor Agreement or (ii) to increase the then outstanding aggregate principal amount of the loans or other obligations under the CL Credit Agreement to an amount that would exceed the CL Cap Amount (excluding capitalized interest, fees, expenses and other charges).

#### 9.26 Limitations on Activities of NP Cogen.

Neither NP Cogen nor JD Corp. shall engage in any activities or incur any Indebtedness other than (i) owning and operating the assets owned and operated by it in the ordinary course of business as of the Closing Date and (ii) owing the Indebtedness owed by it as of the Closing Date.

9.27 Sale Leasebacks.

Borrowers and Guarantors will not, nor will they permit any Subsidiary to, directly or indirectly, become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which any Borrower, Guarantor or any Subsidiary has sold or transferred or is to sell or transfer to a Person which is not a Borrower, Guarantor or a Subsidiary or (b) which any Borrower, Guarantor or any Subsidiary intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by a Borrower, Guarantor or a Subsidiary to another Person which is not a Borrower, Guarantor or a Subsidiary in connection with such lease.

9.28 No Further Negative Pledges.

Borrowers and Guarantors will not, nor will they permit any Domestic Subsidiary to, enter into, assume or become subject to any agreement prohibiting or otherwise restricting the creation or assumption of any lien upon any of their properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation, except (a) pursuant to this Agreement and the other Financing Agreements, (b) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 9.9(d); provided, that, any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, and (c) in connection with any Permitted Lien or any document or instrument governing any Permitted Lien; provided, that, any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien (with the exception of certain negative pledges set forth in the CL Credit Agreement with respect to Borrower's and Guarantor's Real Property which is not encumbered by a mortgage in favor of the CL Administrative Agent).

9.29 Limitation on Excluded Subsidiaries.

Borrowers and Guarantors will not permit the Excluded Subsidiaries to (a) own any other assets or to conduct any other business other than such assets owned and such business conducted, in each case as of the Closing Date or (b) to account for, individually or in the aggregate for all such Excluded Subsidiaries, more than 5% of the net income or assets (determined on a consolidated basis) of the Company and its Subsidiaries.

9.30 Bankruptcy Covenants.

Borrowers and Guarantors shall not seek or consent to, any of the following:

- (a) without the prior written consent of Administrative Agent, any modification, stay, vacation or amendment to the Financing Order;
- (b) the use of cash collateral of Administrative Agent and Lenders under Section 363 of the Bankruptcy Code;
- (c) to obtain post-petition loans or other financial accommodations, other than from Administrative Agent and Lenders and from Indebtedness permitted under Section 9.9(p) of

this Agreement, pursuant to Sections 364(c) or (d) of the Bankruptcy Code without the prior written consent of Administrative Agent;

(d) to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of Administrative Agent's pre-petition and post-petition liens and claims;

(e) to challenge the application of any payments or collections received by Administrative Agent, Collateral Agent or Lenders to the Obligations as provided for herein;

(f) any plan of reorganization that does not provide for the indefeasible payment in full in cash or other immediately available funds and satisfaction of all Obligations on the effective date of such plan unless Administrative Agent and Lenders shall have agreed to such other treatment in writing;

(g) to surcharge the Collateral pursuant to Section 506(c) of the Bankruptcy Code;

(h) 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 Administrative Agent, Collateral Agent or any Lender as provided herein, in the Financing Agreements or in the Financing Order;

(i) a priority claim or administrative expense or unsecured claim against Borrowers or Guarantors (now existing or hereafter arising of any kind or nature, including any administrative expense of the kind specified in Section 105, 326, 330, 331, 503(a), 503(b), 506(c), 507(b), 546(c), 546(d) or 1114 of the Bankruptcy Code) equal or superior to the priority claim of Administrative Agent, Collateral Agent and Lenders in respect of the Obligations, except to the extent of the Carve-Out or the liens of the CL Administrative Agent as to the CL Priority Collateral to secure the Indebtedness under the CL Credit Agreement, to the extent such liens and Indebtedness are permitted hereunder; and

(j) any order seeking authority to take any action prior to the effectiveness of a plan of reorganization that is prohibited by the terms of this Agreement or the other Financing Agreements or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Financing Agreements.

#### 9.31 Prepetition Payables.

Each Borrower and Guarantor shall be permitted to pay any prepetition claim arising under Section 503(b)(9) of the Bankruptcy Code or otherwise without the prior written consent of Administrative Agent and Lenders so long as such payments are consistent with the Budget and are approved by an order of the Bankruptcy Court in form and substance satisfactory to Administrative Agent.

#### 9.32 Further Assurances.

At the reasonable request of Administrative Agent at any time and from time to time, Borrowers and Guarantors shall, at their expense, duly execute and deliver, or cause to be duly

executed and delivered, such further agreements, documents and instruments, and do or cause to be done such further acts as may be necessary or proper to evidence, perfect, maintain and enforce the security interests and the priority thereof in the Collateral and to otherwise effectuate the provisions or purposes of this Agreement or any of the other Financing Agreements.

9.33 Classification of Senior Indebtedness.

Each Borrower and Guarantor shall cause the Obligations to constitute "Senior Debt", "Senior Indebtedness", "Designated Senior Indebtedness" or any similar designation under and as defined in any agreement governing any Subordinated Debt and the subordination provisions set forth in each such agreement to be legally valid and enforceable against the parties thereto.

9.34 Post Closing Covenants.

(a) The Company shall use its commercially reasonable efforts to deliver (or cause to be delivered) to Administrative Agent, Collateral Access Agreements or other applicable lien waiver agreements for any warehouse, plant or other leased real property set forth on Schedule 9.34 attached hereto.

(b) The Company shall deliver (or cause to be delivered) to Administrative Agent true, correct and complete copies of the BV Intercompany Notes within ten (10) days of the Closing Date.

**SECTION 10. EVENTS OF DEFAULT AND REMEDIES**

10.1 Events of Default.

The occurrence or existence of any one or more of the following events are referred to herein individually as an "Event of Default", and collectively as "Events of Default":

(a) (i) any Borrower fails to pay any principal on any Loan when due in accordance with the terms hereof; or any Borrower fails to reimburse any Issuing Bank for any Letter of Credit Obligations when due in accordance with the terms hereof or of any Letter of Credit Document; or any Borrower fails to pay any interest on any Loan or any fee or other amount payable hereunder when due in accordance with the terms hereof (or any Guarantor shall fail to pay on the Guaranty in respect of any of the foregoing or in respect of any other Guaranty Obligations thereunder);

(ii) any Borrower or Guarantor shall fail to perform, comply with or observe any term, covenant or agreement applicable to it contained in any of Sections 8.31 (but with respect to Sections 8.31(b) and (d), such failure is not cured within one (1) Business Day of its occurrence), 8.32(d), 9.1, 9.6 through 9.12, 9.15 through 9.19, 9.21, or 9.26 through 9.33; or

(iii) any Borrower or Guarantor shall fail to comply with any other covenant, contained in this Agreement or the other Financing Agreements or any other agreement, document or instrument among any Borrower or Guarantor, Administrative Agent and the Lenders

or executed by any Borrower or Guarantor in favor of Administrative Agent or the Lenders (other than as described in Sections 10.1(a)(i) or (ii) above), and in the event such breach or failure to comply is capable of cure, is not cured within thirty (30) days of its occurrence; provided, that, such thirty (30) day period shall not apply in the case of: (A) any failure to observe any such covenant which is not capable of being cured at all or within such thirty (30) day period or which has been the subject of a prior failure within a six (6) month period or (B) an intentional breach by any Borrower or Guarantor of any such covenant;

(b) any representation, warranty or statement of fact made by any Borrower or Guarantor to Administrative Agent in this Agreement, the other Financing Agreements or any other written agreement, schedule, confirmatory assignment or otherwise shall when made or deemed made be false or misleading in any material respect on or as of the date made or deemed to be made;

(c) any Guarantor revokes or terminates or purports to revoke or terminate or fails to perform any of the terms, covenants, conditions or provisions of any guarantee, endorsement or other agreement of such party in favor of Administrative Agent or any Lender;

(d) any judgment for the payment of money is rendered against any Borrower or Guarantor in excess of \$250,000 in any one case or in excess of \$250,000 in the aggregate (to the extent not covered by insurance where the insurer has assumed responsibility in writing for such judgment) and shall remain undischarged or unvacated for a period in excess of thirty (30) days or execution shall at any time not be effectively stayed, or any judgment other than for the payment of money, or injunction, attachment, garnishment or execution is rendered against any Borrower or Guarantor or any of the Collateral having a value in excess of \$250,000 or a Dutch executory attachment (*executoriaal beslag*) affects any asset of a Borrower or Guarantor having an aggregate value of at least \$250,000 (or any equivalent thereof in any other currency);

(e) any Borrower or Guarantor dissolves or discontinues doing business (provided, that, any Guarantor may dissolve or discontinue doing business if its assets are transferred to a Borrower or another Guarantor prior to such dissolution or discontinuation); any Borrower or Guarantor (other than NP Cogen) suspends doing business, other than temporary shutdowns for routine maintenance or otherwise in accordance with past practices and in any event not to exceed five (5) days in any fiscal quarter;

(f) any Borrower or Guarantor makes an assignment for the benefit of creditors, makes or sends notice of a bulk transfer or calls a meeting of its creditors or principal creditors in connection with a moratorium or adjustment of the Indebtedness due to them;

(g) other than with respect to such Borrowers and Guarantors subject to the Chapter 11 Case, a case or proceeding under the bankruptcy laws of the United States of America or other applicable jurisdiction now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed against any Borrower or Guarantor or all or any part of its properties and such petition or application is not dismissed within sixty (60) days after the date of its filing or any such Borrower or Guarantor shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of, any such action or proceeding or the relief requested is granted sooner;

(h) other than with respect to such Borrowers and Guarantors subject to the Chapter 11 Case, a case or proceeding under the bankruptcy laws of the United States of America or comparable proceeding under the laws of any other applicable jurisdiction now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at a law or equity) is filed by any such Borrower or Guarantor or for all or any part of its property;

(i) any default in respect of any Indebtedness of any Borrower or Guarantor (other than Indebtedness owing to Administrative Agent, Collateral Agent and Lenders hereunder) that is not stayed by the Bankruptcy Court in connection with the Chapter 11 Cases, in any case in an amount in excess of \$2,500,000, which default continues for more than the applicable cure period, if any, with respect thereto or any default by any Borrower or Guarantor under any Material Contract that is not stayed by the Bankruptcy Court in connection with the Chapter 11 Cases, which default continues for more than the applicable cure period, if any, with respect thereto and/or is not waived in writing by the other parties thereto;

(j) any material provision hereof or of any of the other Financing Agreements shall for any reason cease to be valid, binding and enforceable with respect to any party hereto or thereto (other than Administrative Agent or Lenders) in accordance with its terms, or any such party shall challenge the enforceability hereof or thereof, or shall assert in writing, or take any action or fail to take any action based on the assertion that any provision hereof or of any of the other Financing Agreements has ceased to be or is otherwise not valid, binding or enforceable in accordance with its terms, or any security interest provided for herein or in any of the other Financing Agreements shall cease to be a valid and perfected first priority and/or second priority (as applicable) security interest in any of the Collateral purported to be subject thereto (except as otherwise permitted herein or therein);

(k) an ERISA Event shall occur which results in or could reasonably be expected to result in a Material Adverse Effect;

(l) any Change of Control;

(m) the indictment by any Governmental Authority of any Borrower or Guarantor 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 or threatened commencement of criminal or civil proceedings against such Borrower or Guarantor, 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 \$2,500,000 or (ii) any other property of any Borrower or Guarantor which is necessary or material to the conduct of its business;

(n) there shall be an event of default (after any applicable cure period thereunder has expired) under any of the other material Financing Agreements;

(o) any default (which is not cured within the applicable period of grace or waived) or event of default shall occur under any Subordinated Debt or the subordination provisions contained therein shall cease to be in full force and effect or to give the Lenders the rights, powers and privileges purported to be created thereby;

(p) any uninsured damage to or loss, theft or destruction of any assets of Borrowers or Guarantors or any of their Subsidiaries shall occur that, with respect to any assets of any Borrower or Guarantor, is in excess of \$2,500,000 (except with respect to assets of Borrowers and Guarantors, other than inventory, at plants that have ceased to operate for a period of not less than 90 days from the date of receipt by Agent of notice from Borrowers of such closure, is in excess of \$5,000,000) and, with respect to any assets of any Subsidiary of Borrowers or Guarantors, is in excess of \$5,000,000; or

(q) the Company fails to comply with the terms of the Settlement Agreement or the Final Judgment and any cure right or period prior to which the Commonwealth of Massachusetts or other applicable Governmental Authority shall have the right to (i) enjoin or materially limit the Company's business operations or (ii) levy or issue a fine or penalty that could reasonably be expected to have a Material Adverse Effect shall have expired;

(r) the Company fails to deliver any of the information or other items required by Section 7.1(a) within five (5) Business Days of the later to occur of (i) the date due or (ii) receipt by the Company of notice from Administrative Agent that such information or other items are past due;

(s) the occurrence of any condition or event which permits Administrative Agent, Collateral Agent and Lenders to exercise any of the remedies set forth in the Financing Order, including, without limitation, any "Event of Default" (as defined in the Financing Order);

(t) the termination or non-renewal of the Financing Agreements as provided for in the Financing Order;

(u) any act, condition or event occurring after the date of the commencement of the Chapter 11 Cases that has or would reasonably expect to have a Material Adverse Effect upon the assets, business or prospects of Borrower and Guarantor (taken as a whole) (other than pursuant to a reduction in payment terms by suppliers or reclamation claims), or the Collateral or the rights and remedies of Agent and Lenders under the Loan Agreement or any other Financing Agreements or the Financing Order;

(v) conversion of any Chapter 11 Case to a Chapter 7 case under the Bankruptcy Code;

(w) dismissal of any Chapter 11 Case or any subsequent Chapter 7 case either voluntarily or involuntarily;

(x) the grant of a lien on or other interest in any property of any Borrower or Guarantor other than a lien or encumbrance permitted by Section 9.8 hereof or by the Financing Order or an administrative expense claim other than such administrative expense claim permitted by the Financing Order or this Agreement by the grant of or allowance by the Bankruptcy Court which is superior to or ranks in parity with Collateral Agent's and Lenders' security interest in or lien upon the Collateral or their Superpriority Claim (as defined in the Financing Order);

(y) the Financing Order shall be modified, reversed, revoked, remanded, stayed, rescinded, vacated or amended on appeal or by the Bankruptcy Court without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld or delayed (and

no such consent shall be implied from any other authorization or acquiescence by Administrative Agent, Collateral Agent or any Lender);

(z) the appointment of a trustee pursuant to Sections 1104(a)(1) or 1104(a)(2) of the Bankruptcy Code;

(aa) the appointment of an examiner with special powers pursuant to Section 1104(a) of the Bankruptcy Code;

(bb) the filing of a plan of reorganization or liquidation by or on behalf of any Borrower or Guarantor, to which Administrative Agent has not consented in writing, which does not provide for the payment in full of all Obligations on the effective date thereof in accordance with the terms and conditions contained herein;

(cc) the confirmation of any plan of reorganization or liquidation in the Chapter 11 Case of any Borrower or Guarantor, to which Administrative Agent has not consented to in writing, which does not provide for payment in full of all Obligations on the effective date thereof in accordance with the terms and conditions contained herein; or

(dd) any failure to comply with the minimum Excess Availability requirements set forth in Section 9.17 hereof.

For the purposes of this Section 10.1, in relation to any procedure or step taken in the Netherlands, (i) bankruptcy (*faillissement*), suspension of payments (*surseance van betaling*), emergency procedure (*noodregeling*) or any other procedure having the effect that the entity to which it applies loses the free management or ability to dispose of its property (irrespective of whether that procedure is provisional or final); and (ii) dissolution (*ontbinding*) or any other procedure having the effect that the entity to which it applies ceases to exist, shall qualify as events specified in Sections 10.1(g) and (h) above.

## 10.2 Remedies.

(a) At any time an Event of Default exists or has occurred and is continuing, Administrative Agent and Lenders shall have all rights and remedies provided in this Agreement, the other Financing Agreements, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by any Borrower or Guarantor, except as such notice or consent is expressly provided for hereunder or required by applicable law or the Financing Order. All rights, remedies and powers granted to Administrative Agent and Lenders hereunder, under any of the other Financing Agreements, the Financing Order, the UCC or other applicable law, are cumulative, not exclusive and enforceable, in Administrative Agent's discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Borrower or Guarantor of this Agreement or any of the other Financing Agreements. Subject to Section 12 hereof, Administrative Agent may, and at the direction of the Required Lenders shall, at any time or times, proceed directly against any Borrower or Guarantor to collect the Obligations without prior recourse to the Collateral.

(b) Without limiting the generality of the foregoing, at any time an Event of Default exists or has occurred and is continuing, Administrative Agent may, at its option and shall upon the direction of the Required Lenders, (i) upon notice to Company, accelerate the payment of all Obligations (other than Obligations consisting of Bank Product Debt related to hedging agreements) and demand immediate payment thereof to Administrative Agent for itself and the benefit of Lenders (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), all Obligations shall automatically become immediately due and payable), and (ii) terminate the Commitments whereupon the obligation of each Lender to make any Loan and Issuing Bank to issue any Letter of Credit shall immediately terminate (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), the Commitments and any other obligation of Administrative Agent or a Lender hereunder shall automatically terminate).

(c) Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, subject to the terms of the Intercreditor Agreement, Administrative Agent may, in its discretion (i) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral, (ii) require any Borrower or Guarantor, at Borrowers' expense, to assemble and make available to Administrative Agent any part or all of the Collateral at any place and time designated by Administrative Agent, (iii) collect, foreclose, receive, appropriate, setoff and realize upon any and all Collateral, (iv) remove any or all of the Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (v) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Administrative Agent or elsewhere) at such prices or terms as Administrative Agent may deem reasonable, for cash, upon credit or for future delivery, with Administrative Agent having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of any Borrower or Guarantor, which right or equity of redemption is hereby expressly waived and released by Borrowers and Guarantors and/or (vi) terminate this Agreement. If any of the Collateral is sold or leased by Administrative Agent upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Administrative Agent. If notice of disposition of Collateral is required by law, ten (10) days prior notice by Administrative Agent to Company designating the time and place of any public sale or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and Borrowers and Guarantors waive any other notice. In the event Administrative Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, each Borrower and Guarantor waives the posting of any bond which might otherwise be required. At any time an Event of Default exists or has occurred and is continuing, upon Administrative Agent's request, Borrowers will either, as Administrative Agent shall specify, furnish cash collateral to Issuing Bank to be used to secure and fund the reimbursement obligations to Issuing Bank in connection with any Letter of Credit Obligations or furnish cash collateral to Administrative Agent for the Letter of Credit Obligations. Such cash collateral shall be in the amount equal to one hundred ten (110%) percent of the amount of the Letter of Credit Obligations plus the amount of any fees and expenses payable in connection therewith through the end of the latest expiration date of the Letters of Credit giving rise to such Letter of Credit

Obligations. The rights of the Administrative Agent set forth in this clause (c) with respect to the Capital Stock of the Dutch Borrower shall be subject to the terms of the Dutch Deed of Pledge.

(d) At any time or times that an Event of Default exists or has occurred and is continuing, Administrative Agent and Collateral Agent may, in their discretion, enforce the rights of any Borrower or Guarantor against any account debtor, secondary obligor or other obligor in respect of any of the Accounts or other Receivables. Without limiting the generality of the foregoing, Administrative Agent and/or Collateral Agent may, in its discretion, at such time or times (i) notify any or all account debtors, secondary obligors or other obligors in respect thereof that the Receivables have been assigned to Collateral Agent and that Collateral Agent has a security interest therein and Administrative Agent and/or Collateral Agent may direct any or all account debtors, secondary obligors and other obligors to make payment of Receivables directly to Collateral Agent or Administrative Agent, (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Receivables or other obligations included in the Collateral and thereby discharge or release the account debtor or any secondary obligors or other obligors in respect thereof without affecting any of the Obligations, (iii) demand, collect or enforce payment of any Receivables or such other obligations, but without any duty to do so, and Administrative Agent, Collateral Agent and Lenders shall not be liable for any failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto and (iv) take whatever other action Administrative Agent or Collateral Agent may deem necessary or desirable for the protection of its interests and the interests of Lenders. At any time that an Event of Default exists or has occurred and is continuing, at Administrative Agent's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other obligations have been assigned to Collateral Agent and are payable directly and only to Collateral Agent and Borrowers and Guarantors shall deliver to Administrative Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Administrative Agent may require. In the event any account debtor returns Inventory when an Event of Default exists or has occurred and is continuing, Borrowers shall, upon Administrative Agent's request, hold the returned Inventory in trust for Collateral Agent, segregate all returned Inventory from all of its other property, dispose of the returned Inventory solely according to Administrative Agent's and Collateral Agent's instructions, and not issue any credits, discounts or allowances with respect thereto without Administrative Agent's prior written consent.

(e) To the extent that applicable law imposes duties on Administrative Agent or Collateral Agent or any Lender to exercise remedies in a commercially reasonable manner (which duties cannot be waived under such law), each Borrower and Guarantor acknowledges and agrees that it is not commercially unreasonable for Administrative Agent, Collateral Agent or any Lender (i) to fail to incur expenses reasonably deemed significant by Administrative Agent, Collateral Agent or any Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain consents of any Governmental Authority or other third party for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against account debtors, secondary obligors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (iv) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the

use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other persons, whether or not in the same business as any Borrower or Guarantor, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, (xi) to purchase insurance or credit enhancements to insure Administrative Agent, Collateral Agent or Lenders against risks of loss, collection or disposition of Collateral or to provide to Administrative Agent, Collateral Agent or Lenders a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by Administrative Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Administrative Agent and Collateral Agent in the collection or disposition of any of the Collateral. Each Borrower and Guarantor acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Administrative Agent, Collateral Agent or any Lender would not be commercially unreasonable in the exercise by Administrative Agent, Collateral Agent or any Lender of remedies against the Collateral and that other actions or omissions by Administrative Agent, Collateral Agent or any Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section. Without limitation of the foregoing, nothing contained in this Section shall be construed to grant any rights to any Borrower or Guarantor or to impose any duties on Administrative Agent, Collateral Agent or Lenders that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

(f) For the purpose of enabling Administrative Agent and Collateral Agent to exercise the rights and remedies hereunder, each Borrower and Guarantor hereby grants to Administrative Agent and Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable at any time an Event of Default shall exist or have occurred and for so long as the same is continuing) without payment of royalty or other compensation to any Borrower or Guarantor, to use, assign, license or sublicense any of the trademarks, service-marks, trade names, business names, trade styles, designs, logos and other source of business identifiers and other Intellectual Property and general intangibles now owned or hereafter acquired by any Borrower or Guarantor, wherever the same maybe located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

(g) At any time an Event of Default exists or has occurred and is continuing, Administrative Agent may apply the cash proceeds of Collateral actually received by Administrative Agent or Collateral Agent from any sale, lease, foreclosure or other disposition of the Collateral to payment of the Obligations, in whole or in part and in accordance with the terms hereof, whether or not then due or may hold such proceeds as cash collateral for the Obligations. Borrowers and Guarantors shall remain liable to Administrative Agent, Collateral Agent and Lenders for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including attorneys' fees and expenses.

(h) Without limiting the foregoing, upon the occurrence and during the continuance of a Default or an Event of Default, (i) Administrative Agent and Lenders may, at Administrative Agent's option, and upon the occurrence of an Event of Default at the direction of the Required Lenders, Administrative Agent and Lenders shall, without notice, cease making Loans or arranging for Letters of Credit or reduce the lending formulas or amounts of Loans and Letters of Credit available to Borrowers and (ii) Administrative Agent may, at its option, establish such Reserves as Administrative Agent determines, without limitation or restriction, notwithstanding anything to the contrary contained herein.

(i) Upon the occurrence and during the continuance of an Event of Default, Administrative Agent and Lenders may, by notice to the Dutch Borrower, require the Dutch Borrower to give a guarantee or security in favour of the Lenders or the Collateral Agent and the Dutch Borrower shall comply with such request.

(j) Notwithstanding any provision to the contrary in any Financing Agreement, foreclosure on any security governed by Canadian law, including the right of pledge over the Capital Stock of Newark Paperboard Products, Ltd. (including allocation of the proceeds) shall take place in accordance with Canadian law and any relevant Security Document. Section 10.2(c) hereof shall not apply to any security governed by Canadian law to the extent not permissible under the applicable Canadian law.

(k) Notwithstanding any provision to the contrary in any Financing Agreement, foreclosure on any security governed by Dutch law, including the right of pledge over the Capital Stock of the Dutch Borrower (including allocation of the proceeds), shall take place in accordance with Dutch law and any relevant Security Document (including the Dutch Deed of Pledge).

## **SECTION 11. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW**

### **11.1 Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.**

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements (except as otherwise provided therein) and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York, but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than New York and the Bankruptcy Code; provided, however, that, the Dutch Deed of Pledge shall be governed by the laws of the Netherlands.

(b) Borrowers, Guarantors, Administrative Agent, Lenders, Swingline Lender and Issuing Bank irrevocably consent and submit to the non-exclusive jurisdiction of the United States Bankruptcy Court of the District of New Jersey (and in the event such Bankruptcy Court does not have jurisdiction over any matter or if it has jurisdiction but does not exercise such jurisdiction for any reason, then the courts of the State of New York sitting in New York County, New York and the United States District Court of the Southern District of New York, whichever Administrative Agent may elect), and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in

any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except, that, Administrative Agent and Lenders shall have the right to bring any action or proceeding against any Borrower or Guarantor or its or their property in the courts of any other jurisdiction which Administrative Agent deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against any Borrower or Guarantor or its or their property).

(c) Each Borrower and Guarantor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Administrative Agent's option, by service upon any Borrower or Guarantor (or Company on behalf of such Borrower or Guarantor) in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, such Borrower or Guarantor shall appear in answer to such process, failing which such Borrower or Guarantor shall be deemed in default and judgment may be entered by Administrative Agent against such Borrower or Guarantor for the amount of the claim and other relief requested; provided, however, that, enforcement in a Dutch court of this Agreement and the Dutch Deed of Pledge will be subject to Dutch rules of civil procedure.

(d) BORROWERS, GUARANTORS, AGENT, LENDERS AND ISSUING BANK EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. BORROWERS, GUARANTORS, AGENT, LENDERS AND ISSUING BANK EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY BORROWER, ANY GUARANTOR, ADMINISTRATIVE AGENT, ANY LENDER OR ISSUING BANK MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Administrative Agent, Lenders, Swingline Lender and Issuing Bank shall not have any liability to any Borrower or Guarantor (whether in tort, contract, equity or otherwise) for losses suffered by such Borrower or Guarantor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Administrative Agent, such Lender, Swingline Lender and Issuing Bank, that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, Administrative Agent, Lenders, Swingline Lender and Issuing Bank shall be entitled to the benefit of the rebuttable presumption that it acted in good faith

and with the exercise of ordinary care in the performance by it of the terms of this Agreement. Each Borrower and Guarantor: (i) certifies that neither Administrative Agent, any Lender, Swingline Lender, Issuing Bank nor any representative, agent or attorney acting for or on behalf of Administrative Agent, any Lender, Swingline Lender or Issuing Bank has represented, expressly or otherwise, that Administrative Agent, Lenders, Swingline Lender and Issuing Bank would not, in the event of litigation, seek to enforce any of the waivers provided for in this Agreement or any of the other Financing Agreements and (ii) acknowledges that in entering into this Agreement and the other Financing Agreements, Administrative Agent, Lenders, Swingline Lender and Issuing Bank are relying upon, among other things, the waivers and certifications set forth in this Section 11.1 and elsewhere herein and therein.

#### 11.2 Waiver of Notices.

Each Borrower and Guarantor hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonor with respect to any and all instruments and chattel paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on any Borrower or Guarantor which Administrative Agent or any Lender may elect to give shall entitle such Borrower or Guarantor to any other or further notice or demand in the same, similar or other circumstances.

#### 11.3 Amendments and Waivers.

(a) Neither this Agreement nor any other Financing Agreement nor any terms hereof or thereof may be amended, waived, discharged or terminated unless such amendment, waiver, discharge or termination is in writing signed by Administrative Agent and the Required Lenders or at Administrative Agent's option, by Administrative Agent with the authorization or consent of the Required Lenders, and as to amendments to any of the Financing Agreements (other than with respect to any provision of Section 12 hereof), by any Borrower and such amendment, waiver, discharge or termination shall be effective and binding as to all Lenders and Issuing Bank only in the specific instance and for the specific purpose for which given; except, that, no such amendment, waiver, discharge or termination shall:

(b) reduce the interest rate or any fees or extend the time of payment of principal, interest or any fees or reduce the principal amount of any Loan or Letters of Credit, in each case without the consent of each Lender directly affected thereby,

(i) increase the Commitment of any Lender over the amount thereof then in effect or provided hereunder, in each case without the consent of the Lender directly affected thereby,

(ii) release Collateral with a fair market value in excess of \$2,000,000 (except as expressly required hereunder or under any of the other Financing Agreements or applicable law and except as permitted under Section 12.11(b) hereof), without the consent of Administrative Agent and all of Lenders,

(iii) release any Borrower or any material Guarantor (as determined by Administrative Agent) from obligations hereunder, without the consent of Administrative Agent and all of the Lenders,

(iv) reduce any percentage specified in the definition of Required Lenders, without the consent of Administrative Agent and all of Lenders,

(v) consent to the assignment or transfer by any Borrower or Guarantor of any of their rights and obligations under this Agreement, without the consent of Administrative Agent and all of Lenders,

(vi) amend, modify or waive any terms of this Section 11.3 hereof, without the consent of Administrative Agent and all of Lenders,

(vii) increase the advance rates constituting part of the U.S. Borrowing Base, increase the Letter of Credit Limit or modify the definitions of Eligible Accounts or Eligible Inventory such that more credit would be available to Borrowers, without the consent of Administrative Agent and all of Lenders,

(viii) amend, modify or waive any requirements of Section 12.8 or 12.11 such that the amount of permitted overadvances or Special Agent Advances may be increased without the consent of Administrative Agent and each Lender,

(ix) amend Section 6.4(a) without the consent of Administrative Agent and each Lender, or

(x) amend, modify or waive any requirements of Section 9.18 without the consent of Administrative Agent and each Lender.

(c) Administrative Agent, Lenders and Issuing Bank shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its or their rights, powers and/or remedies unless such waiver shall be in writing and signed as provided herein. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Administrative Agent, any Lender or Issuing Bank of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Administrative Agent, any Lender or Issuing Bank would otherwise have on any future occasion, whether similar in kind or otherwise.

(d) Notwithstanding anything to the contrary contained in Section 11.3(a) above, in connection with any amendment, waiver, discharge or termination, in the event that any Lender whose consent thereto is required shall fail to consent or fail to consent in a timely manner (such Lender being referred to herein as a "Non-Consenting Lender"), but the consent of any other Lenders to such amendment, waiver, discharge or termination that is required are obtained, if any, then Wells Fargo shall have the right, but not the obligation, at any time thereafter, and upon the exercise by Wells Fargo of such right, such Non-Consenting Lender shall have the obligation, to sell, assign and transfer to Wells Fargo or such Eligible Transferee as Wells Fargo may specify, the Commitment of such Non-Consenting Lender and all rights and interests of such Non-Consenting Lender pursuant thereto. Wells Fargo shall provide the Non-Consenting Lender with prior written

notice of its intent to exercise its right under this Section, which notice shall specify on date on which such purchase and sale shall occur. Such purchase and sale shall be pursuant to the terms of an Assignment and Acceptance (whether or not executed by the Non-Consenting Lender); except, that, on the date of such purchase and sale, Wells Fargo, or such Eligible Transferee specified by Wells Fargo, shall pay to the Non-Consenting Lender (except as Wells Fargo and such Non-Consenting Lender may otherwise agree) the amount equal to: (i) the principal balance of the Loans held by the Non-Consenting Lender outstanding as of the close of business on the business day immediately preceding the effective date of such purchase and sale, plus (ii) amounts accrued and unpaid in respect of interest and fees payable to the Non-Consenting Lender to the effective date of the purchase (but in no event shall the Non-Consenting Lender be deemed entitled to any early termination fee), minus (iii) the amount of the closing fee received by the Non-Consenting Lender pursuant to the terms hereof or of any of the other Financing Agreements multiplied by the fraction, the numerator of which is the number of months remaining in the then current term of the Credit Facility and the denominator of which is the number of months in the then current term thereof. Such purchase and sale shall be effective on the date of the payment of such amount to the Non-Consenting Lender and the Commitment of the Non-Consenting Lender shall terminate on such date.

(e) The consent of Administrative Agent shall be required for any amendment, waiver or consent affecting the rights or duties of Administrative Agent hereunder or under any of the other Financing Agreements, in addition to the consent of the Lenders otherwise required by this Section and the exercise by Administrative Agent of any of its rights hereunder with respect to Reserves or Eligible Accounts or Eligible Inventory shall not be deemed an amendment to the advance rates provided for in this Section 11.3. The consent of Issuing Bank shall be required for any amendment, waiver or consent affecting the rights or duties of Issuing Bank hereunder or under any of the other Financing Agreements, in addition to the consent of the Lenders otherwise required by this Section; provided, that, the consent of Issuing Bank shall not be required for any other amendments, waivers or consents. The consent of Swingline Lender shall be required for any amendment, waiver or consent affecting the rights or duties of Swingline Lender hereunder or under any of the other Financing Agreements, in addition to the consent of the Lenders otherwise required by this Section. Notwithstanding anything to the contrary contained in Section 11.3(a) above, (i) in the event that Administrative Agent shall agree that any items otherwise required to be delivered to Administrative Agent as a condition of the initial Loans and Letters of Credit hereunder may be delivered after the date hereof, Administrative Agent may, in its discretion, agree to extend the date for delivery of such items or take such other action as Administrative Agent may deem appropriate as a result of the failure to receive such items as Administrative Agent may determine or may waive any Event of Default as a result of the failure to receive such items, in each case without the consent of any Lender and (ii) Administrative Agent may consent to any change in the type of organization, jurisdiction of organization or other legal structure of any Borrower, Guarantor or any of their Subsidiaries and amend the terms hereof or of any of the other Financing Agreements as may be necessary or desirable to reflect any such change, in each case without the approval of any Lender.

#### 11.4 Waiver of Counterclaims.

Each Borrower and Guarantor waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.

### 11.5 Indemnification.

Each Borrower and Guarantor shall, jointly and severally, indemnify and hold Administrative Agent, each Lender, the Arranger and Issuing Bank, and their respective officers, directors, agents, employees, advisors and counsel and their respective Affiliates (each such person being an "Indemnatee"), harmless from and against any and all losses, claims, damages, liabilities, costs or expenses (including attorneys' fees and expenses) imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other Financing Agreements, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel; except, that, Borrowers and Guarantors shall not have any obligation under this Section 11.5 to indemnify an Indemnatee with respect to a matter covered hereby resulting from the gross negligence or willful misconduct of such Indemnatee as determined pursuant to a final, non-appealable order of a court of competent jurisdiction (but without limiting the obligations of Borrowers or Guarantors as to any other Indemnatee). To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, Borrowers and Guarantors shall pay the maximum portion which it is permitted to pay under applicable law to Administrative Agent and Lenders in satisfaction of indemnified matters under this Section. To the extent permitted by applicable law, no Borrower or Guarantor shall assert, and each Borrower and Guarantor hereby waives, any claim against any Indemnatee, on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Financing Agreements or any undertaking or transaction contemplated hereby. No Indemnatee referred to above 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 any of the other Financing Agreements or the transaction contemplated hereby or thereby. All amounts due under this Section shall be payable upon demand. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

## **SECTION 12. THE AGENT**

### 12.1 Appointment, Powers and Immunities.

Each Lender and Issuing Bank irrevocably designates, appoints and authorizes Wells Fargo to act as Administrative Agent and Collateral Agent hereunder and under the other Financing Agreements with such powers as are specifically delegated to Administrative Agent and Collateral Agent, as applicable, by the terms of this Agreement and of the other Financing Agreements, together with such other powers as are reasonably incidental thereto. Administrative Agent and Collateral Agent (a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Financing Agreements, and shall not by reason of this Agreement or any other Financing Agreement be a trustee or fiduciary for any Lender; (b) shall not be responsible to Lenders for any recitals, statements, representations or warranties contained in this Agreement or in any of the other Financing Agreements, or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or any other Financing

Agreement, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Agreement or any other document referred to or provided for herein or therein or for any failure by any Borrower or any Guarantor or any other Person to perform any of its obligations hereunder or thereunder; and (c) shall not be responsible to Lenders for any action taken or omitted to be taken by it hereunder or under any other Financing Agreement or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except for its own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Administrative Agent may employ agents and attorneys in fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys in fact selected by it in good faith. Administrative Agent may deem and treat the payee of any note as the holder thereof for all purposes hereof unless and until the assignment thereof pursuant to an agreement (if and to the extent permitted herein) in form and substance satisfactory to Administrative Agent shall have been delivered to and acknowledged by Administrative Agent.

#### 12.2 Reliance by Administrative Agent.

Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopy, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. As to any matters not expressly provided for by this Agreement or any other Financing Agreement, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders or all of Lenders as is required in such circumstance, and such instructions of such Agents and any action taken or failure to act pursuant thereto shall be binding on all Lenders.

#### 12.3 Events of Default.

(a) Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or an Event of Default or other failure of a condition precedent to the Loans and Letters of Credit hereunder, unless and until Administrative Agent has received written notice from a Lender, or Borrower specifying such Event of Default or any unfulfilled condition precedent, and stating that such notice is a "Notice of Default or Failure of Condition". In the event that Administrative Agent receives such a Notice of Default or Failure of Condition, Administrative Agent shall give prompt notice thereof to the Lenders. Administrative Agent shall (subject to Section 12.7) take such action with respect to any such Event of Default or failure of condition precedent as shall be directed by the Required Lenders to the extent provided for herein; provided, that, unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to or by reason of such Event of Default or failure of condition precedent, as it shall deem advisable in the best interest of Lenders. Without limiting the foregoing, and notwithstanding the existence or occurrence and continuance of an Event of Default or any other failure to satisfy any of the conditions precedent set forth in Section 4 of this Agreement to the contrary, unless and until otherwise directed by the Required Lenders, Administrative Agent may, but shall have no obligation to, continue to make Loans and Issuing Bank may, but shall have no obligation to, issue or cause to be issued any Letter of Credit for the ratable account and risk of Lenders from time to time if

Administrative Agent believes making such Loans or issuing or causing to be issued such Letter of Credit is in the best interests of Lenders.

(b) Except with the prior written consent of Administrative Agent, no Lender or Issuing Bank may assert or exercise any enforcement right or remedy in respect of the Loans, Letter of Credit Obligations or other Obligations, as against any Borrower or Guarantor or any of the Collateral or other property of any Borrower or Guarantor.

#### 12.4 Wells Fargo in its Individual Capacity.

With respect to its Commitment and the Loans made and Letters of Credit issued or caused to be issued by it (and any successor acting as Administrative Agent), so long as Wells Fargo shall be a Lender hereunder, it shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as Administrative Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Wells Fargo in its individual capacity as Lender hereunder. Wells Fargo (and any successor acting as Administrative Agent) and its Affiliates may (without having to account therefor to any Lender) lend money to, make investments in and generally engage in any kind of business with Borrowers (and any of its Subsidiaries or Affiliates) as if it were not acting as Administrative Agent, and Wells Fargo and its Affiliates may accept fees and other consideration from any Borrower or Guarantor and any of its Subsidiaries and Affiliates for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

#### 12.5 Indemnification.

Lenders agree to indemnify Administrative Agent and Issuing Bank (to the extent not reimbursed by Borrowers hereunder and without limiting any obligations of Borrowers hereunder) ratably, in accordance with their Pro Rata Shares, for any and all claims of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Administrative Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Financing Agreement or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including the costs and expenses that Administrative Agent is obligated to pay hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents; provided, that, no Lender shall be liable for any of the foregoing to the extent it arises from the gross negligence or willful misconduct of the party to be indemnified as determined by a final non-appealable judgment of a court of competent jurisdiction. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

#### 12.6 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender agrees that it has, independently and without reliance on Administrative Agent or other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of Borrowers and Guarantors and has made its own decision to enter into this Agreement and that it will, independently and without reliance upon Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement

or any of the other Financing Agreements. Administrative Agent shall not be required to keep itself informed as to the performance or observance by any Borrower or Guarantor of any term or provision of this Agreement or any of the other Financing Agreements or any other document referred to or provided for herein or therein or to inspect the properties or books of any Borrower or Guarantor. Administrative Agent will use reasonable efforts to provide Lenders with any information received by Administrative Agent from any Borrower or Guarantor which is required to be provided to Lenders or deemed to be requested by Lenders hereunder and with a copy of any Notice of Default or Failure of Condition received by Administrative Agent from any Borrower or any Lender; provided, that, Administrative Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Administrative Agent's own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Except for notices, reports and other documents expressly required to be furnished to Lenders by Administrative Agent or deemed requested by Lenders hereunder, Administrative Agent shall not have any duty or responsibility to provide any Lender with any other credit or other information concerning the affairs, financial condition or business of any Borrower or Guarantor that may come into the possession of Administrative Agent.

#### 12.7 Failure to Act.

Except for action expressly required of Administrative Agent hereunder and under the other Financing Agreements, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from Lenders of their indemnification obligations under Section 12.5 hereof against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

#### 12.8 Additional Loans.

Administrative Agent shall not make any Revolving Loans or Issuing Bank provide any Letter of Credit to any Borrower on behalf of Lenders intentionally and with actual knowledge that such Revolving Loans or Letter of Credit would cause the aggregate Dollar Amount of the total outstanding Loans and Letter of Credit Obligations to exceed the U.S. Borrowing Base, without the prior consent of all Lenders; except, that, Administrative Agent may make such additional Revolving Loans or Issuing Bank may provide such additional Letter of Credit on behalf of Lenders, intentionally and with actual knowledge that such Revolving Loans or Letter of Credit will cause the total outstanding Loans and Letter of Credit Obligations to exceed the U.S. Borrowing Base, as Administrative Agent may deem necessary or advisable in its discretion; provided, that: (a) the total principal Dollar Amount of the additional Revolving Loans or additional Letters of Credit to any Borrower which Administrative Agent may make or provide after obtaining such actual knowledge that the aggregate principal Dollar Amount of the Loans and Letter of Credit Obligations equal or exceed the U.S. Borrowing Base, plus the amount of Special Administrative Agent Advances made pursuant to Section 12.11(a)(ii) hereof then outstanding, shall not exceed the aggregate amount equal to ten (10%) percent of the Maximum Credit and shall not cause the total principal Dollar Amount of the Loans and Letters of Credit to exceed the Maximum Credit and (b) no such additional Revolving Loan or Letter of Credit shall be outstanding more than ninety (90) days after the date such additional Revolving Loan or Letter of Credit is made or issued (as the case may be), except as the Required Lenders may otherwise agree. Each Lender shall be obligated to pay Administrative Agent the amount of its Pro Rata Share of any such additional Revolving Loans or Letters of Credit.

12.9 Concerning the Collateral and the Related Financing Agreements.

Each Lender authorizes and directs Administrative Agent to enter into this Agreement and the other Financing Agreements. Each Lender agrees that any action taken by Administrative Agent or Required Lenders in accordance with the terms of this Agreement or the other Financing Agreements and the exercise by Administrative Agent or Required Lenders of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

12.10 Field Audit, Examination Reports and other Information; Disclaimer by Lenders.

By signing this Agreement, each Lender: is deemed to have requested that Administrative Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report and report with respect to the U.S. Borrowing Base prepared or received by Administrative Agent (each field audit or examination report and report with respect to the U.S. Borrowing Base being referred to herein as a "Report" and collectively, "Reports"), appraisals with respect to the Collateral and financial statements with respect to Company and its Subsidiaries received by Administrative Agent;

(a) expressly agrees and acknowledges that Administrative Agent (i) does not make any representation or warranty as to the accuracy of any Report, appraisal or financial statement or (ii) shall not be liable for any information contained in any Report, appraisal or financial statement;

(b) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Administrative Agent or any other party performing any audit or examination will inspect only specific information regarding Borrowers and Guarantors and will rely significantly upon Borrowers' and Guarantors' books and records, as well as on representations of Borrowers' and Guarantors' personnel; and

(c) agrees to keep all Reports confidential and strictly for its internal use in accordance with the terms of Section 13.5 hereof, and not to distribute or use any Report in any other manner.

12.11 Collateral Matters.

(a) 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 Loans and Letters of Credit hereunder, make such disbursements and advances ("Special Administrative Agent Advances") which Administrative Agent, in its sole discretion, (i) deems necessary or desirable either to preserve or protect the Collateral or any portion thereof or (ii) to enhance the likelihood or maximize the amount of repayment by Borrowers and Guarantors of the Loans and other Obligations; provided, that, (A) the aggregate principal Dollar Amount of the Special Administrative Agent Advances pursuant to this clause (ii) outstanding at any time, plus the then outstanding principal Dollar Amount of the additional Loans and Letters of Credit which Administrative Agent may make or provide as set forth in Section 12.8 hereof, shall not exceed the amount equal to ten (10%) percent of the Maximum Credit and (B) the aggregate principal Dollar Amount of the Special Administrative Agent Advances pursuant to this clause (ii)

outstanding at any time, plus the then outstanding principal Dollar Amount of the Loans, shall not exceed the Maximum Credit, except at Administrative Agent's option; provided, that, to the extent that the aggregate principal amount of Special Administrative Agent Advances plus the then outstanding principal amount of the Loans exceed the Maximum Credit the Special Administrative Agent Advances that are in excess of the Maximum Credit shall be for the sole account and risk of Administrative Agent and notwithstanding anything to the contrary set forth below, no Lender shall have any obligation to provide its share of such Special Administrative Agent Advances in excess of the Maximum Credit, or (iii) to pay any other amount chargeable to any Borrower or Guarantor pursuant to the terms of this Agreement or any of the other Financing Agreements consisting of (A) costs, fees and expenses and (B) payments to Issuing Bank in respect of any Letter of Credit Obligations. The Special Administrative Agent Advances shall be repayable on demand and together with all interest thereon shall constitute Obligations secured by the Collateral. Special Administrative Agent Advances shall not constitute Loans but shall otherwise constitute Obligations hereunder. Interest on Special Administrative Agent Advances shall be payable at the Interest Rate then applicable to Prime Rate Loans and shall be payable on demand. Without limitation of its obligations pursuant to Section 6.11, 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 Share of each such Special Administrative Agent Advance. If such funds are not made available to Administrative Agent by such Lender, such Lender shall be deemed a Defaulting Lender and 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 3.1 hereof applicable to Prime Rate Loans.

(b) Lenders hereby irrevocably authorize Administrative Agent and Collateral Agent, at their option and in their discretion to release any security interest in or lien upon, any of the Collateral (i) upon termination of the Commitments and payment and satisfaction of all of the Obligations and delivery of cash collateral to the extent required under Section 13.1 below, or (ii) constituting property being sold or disposed of if Company or any Borrower or Guarantor certifies to Administrative Agent or Collateral Agent that the sale or disposition is made in compliance with Section 9.7 hereof (and Administrative Agent and Collateral Agent may rely conclusively on any such certificate, without further inquiry), or (iii) constituting property in which any Borrower or Guarantor did not own an interest at the time the security interest or lien was granted or at any time thereafter, or (iv) having a value in the aggregate in any twelve (12) month period of less than \$500,000, and to the extent Collateral Agent may release its security interest in and lien upon any such Collateral pursuant to the sale or other disposition thereof, such sale or other disposition shall be deemed consented to by Lenders, or (v) if required or permitted under the terms of any of the other Financing Agreements, including any intercreditor agreement, or (vi) approved, authorized or ratified in writing by all of Lenders. Except as provided above, Collateral Agent and Administrative Agent will not release any security interest in or lien upon, any of the Collateral without the prior written authorization of all of Lenders. Upon request by Collateral Agent or Administrative Agent at

any time, Lenders will promptly confirm in writing Collateral Agent's or Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section. In no event shall the consent or approval of Issuing Bank to any release of Collateral be required.

(c) Without in any manner limiting Administrative Agent's authority to act without any specific or further authorization or consent by the Required Lenders, each Lender agrees to confirm in writing, upon request by Collateral Agent or Administrative Agent, the authority to release Collateral conferred upon Collateral Agent under this Section. Collateral Agent shall (and is hereby irrevocably authorized by Lenders to) execute such documents as may be necessary to evidence the release of the security interest or liens granted to Collateral Agent upon any Collateral to the extent set forth above; provided, that, (i) Collateral Agent shall not be required to execute any such document on terms which, in Collateral Agent's or Administrative Agent's opinion, would expose Collateral Agent or Administrative Agent to liability or create any obligations or entail any consequence other than the release of such security interest or liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any security interest or lien upon (or obligations of any Borrower or Guarantor in respect of) the Collateral retained by such Borrower or Guarantor.

(d) Neither Collateral Agent nor Administrative Agent shall have any obligation whatsoever to any Lender, Issuing Bank or any other Person to investigate, confirm or assure that the Collateral exists or is owned by any Borrower or Guarantor or is cared for, protected or insured or has been encumbered, or that any particular items of Collateral meet the eligibility criteria applicable in respect of the Loans or Letters of Credit hereunder, or whether any particular reserves are appropriate, or that the liens and security interests granted to Collateral Agent pursuant hereto or any of the Financing Agreements or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Collateral Agent or Administrative Agent in this Agreement or in any of the other Financing Agreements, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, subject to the other terms and conditions contained herein, Collateral Agent and Administrative Agent may act in any manner it may deem appropriate, in its discretion, given Collateral Agent's own interest in the Collateral as a Lender and that neither Collateral Agent nor Administrative Agent shall have any duty or liability whatsoever to any other Lender or Issuing Bank.

#### 12.12 Agency for Perfection.

Each Lender and Issuing Bank hereby appoints Administrative Agent, Collateral Agent, Control Agent and each other Lender and Issuing Bank as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral of Collateral Agent in assets which, in accordance with Article 9 of the UCC can be perfected only by possession (or where the security interest of a secured party with possession has priority over the security interest of another secured party) and Collateral Agent, Administrative Agent, Control Agent and each Lender and Issuing Bank hereby acknowledges that it holds possession of any such Collateral for the benefit of Collateral Agent as secured party. Should any Lender or Issuing Bank obtain possession of any such Collateral, such Lender shall notify Administrative Agent thereof, and, promptly upon

Administrative Agent's request therefor shall deliver such Collateral to Collateral Agent or Control Agent or in accordance with Administrative Agent's instructions.

12.13 Successor Administrative Agent.

Administrative Agent may resign as Administrative Agent upon thirty (30) days' notice to Lenders and Company; provided, that, if Administrative Agent resigns, it shall also resign as Collateral Agent and Control Agent (if applicable). If Administrative Agent resigns under this Agreement, the Required Lenders shall appoint a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Administrative Agent, Administrative Agent may appoint, after consulting with Lenders and Company, a successor agent but no Lender shall be required to accept such appointment. Upon the acceptance by a Person as successor agent hereunder, such successor agent shall succeed to all of the rights, powers and duties of the retiring Administrative Agent and Collateral Agent and the terms "Administrative Agent" and "Collateral Agent" as used herein and in the other Financing Agreements shall mean such successor agent and the retiring Administrative Agent's and Collateral Agent's appointment, powers and duties as Administrative Agent and Collateral Agent shall be terminated. After any retiring Administrative Agent's resignation hereunder as Administrative Agent and Collateral Agent's resignation hereunder as Collateral Agent, the provisions of this Section 12 shall inure to its benefit as to any actions taken or omitted by it while it was Administrative Agent or Collateral Agent under this Agreement. If no successor agent has accepted appointment as Administrative Agent and Collateral Agent by the date which is thirty (30) days after the date of a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nonetheless thereupon become effective and Lenders shall perform all of the duties of Administrative Agent and Collateral Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. The successor Administrative Agent and Collateral Agent shall execute all documents and take all other actions necessary in connection with the substitution, in accordance with applicable law, of the successor Administrative Agent and Collateral Agent as creditor of the Company's Parallel Debts and as holder of the security created pursuant to the Financing Agreements.

12.14 Other Agent Designations.

Administrative Agent may at any time and from time to time determine that a Lender may, in addition, be a "Co-Administrative Agent", "Syndication Agent", "Documentation Agent", "Collateral Agent", "Control Agent" or similar designation hereunder and enter into an agreement with such Lender to have it so identified for purposes of this Agreement. Any such designation shall be effective upon written notice by Administrative Agent to Company of any such designation. Any Lender that is so designated as a Co-Administrative Agent, Syndication Agent, Documentation Agent, Collateral Agent, Control Agent or such similar designation by Administrative Agent shall have no right, power, obligation, liability, responsibility or duty under this Agreement or any of the other Financing Agreements other than those applicable to all Lenders as such. Without limiting the foregoing, the Lenders so identified shall not have or be deemed to have any fiduciary relationship with any Lender and no Lender shall be deemed to have relied, nor shall any Lender rely, on a Lender so identified as a Co-Administrative Agent, Syndication Agent, Documentation Agent, Collateral Agent, Control Agent or such similar designation in deciding to enter into this Agreement or in taking or not taking action hereunder.

12.15 Intercreditor Agreement.

Each of the Lenders hereby acknowledges that it has received and reviewed the Intercreditor Agreement and agrees to be bound by the terms thereof. Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 13.7) hereby (i) acknowledges that Wells Fargo is acting under the Intercreditor Agreement in multiple capacities as Administrative Agent and as a Control Agent and (ii) waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against Wells Fargo any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto. Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 13.7) hereby authorizes and directs Wells Fargo to enter into the Intercreditor Agreement on behalf of such Lender and agrees that Wells Fargo, in its various capacities thereunder, may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement.

12.16 Parallel Debts and Administrative Agent.

(a) Notwithstanding any provision to the contrary in any Financing Agreement, in relation to the Company's Parallel Debts and any security governed by Dutch law (i) Administrative Agent (or Collateral Agent, as applicable) shall act for itself and not as agent for any Lender (but always for the benefit of the Lenders in accordance with the provisions of the Financing Agreements); and (ii) the rights, powers and authorities vested in Administrative Agent (or Collateral Agent, as applicable) pursuant to the Financing Agreements are subject to any restrictions imposed by mandatory Dutch law.

(b) If Collateral Agent resigns in accordance with Section 12.13, the Company shall execute such documents and take all such other action as necessary or (in the opinion of Collateral Agent) desirable in connection with the substitution, in accordance with applicable law, of the successor Collateral Agent as creditor of the Parallel Debts and as beneficiary of any security securing the Parallel Debts.

**SECTION 13. TERM OF AGREEMENT; MISCELLANEOUS**

13.1 Term.

(a) This Agreement and the other Financing Agreements shall become effective as of the date set forth on the first page hereof and shall mature with all Obligations to be paid and satisfied in full in immediately available funds on the Termination Date. Upon the Termination Date, or earlier if accelerated pursuant to Section 10.2, Borrowers shall pay to Administrative Agent all outstanding and unpaid Obligations and shall furnish cash collateral to Administrative Agent (or at Administrative Agent's option, a letter of credit issued for the account of Borrowers and at Borrowers' expense, in form and substance satisfactory to Administrative Agent, by an issuer reasonably acceptable to Administrative Agent and payable to Administrative Agent as beneficiary) in such amounts as Administrative Agent determines are reasonably necessary to secure Administrative Agent, Lenders and Issuing Bank from loss, cost, damage or expense, including attorneys' fees and expenses, in connection with any contingent Obligations, including issued and outstanding Letter of Credit Obligations and checks or other payments provisionally credited to the Obligations and/or as to which Administrative Agent or any Lender has not yet received final and

indefeasible payment and any continuing obligations of Administrative Agent or any Lender pursuant to any Account Control Agreement. The amount of such cash collateral (or letter of credit, as Administrative Agent may determine) as to any Letter of Credit Obligations shall be in the amount equal to one hundred five (105%) percent of the amount of the Letter of Credit Obligations plus the amount of any fees and expenses payable in connection therewith through the end of the latest expiration date of the Letters of Credit giving rise to such Letter of Credit Obligations. Such payments in respect of the Obligations and cash collateral shall be remitted by wire transfer in Federal funds to the Agent Payment Account or such other bank account of Administrative Agent, as Administrative Agent may, in its discretion, designate in writing to Company for such purpose. Interest shall be due until and including the next Business Day, if the amounts so paid by Borrowers to the Agent Payment Account or other bank account designated by Administrative Agent are received in such bank account later than 12:00 noon, Charlotte, North Carolina time.

(b) No termination of the Commitments, this Agreement or any of the other Financing Agreements shall relieve or discharge any Borrower or Guarantor of its respective duties, obligations and covenants under this Agreement or any of the other Financing Agreements until all Obligations (other than contingent indemnification and like Obligations which by the terms thereof are stated to survive termination of the Financing Agreements) have been fully and finally discharged and paid, and Collateral Agent's continuing security interest in the Collateral and the rights and remedies of Administrative Agent, Collateral Agent and Lenders hereunder, under the other Financing Agreements and applicable law, shall remain in effect until all such Obligations have been fully and finally discharged and paid. Accordingly, each Borrower and Guarantor waives any rights it may have under the UCC to demand the filing of termination statements with respect to the Collateral and neither Collateral Agent nor Administrative Agent shall be required to send such termination statements to Borrowers or Guarantors, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms and all such Obligations paid and satisfied in full in immediately available funds.

### 13.2 Interpretative Provisions.

All terms used herein which are defined in Article 1, Article 8 or Article 9 of the UCC shall have the meanings given therein unless otherwise defined in this Agreement.

(a) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(b) All references to any Borrower, Guarantor, Administrative Agent, Collateral Agent and Lenders pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns, including, without limitation, as to such Borrower or Guarantor, such Borrower or Guarantor, as Debtor and Debtor-in-Possession under the Bankruptcy Code, and any trustee or other fiduciary hereafter appointed as its legal representative or with respect to the property of the estate of such Borrower or Guarantor under Chapter 11 or Chapter 7 of the Bankruptcy Code and any successor upon the conclusion of the Chapter 11 Cases..

(c) The words "hereof", "herein", "hereunder", "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any

particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(d) The word “including” when used in this Agreement shall mean “including, without limitation” and the word “will” when used in this Agreement shall be construed to have the same meaning and effect as the word “shall”.

(e) An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 11.3 or is cured in a manner satisfactory to Administrative Agent, if such Event of Default is capable of being cured as determined by Administrative Agent.

(f) All references to the term “good faith” used herein when applicable to Administrative Agent or any Lender shall mean, notwithstanding anything to the contrary contained herein or in the UCC, honesty in fact in the conduct or transaction concerned. Borrowers and Guarantors shall have the burden of proving any lack of good faith on the part of Administrative Agent or any Lender alleged by any Borrower or Guarantor at any time.

(g) Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the financial statements of Company most recently received by Administrative Agent prior to the date hereof. Notwithstanding the foregoing, all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof. Notwithstanding anything to the contrary contained in GAAP or any interpretations or other pronouncements by the Financial Accounting Standards Board or otherwise, the term “unqualified opinion” as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is unqualified and also does not include any explanation, supplemental comment or other comment concerning the ability of the applicable person to continue as a going concern or the scope of the audit.

(h) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”.

(i) Unless otherwise expressly provided herein, (i) references herein to any agreement, document or instrument shall be deemed to include all subsequent amendments, modifications, supplements, extensions, renewals, restatements or replacements with respect thereto, but only to the extent the same are not prohibited by the terms hereof or of any other Financing Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, recodifying, supplementing or interpreting the statute or regulation.

(j) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(k) This Agreement and other Financing Agreements may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(l) This Agreement and the other Financing Agreements are the result of negotiations among and have been reviewed by counsel to Administrative Agent and the other parties, and are the products of all parties. Accordingly, this Agreement and the other Financing Agreements shall not be construed against Administrative Agent or Lenders merely because of Administrative Agent's or any Lender's involvement in their preparation.

### 13.3 Notices.

(a) All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next Business Day, one (1) Business Day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. Notices delivered through electronic communications shall be effective to the extent set forth in Section 13.3(b) below. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

The Company and the other  
Borrowers and Guarantors:

The Newark Group, Inc.  
20 Jackson Drive  
Cranford, New Jersey 07016  
Attention: Mr. Joseph E. Byrne, Vice President  
and Chief Financial Officer  
Telecopier: (908) 276-2888  
Telephone: (908) 276-4000  
Email: [jbyrne@tngus.com](mailto:jbyrne@tngus.com)

with a copy to:

Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, New Jersey 07068  
Attention: Mr. Daniel J. Barkin  
Telecopier: (973) 597-2400  
Telephone: (973) 597-2500  
Email: [dbarkin@lowenstein.com](mailto:dbarkin@lowenstein.com)

The Administrative Agent: Wells Fargo Bank, National Association,  
as Administrative Agent  
12 East 49th Street  
New York, New York 10017  
Attention: Portfolio Manager  
Telecopier: (212) 545-4420  
Telephone: (212) 545-4535  
Email: [herb.korn@wellsfargo.com](mailto:herb.korn@wellsfargo.com)

The Lenders: The address set forth on each Lender's  
Administrative Details Form

(b) Notices and other communications to Lenders and Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent or as otherwise determined by Administrative Agent; provided, that, the foregoing shall not apply to notices to any Lender or Issuing Bank pursuant to Section 2 hereof if such Lender or Issuing Bank, as applicable, has notified Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. Unless Administrative Agent otherwise requires, (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 given during the normal business hours of the recipient, such notice 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 communications is available and identifying the website address therefor.

#### 13.4 Partial Invalidity.

If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

#### 13.5 Confidentiality.

(a) Administrative Agent, each Lender and Issuing Bank shall use all reasonable efforts to keep confidential, in accordance with its customary procedures for handling confidential information and safe and sound lending practices, any non-public information supplied to it by any Borrower pursuant to this Agreement which is clearly and conspicuously marked as confidential at the time such information is furnished by such Borrower to Administrative Agent, such Lender or Issuing Bank; provided, that, nothing contained herein shall limit the disclosure of any such information: (i) to the extent required by statute, rule, regulation, subpoena or court order, (ii) to bank examiners and other regulators, auditors and/or accountants, in connection with any litigation

to which Administrative Agent, such Lender or Issuing Bank is a party, (iii) to any Lender or Participant (or prospective Lender or Participant) or Issuing Bank or to any Affiliate of any Lender so long as such Lender, Participant (or prospective Lender or Participant), Issuing Bank or Affiliate shall have been instructed to treat such information as confidential in accordance with this Section 13.5, or (iv) to counsel for Administrative Agent, any Lender, Participant (or prospective Lender or Participant) or Issuing Bank.

(b) In the event that Administrative Agent, any Lender or Issuing Bank receives a request or demand to disclose any confidential information pursuant to any subpoena or court order, Administrative Agent or such Lender or Issuing Bank, as the case may be, agrees (i) to the extent permitted by applicable law or if permitted by applicable law, to the extent Administrative Agent or such Lender or Issuing Bank determines in good faith that it will not create any risk of liability to Administrative Agent or such Lender or Issuing Bank, Administrative Agent or such Lender or Issuing Bank will promptly notify Company of such request so that Company may seek a protective order or other appropriate relief or remedy and (ii) if disclosure of such information is required, disclose such information and, subject to reimbursement by Borrowers of Administrative Agent's or such Lender's or Issuing Bank's expenses, cooperate with Company in the reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed information which Company so designates, to the extent permitted by applicable law or if permitted by applicable law, to the extent Administrative Agent or such Lender or Issuing Bank determines in good faith that it will not create any risk of liability to Administrative Agent or such Lender or Issuing Bank.

(c) In no event shall this Section 13.5 or any other provision of this Agreement, any of the other Financing Agreements or applicable law be deemed: (i) to apply to or restrict disclosure of information that has been or is made public by any Borrower, Guarantor or any third party or otherwise becomes generally available to the public other than as a result of a disclosure in violation hereof, (ii) to apply to or restrict disclosure of information that was or becomes available to Administrative Agent, any Lender (or any Affiliate of any Lender) or Issuing Bank on a non-confidential basis from a person other than a Borrower or Guarantor, (iii) to require Administrative Agent, any Lender or Issuing Bank to return any materials furnished by a Borrower or Guarantor to Administrative Agent, a Lender or Issuing Bank or prevent Administrative Agent, a Lender or Issuing Bank from responding to routine informational requests in accordance with the Code of Ethics for the Exchange of Credit Information promulgated by The Robert Morris Associates or other applicable industry standards relating to the exchange of credit information. The obligations of Administrative Agent, Lenders and Issuing Bank under this Section 13.5 shall supersede and replace the obligations of Administrative Agent, Lenders and Issuing Bank under any confidentiality letter signed prior to the date hereof or any other arrangements concerning the confidentiality of information provided by any Borrower or Guarantor to Administrative Agent or any Lender. In addition, Administrative Agent and Lenders may disclose information relating to the Credit Facility to Gold Sheets and other publications, with such information to consist of deal terms and other information customarily found in such publications and that Wells Fargo may otherwise use the corporate name and logo of Borrowers and Guarantors or deal terms in "tombstones" or other advertisements, public statements or marketing materials.

### 13.6 Successors.

This Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon and inure to the benefit of and be enforceable by Administrative Agent, Lenders, Issuing Bank, Borrowers, Guarantors and their respective successors and assigns; except, that, Borrower may not assign its rights under this Agreement, the other Financing Agreements and any other document referred to herein or therein without the prior written consent of Administrative Agent and Lenders. Any such purported assignment without such express prior written consent shall be void. No Lender may assign its rights and obligations under this Agreement without the prior written consent of Administrative Agent and the Company, except as provided in Section 13.7 below. The terms and provisions of this Agreement and the other Financing Agreements are for the purpose of defining the relative rights and obligations of Borrowers, Guarantors, Administrative Agent, Lenders and Issuing Bank with respect to the transactions contemplated hereby and there shall be no third party beneficiaries of any of the terms and provisions of this Agreement or any of the other Financing Agreements.

13.7 Assignments; Participations.

(a) Each Lender may, with the prior written consent of Administrative Agent and, so long as there is no Default or Event of Default that has occurred and is continuing (which such approval shall not be unreasonably withheld or delayed), the Company, assign all or, if less than all, a portion equal to at least \$5,000,000 in the aggregate for the assigning Lender, of such rights and obligations under this Agreement to one or more Eligible Transferees (but not including for this purpose any assignments in the form of a participation), each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and Acceptance; provided, that, (i) such transfer or assignment will not be effective until recorded by Administrative Agent on the Register and (ii) Administrative Agent shall have received for its sole account payment of a processing fee from the assigning Lender or the assignee in the amount of \$3,500. Administrative Agent shall maintain a register of the names and addresses of Lenders, their Commitments and the principal amount of their Loans (the "Register"). Administrative Agent shall also maintain a copy of each Assignment and Acceptance delivered to and accepted by it and shall modify the Register to give effect to each Assignment and Acceptance. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and any Borrowers, Guarantors, Administrative Agent and Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Company and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(b) Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and to the other Financing Agreements and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations (including, without limitation, the obligation to participate in Letter of Credit Obligations) of a Lender hereunder and thereunder and the assigning Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement.

(c) By execution and delivery of an Assignment and Acceptance, the assignor and assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no

representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any of the other Financing Agreements or the execution, legality, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Financing Agreements furnished pursuant hereto, (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Borrower, Guarantor or any of their Subsidiaries or the performance or observance by any Borrower or Guarantor of any of the Obligations; (iii) such assignee confirms that it has received a copy of this Agreement and the other Financing Agreements, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such assignee will, independently and without reliance upon the assigning Lender, Administrative Agent 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 the other Financing Agreements, (v) such assignee appoints and authorizes Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Financing Agreements as are delegated to Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Financing Agreements are required to be performed by it as a Lender. Administrative Agent and Lenders may furnish any information concerning any Borrower or Guarantor in the possession of Administrative Agent or any Lender from time to time to assignees and Participants.

(d) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Financing Agreements (including, without limitation, all or a portion of its Commitments and the Loans owing to it and its participation in the Letter of Credit Obligations, without the consent of Administrative Agent or the other Lenders); provided, that, (i) such Lender's obligations under this Agreement (including, without limitation, its Commitment hereunder) and the other Financing Agreements shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and Borrowers, Guarantors, the other Lenders and Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Financing Agreements, and (iii) the Participant shall not have any rights under this Agreement or any of the other Financing Agreements (the Participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the Participant relating thereto) and all amounts payable by any Borrower or Guarantor hereunder shall be determined as if such Lender had not sold such participation.

(e) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans hereunder to a Federal Reserve Bank in support of borrowings made by such Lenders from such Federal Reserve Bank; provided, that, no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee for such Lender as a party hereto.

(f) Borrowers and Guarantors shall assist Administrative Agent or any Lender permitted to sell assignments or participations under this Section 13.7 in whatever manner reasonably necessary in order to enable or effect any such assignment or participation, including (but not limited to) the execution and delivery of any and all agreements, notes and other documents and

instruments as shall be requested and the delivery of informational materials, appraisals or other documents for, and the participation of relevant management in meetings and conference calls with, potential Lenders or Participants. Borrowers shall certify the correctness, completeness and accuracy, in all material respects, of all descriptions of Borrowers and Guarantors and their affairs provided, prepared or reviewed by any Borrower or Guarantor that are contained in any selling materials and all other information provided by it and included in such materials.

(g) Any Lender that is an Issuing Bank may at any time assign all of its Commitments pursuant to this Section 13.7. If such Issuing Bank ceases to be Lender, it may, at its option, resign as Issuing Bank and such Issuing Bank's obligations to issue Letters of Credit shall terminate but it shall retain all of the rights and obligations of Issuing Bank hereunder with respect to Letters of Credit outstanding as of the effective date of its resignation and all Letter of Credit Obligations with respect thereto (including the right to require Lenders to make Revolving Loans or fund risk participations in outstanding Letter of Credit Obligations), shall continue.

(h) The Lenders signatory hereto that have executed and delivered Assignment and Acceptances with respect to the credit facility under the Existing Financing Agreements hereby confirm that such Assignment and Acceptances are replaced and superseded by the terms hereof.

### 13.8 Entire Agreement.

This Agreement, the other Financing Agreements, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

### 13.9 USA Patriot Act.

Each Lender subject to the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "Act") hereby notifies Borrowers and Guarantors that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies each person or corporation who opens an account and/or enters into a business relationship with it, which information includes the name and address of Borrowers and Guarantors and other information that will allow such Lender to identify such person in accordance with the Act and any other applicable law. Borrowers and Guarantors are hereby advised that any Loans or Letters of Credit hereunder are subject to satisfactory results of such verification.

### 13.10 Counterparts, Etc.

This Agreement or any of the other Financing Agreements may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement or any of the other Financing Agreements by telefacsimile or other electronic method of transmission shall have the same force and effect as the delivery of an original executed counterpart of this Agreement or any of

such other Financing Agreements. Any party delivering an executed counterpart of any such agreement by telefacsimile or other electronic method of transmission shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

13.11 Dutch Obligations.

(a) Notwithstanding anything set forth in this Agreement or any other Financing Agreement to the contrary, the Dutch Borrower shall not at any time be liable, directly or indirectly, for any portion of the Domestic Obligations, including, without limitation, the principal of the Loans or any interest thereon or fees or expenses payable with respect thereto made to any U.S. Borrower (and the U.S. Borrowers and Guarantors are solely liable for such Obligations), and no property of the Dutch Borrower shall at any time serve, directly or indirectly, as Collateral or any other type of collateral or security for any portion of the Domestic Obligations.

(b) Notwithstanding anything in this Agreement or in the other Financing Agreements to the contrary, the parties hereto acknowledge and agree that (i) each of Borrowers, in its capacity as a Borrower hereunder, is jointly and severally liable for the Obligations of the other Borrowers; provided, that, it is acknowledged and agreed that the Company has guaranteed the Obligations of the Dutch Borrower and that the Dutch Borrower has not guaranteed the Domestic Obligations and (ii) the Dutch Borrower shall not be required to repay or prepay, or to guarantee, nor shall any amount paid by the Dutch Borrower be applied to, any Domestic Obligations.

13.12 [Intentionally Omitted].

13.13 Parallel Debts.

(a) Without prejudice to the other provisions of this Agreement and the other Financing Agreements and for the purpose of ensuring the validity and effect of any security right governed by Dutch law and granted or to be granted by the Company pursuant to the Financing Agreements, the Company undertakes, as a separate and independent obligation to Collateral Agent, to pay to Collateral Agent its Parallel Debts.

(b) (i) The Company may not pay its Parallel Debts other than at the instruction of, and in the manner determined by, Collateral Agent. All payments to be made by the Company under the Financing Agreements shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

(ii) Without prejudice to paragraph (i) above, the Company shall be obliged to pay its Parallel Debts (or, if the Company's Underlying Debts are due at different times, amounts of its Parallel Debts corresponding to each such Underlying Debts) only when its Underlying Debts have fallen due.

(c) Any payment made, or amount recovered, in respect of the Company's Parallel Debts shall reduce the Company's Underlying Debts to any Lender by the amount which that Lender is entitled to receive out of that payment or recovery under the Financing Agreement.

(d) Each Parallel Debt is a separate and independent obligation and shall not constitute the Collateral Agent and any Lender as joint creditor of any Underlying Debt.

(e) If (notwithstanding Section 13.13(d)) any Parallel Debt constitutes the Collateral Agent as a joint creditor with any Lender, the Collateral Agent may determine (at its discretion) that that Parallel Debt and one or more other Parallel Debts shall be combined into one single Parallel Debt (a "Combined Parallel Debt"), whereupon those Parallel Debts shall be combined into a Combined Parallel Debt:

(i) the amount of which shall be equal to the aggregate of the amounts of the Underlying Debts combined into it;

(ii) which shall, if the Underlying Debts are expressed in different currencies, be expressed in such of those currencies or Euro as the Collateral Agent may determine (and, for this purpose, each Underlying Debt shall be converted into the current of the Combined Parallel Debt in accordance with Section 6.13);

(iii) which shall, if the Underlying Debts combined into it fall due at different times, fall due in parts corresponding to those Underlying Debts; and

(iv) to which this Agreement shall otherwise apply as if the Combined Parallel Debt were a Parallel Debt.

(f) If any Underlying Debt is avoided or reduced other than (i) as a result of payment to, or recovery or discharge by, the Lender to which the Underlying Debt is owed, or (ii) otherwise with the consent of that Lender, then the amount of the Parallel Debt corresponding to that Underlying Debt shall be equal to the amount which the Underlying Debt would have had if the avoidance or reduction had not occurred.

#### 13.14 Concerning Joint and Several Liability of Borrowers.

(a) Each of U.S. Borrowers is accepting joint and several liability hereunder in consideration of the financial accommodation to be provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of U.S. Borrowers and in consideration of the undertakings of each of U.S. Borrowers to accept joint and several liability for the obligations of each of them.

(b) Each of U.S. Borrowers jointly and severally hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other U.S. Borrowers with respect to the payment and performance of all of the Obligations, it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each of the U.S. Borrowers without preferences or distinction among them.

(c) If and to the extent that any of the U.S. Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other U.S. Borrowers will make such payment with respect to, or perform, such Obligation.

(d) The obligations of each U.S. Borrower under the provisions of this Section 13.14 constitute full recourse obligations of such Borrower, enforceable against it to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided herein, each U.S. Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Loan made under this Agreement, notice of occurrence of any Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by any Lender under or in respect of any of the Obligations, any requirement of diligence and, generally, all demands, notices and other formalities of every kind in connection with this Agreement. Each U.S. Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by any Lender at any time or times in respect of any default by any U.S. Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by any Lender in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any U.S. Borrower. Without limiting the generality of the foregoing, each U.S. Borrower assents to any other action or delay in acting or failure to act on the part of any Lender, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with the applicable laws or regulations thereunder which might, but for the provisions of this Section 13.14, afford grounds for terminating, discharging or relieving such Borrower, in whole or in part, from any of its obligations under this Section 13.14, it being the intention of each U.S. Borrower that, so long as any of the Obligations remain unsatisfied, the obligations of such Borrower under this Section 13.14 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each U.S. Borrower under this Section 13.14 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower or any Lender. The joint and several liability of U.S. Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, membership, constitution or place of formation of any Borrower or any Lender.

(f) The provisions of this Section 13.14 are made for the benefit of the Lenders and their respective successors and assigns, and may be enforced by any such Person from time to time against any of the U.S. Borrowers as often as occasion therefor may arise and without requirement on the part of any Lender first to marshal any of its claims or to exercise any of its rights against any of the other U.S. Borrowers or to exhaust any remedies available to it against any of the other U.S. Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy. The provisions of this Section 13.14 shall remain in effect until all the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by any Lender upon the insolvency, bankruptcy or reorganization of any of the U.S. Borrowers, or otherwise, the provisions of this Section 13.14 will forthwith be reinstated in effect, as though such payment had not been made.

(g) Notwithstanding any provision to the contrary contained herein or in any other of the Financing Agreements, to the extent the joint obligations of a Borrower shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of each U.S. Borrower hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal or state and including, without limitation, the Bankruptcy Code).

(h) U.S. Borrowers hereby agree, as among themselves, that if any U.S. Borrower shall become an Excess Funding Borrower (as defined below), each other U.S. Borrower shall, on demand of such Excess Funding Borrower (but subject to the next sentence hereof and to subsection (B) below), pay to such Excess Funding Borrower an amount equal to such Borrower's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, assets, liabilities and debts of such Excess Funding Borrower) of such Excess Payment (as defined below). The payment obligation of any U.S. Borrower to any Excess Funding Borrower under this Section 13.14(h) shall be subordinate and subject in right of payment to the prior payment in full of the Obligations of such Borrower under the other provisions of this Agreement, and such Excess Funding Borrower shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such Obligations. For purposes hereof, (i) "Excess Funding Borrower" shall mean, in respect of any Obligations arising under the other provisions of this Credit Agreement (hereafter, the "Joint Obligations"), a U.S. Borrower that has paid an amount in excess of its Pro Rata Share of the Joint Obligations; (ii) "Excess Payment" shall mean, in respect of any Joint Obligations, the amount paid by an Excess Funding Borrower in excess of its Pro Rata Share of such Joint Obligations; and (iii) "Pro Rata Share", for the purposes of this Section 13.14(h) only, shall mean, for any U.S. Borrower, the ratio (expressed as a percentage) of (A) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Borrower (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Borrower hereunder) to (B) the amount by which the aggregate present fair salable value of all assets and other properties of such Borrower and all of the other U.S. Borrowers exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Borrower and the other U.S. Borrowers hereunder) of such Borrower and all of the other U.S. Borrowers, all as of the Closing Date (if any Borrower becomes a party hereto subsequent to the Closing Date, then for the purposes of this Section 13.14(h) such subsequent Borrower shall be deemed to have been a Borrower as of the Closing Date and the information pertaining to, and only pertaining to, such Borrower as of the date such Borrower became a Borrower shall be deemed true as of the Closing Date).

### 13.15 Judgment Currency.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under any other Financing Agreement in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrowers in respect of any such sum due from it to Administrative Agent or any Lender hereunder or under the other Financing Agreements shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the

“Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by Administrative Agent or such Lender of any sum adjudged to be so due in the Judgment Currency, Administrative Agent or such Lender may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to Administrative Agent or such Lender in the Agreement Currency, Borrowers agree, as a separate obligation and notwithstanding any such judgment, to indemnify Administrative Agent or such Lender or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to Administrative Agent or such Lender in such currency, Administrative Agent or such Lender agrees to return the amount of any excess to Borrowers (or to any other Person who may be entitled thereto under applicable law).

#### 13.16 Waiver.

Administrative Agent and Lenders hereby waive (a) each “Event of Default” (as such term is defined in the Existing Loan Agreement) arising under the Existing Loan Agreement identified on Schedule 13.16 hereto and (b) any other non-material technical “Event of Default” (as such term is defined in the Existing Loan Agreement) which may have occurred under the Existing Loan Agreement, which has otherwise been cured or remedied, but that continues as of the Closing Date solely as a result of the failure to cure or remedy within the time period specified under the Existing Loan Agreement.

### **SECTION 14. GUARANTY OF U.S. OBLIGATIONS**

#### 14.1 The Domestic Guaranty.

In order to induce the Lenders to enter into this Agreement with the Company or any of its Domestic Subsidiaries and to extend credit hereunder, and in recognition of the direct benefits to be received by Guarantors from the Revolving Loans hereunder, each of the Guarantors hereby agrees with Administrative Agent and the Lenders as follows: each Guarantor hereby unconditionally and irrevocably jointly and severally guarantees as primary obligor and not merely as surety the full and prompt payment when due, whether upon maturity, by acceleration or otherwise, of any and all indebtedness of the U.S. Borrowers to Administrative Agent, and the Lenders. If any or all of the indebtedness of the U.S. Borrowers to Administrative Agent and the Lenders becomes due and payable hereunder, each Guarantor unconditionally promises to pay such indebtedness to Administrative Agent and the Lenders, or order, on demand, together with any and all reasonable expenses which may be incurred by Administrative Agent, or the Lenders in collecting any of the indebtedness. The word “indebtedness” is used in this Section 14 in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of the U.S. Borrowers, including all U.S. Obligations, arising in connection with this Agreement, or the other Financing Agreements, in each case, heretofore, now, or hereafter made, incurred or created, whether voluntarily or involuntarily, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether or not such indebtedness is from time to time reduced, or extinguished and thereafter increased or incurred, whether the U.S. Borrowers may be liable individually or jointly with others, whether or not recovery upon such indebtedness may be or hereafter become barred by any statute of limitations, and whether or not such indebtedness may be or hereafter become otherwise

unenforceable. The Domestic Guaranty set forth in this Section 14 is a guaranty of timely payment and not of collection.

Notwithstanding any provision to the contrary contained herein or in any other of the Financing Agreements, to the extent the obligations of a Guarantor shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of each such Guarantor hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal or state and including, without limitation, the United States Bankruptcy Code).

#### 14.2 Bankruptcy.

Additionally, each of the Guarantors unconditionally and irrevocably guarantees jointly and severally the payment of any and all indebtedness of the U.S. Borrowers to the Lenders whether or not due or payable by the U.S. Borrowers arising during the Chapter 11 Cases, and unconditionally promises to pay such indebtedness to Administrative Agent for the account of the Lenders, or order, on demand when due, in lawful money of the United States. Each of the Guarantors further agrees that to the extent that the U.S. Borrowers or a Guarantor shall make a payment or a transfer of an interest in any property to Administrative Agent, or any Lender, which payment or transfer or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, or otherwise is avoided, and/or required to be repaid to a U.S. Borrower or a Guarantor, the estate of a U.S. Borrower or a Guarantor, a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such avoidance or repayment, the obligation or part thereof intended to be satisfied shall be revived and continued in full force and effect as if said payment had not been made.

#### 14.3 Nature of Liability.

The liability of each Guarantor hereunder is exclusive and independent of any security for or other Domestic Guaranty of the indebtedness of the U.S. Borrowers whether executed by any such Guarantor, any other Guarantor or by any other party, and no Guarantor's liability hereunder shall be affected or impaired by (a) any direction as to application of payment by any U.S. Borrower or by any other party, (b) any other continuing or other Domestic Guaranty, undertaking or maximum liability of a Guarantor or of any other party as to the indebtedness of the U.S. Borrowers, (c) any payment on or in reduction of any such other Domestic Guaranty or undertaking, (d) any dissolution, termination or increase, decrease or change in personnel by any U.S. Borrower, or (e) any payment made to Administrative Agent, or any Lenders on the indebtedness which Administrative Agent, or such repay the U.S. Borrowers pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each of the Guarantors waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

#### 14.4 Independent Obligation.

The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor or the U.S. Borrowers, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against any other Guarantor or the U.S.

Borrowers and whether or not any other Guarantor or any U.S. Borrower is joined in any such action or actions.

14.5 Authorization.

Each of the Guarantors authorizes Administrative Agent, and each Lender 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) renew, compromise, extend, increase, accelerate or otherwise change the time for payment of, or otherwise change the terms of the indebtedness or any part thereof in accordance with this Agreement, including any increase or decrease of the rate of interest thereon, (b) take and hold security from any Guarantor or any other party for the payment of the Domestic Guaranty or the indebtedness and exchange, enforce waive and release any such security, (c) apply such security and direct the order or manner of sale thereof as Administrative Agent and the Lenders in their discretion may determine and (d) release or substitute any one or more endorsers, Guarantors, the U.S. Borrowers or other obligors.

14.6 Reliance.

It is not necessary for Administrative Agent, or the Lenders to inquire into the capacity or powers of any U.S. Borrower or the officers, directors, members, partners or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

14.7 Waiver.

(a) Each of the Guarantors waives any right (except as shall be required by applicable statute and cannot be waived) to require Administrative Agent, or any Lender to (i) proceed against any U.S. Borrower, any other Guarantor or any other party, (ii) proceed against or exhaust any security held from any U.S. Borrower, any other Guarantor or any other party, or (iii) pursue any other remedy in Administrative Agent's, or any Lender's power whatsoever. Each of the Guarantors waives any defense based on or arising out of any defense of any U.S. Borrower, any other Guarantor or any other party other than payment in full of the indebtedness, including, without limitation, any defense based on or arising out of the disability of any U.S. Borrower, any other Guarantor or any other party, or the unenforceability of the indebtedness or any part thereof from any cause, or the cessation from any cause of the liability of any U.S. Borrower other than payment in full of the indebtedness. Administrative Agent or any of the Lenders may, at their election, exercise any right or remedy Administrative Agent and any Lender may have against any U.S. Borrower 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 indebtedness has been paid. Each of the Guarantors waives any defense arising out of any such election by Administrative Agent and each of the Lenders, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of Guarantors against any U.S. Borrower or any other party.

(b) Each of the Guarantors waives all presentments, demands for performance, protests and notices, including, without limitation, notices of nonperformance, notice of protest, notices of dishonor, notices of acceptance of the Domestic Guaranty, and notices of the existence, creation or incurring of new or additional indebtedness. Each Guarantor assumes all responsibility

for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the indebtedness and the nature, scope and extent of the risks which such Guarantor assumes and incurs hereunder, and agrees that neither Administrative Agent nor any Lender shall have any duty to advise such Guarantor of information known to it regarding such circumstances or risks.

(c) Each of the Guarantors hereby agrees it will not exercise any rights of subrogation which it may at any time otherwise have as a result of the Domestic Guaranty (whether contractual, under Section 509 of the United States Bankruptcy Code, or otherwise) to the claims of the Lenders against any U.S. Borrower or any other Guarantor of the indebtedness of any U.S. Borrower owing to the Lenders (collectively, the "Other Parties") and all contractual, statutory or common law rights of reimbursement, contribution or indemnity from any Other Party which it may at any time otherwise have as a result of the Domestic Guaranty until such time as the Loans hereunder shall have been paid and the Commitments have been terminated. Each of the Guarantors hereby further agrees not to exercise any right to enforce any other remedy which Administrative Agent, or the Lenders now has or may hereafter have against any Other Party, any endorser or any other Guarantor of all or any part of the indebtedness of any U.S. Borrower and any benefit of, and any right to participate in, any security or collateral given to or for the benefit of the Lenders to secure payment of the indebtedness of any U.S. Borrower until such time as the Loans hereunder shall have been paid and the Commitments have been terminated.

#### 14.8 Limitation on Enforcement.

The Lenders agree that this Domestic Guaranty may be enforced only by the action of Administrative Agent acting upon the instructions of the Required Lenders and that no Lender shall have any right individually to seek to enforce or to enforce the Domestic Guaranty, it being understood and agreed that such rights and remedies may be exercised by Administrative Agent for the benefit of the Lenders under the terms of this Agreement. The Lenders further agree that this Domestic Guaranty may not be enforced against any director, officer, employee or stockholder of Guarantors.

#### 14.9 Confirmation of Payment.

Administrative Agent and the Lenders will, upon request after payment in cash in full of the indebtedness and obligations which are the subject of the Domestic Guaranty and termination of the Commitments relating thereto, confirm to the U.S. Borrowers, the Guarantors or any other Person that such indebtedness and obligations have been paid and the Commitments relating thereto terminated.

### **SECTION 15. GUARANTY OF THE DUTCH BORROWER OBLIGATIONS**

#### 15.1 The DO Guaranty.

In order to induce the Lenders to enter into this Agreement with the Dutch Borrower or any of its Subsidiaries and to extend credit hereunder and thereunder, and in recognition of the direct benefits to be received by the DO Guarantors from the Loans made to the Dutch Borrower hereunder, each of the DO Guarantors hereby agrees with Administrative Agent and the Lenders as follows: each DO Guarantor hereby unconditionally and irrevocably jointly and severally

guarantees as primary obligor and not merely as surety the full and prompt payment when due, whether upon maturity, by acceleration or otherwise, of any and all indebtedness of the Dutch Borrower to Administrative Agent, and the Lenders. If any or all of the indebtedness of the Dutch Borrower to Administrative Agent and the Lenders becomes due and payable hereunder, each DO Guarantor unconditionally promises to pay such indebtedness to Administrative Agent and the Lenders, or order, on demand, together with any and all reasonable expenses which may be incurred by Administrative Agent, or the Lenders in collecting any of the indebtedness. The word "indebtedness" is used in this Section 15 in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of the Dutch Borrower, including all Obligations of the Dutch Borrower, arising in connection with this Agreement, or the other Financing Agreements, in each case, heretofore, now, or hereafter made, incurred or created, whether voluntarily or involuntarily, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether or not such indebtedness is from time to time reduced, or extinguished and thereafter increased or incurred, whether the Dutch Borrower may be liable individually or jointly with others, whether or not recovery upon such indebtedness may be or hereafter become barred by any statute of limitations, and whether or not such indebtedness may be or hereafter become otherwise unenforceable. The DO Guaranty set forth in this Section 15 is a guaranty of timely payment and not of collection.

#### 15.2 Bankruptcy.

Additionally, each of the DO Guarantors unconditionally and irrevocably guarantees jointly and severally the payment of any and all indebtedness of the Dutch Borrower to the Lenders whether or not due or payable by the Dutch Borrower upon the occurrence of any of the events specified in Section 10.1(g) or (h), and unconditionally promises to pay such indebtedness to Administrative Agent for the account of the Lenders, or order, on demand when due, in lawful money of the United States. Each of the DO Guarantors further agrees that to the extent that the Dutch Borrower or a DO Guarantor shall make a payment or a transfer of an interest in any property to Administrative Agent, or any Lender, which payment or transfer or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, or otherwise is avoided, and/or required to be repaid to the Dutch Borrower or a DO Guarantor, the estate of the Dutch Borrower or a DO Guarantor, a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such avoidance or repayment, the obligation or part thereof intended to be satisfied shall be revived and continued in full force and effect as if said payment had not been made.

#### 15.3 Nature of Liability.

The liability of each DO Guarantor hereunder is exclusive and independent of any security for or other DO Guaranty of the indebtedness of the Dutch Borrower whether executed by any such DO Guarantor, any other DO Guarantor or by any other party, and no DO Guarantor's liability hereunder shall be affected or impaired by (a) any direction as to application of payment by the Dutch Borrower or by any other party, (b) any other continuing or other DO Guaranty, undertaking or maximum liability of a DO Guarantor or of any other party as to the indebtedness of the Dutch Borrower, (c) any payment on or in reduction of any such other DO Guaranty or undertaking, (d) any dissolution, termination or increase, decrease or change in personnel by the Dutch Borrower, or (e) any payment made to Administrative Agent, or the Lenders on the indebtedness which

Administrative Agent, such Lenders repay the Dutch Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each of the DO Guarantors waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

#### 15.4 Independent Obligation.

The obligations of each DO Guarantor hereunder are independent of the obligations of any other DO Guarantor or the Dutch Borrower, and a separate action or actions may be brought and prosecuted against each DO Guarantor whether or not action is brought against any other DO Guarantor or the Dutch Borrower and whether or not any other DO Guarantor or the Dutch Borrower is joined in any such action or actions.

#### 15.5 Authorization.

Each of the DO Guarantors authorizes Administrative Agent, and each Lender 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) renew, compromise, extend, increase, accelerate or otherwise change the time for payment of, or otherwise change the terms of the indebtedness or any part thereof in accordance with this Agreement, including any increase or decrease of the rate of interest thereon, (b) take and hold security from any DO Guarantor or any other party for the payment of the DO Guaranty or the indebtedness and exchange, enforce waive and release any such security, (c) apply such security and direct the order or manner of sale thereof as Administrative Agent and the Lenders in their discretion may determine and (d) release or substitute any one or more endorsers, DO Guarantors, the Dutch Borrower or other obligors.

#### 15.6 Reliance.

It is not necessary for Administrative Agent, or the Lenders to inquire into the capacity or powers of the Dutch Borrower or the officers, directors, members, partners or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

#### 15.7 Waiver.

(a) Each of the DO Guarantors waives any right (except as shall be required by applicable statute and cannot be waived) to require Administrative Agent, or any Lender to (i) proceed against the Dutch Borrower, any other DO Guarantor or any other party, (ii) proceed against or exhaust any security held from the Dutch Borrower, any other DO Guarantor or any other party, or (iii) pursue any other remedy in Administrative Agent's, or any Lender's power whatsoever. Each of the DO Guarantors waives any defense based on or arising out of any defense of the Dutch Borrower, any other DO Guarantor or any other party other than payment in full of the indebtedness, including, without limitation, any defense based on or arising out of the disability of the Dutch Borrower, any other DO Guarantor or any other party, or the unenforceability of the indebtedness or any part thereof from any cause, or the cessation from any cause of the liability of the Dutch Borrower other than payment in full of the indebtedness. Administrative Agent or any of the Lenders may, at their election, exercise any right or remedy Administrative Agent and any Lender may have against the Dutch Borrower or any other party, or any security, without affecting or

impairing in any way the liability of any DO Guarantor hereunder except to the extent the indebtedness has been paid. Each of the DO Guarantors waives any defense arising out of any such election by Administrative Agent and each of the Lenders, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of the DO Guarantors against the Dutch Borrower or any other party.

(b) Each of the DO Guarantors waives all presentments, demands for performance, protests and notices, including, without limitation, notices of nonperformance, notice of protest, notices of dishonor, notices of acceptance of the DO Guaranty, and notices of the existence, creation or incurring of new or additional indebtedness. Each DO Guarantor assumes all responsibility for being and keeping itself informed of the Dutch Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the indebtedness and the nature, scope and extent of the risks which such DO Guarantor assumes and incurs hereunder, and agrees that neither Administrative Agent nor any Lender shall have any duty to advise such DO Guarantor of information known to it regarding such circumstances or risks.

(c) Each of the DO Guarantors hereby agrees it will not exercise any rights of subrogation which it may at any time otherwise have as a result of the DO Guaranty (whether contractual, under Section 509 of the United States Bankruptcy Code, or otherwise) to the claims of the Lenders against the Dutch Borrower or any other DO Guarantor of the indebtedness of the Dutch Borrower owing to the Lenders (collectively, the "Other Parties") and all contractual, statutory or common law rights of reimbursement, contribution or indemnity from any Other Party which it may at any time otherwise have as a result of the DO Guaranty until such time as the Loans hereunder shall have been paid and the Commitments have been terminated. Each of the DO Guarantors hereby further agrees not to exercise any right to enforce any other remedy which Administrative Agent, or the Lenders now have or may hereafter have against any Other Party, any endorser or any other DO Guarantor of all or any part of the indebtedness of the Dutch Borrower and any benefit of, and any right to participate in, any security or collateral given to or for the benefit of the Lenders to secure payment of the indebtedness of the Dutch Borrower until such time as the Loans hereunder shall have been paid and the Commitments have been terminated.

#### 15.8 Limitation on Enforcement.

The Lenders agree that this DO Guaranty may be enforced only by the action of Administrative Agent acting upon the instructions of the Required Lenders and that no Lender shall have any right individually to seek to enforce or to enforce the DO Guaranty, it being understood and agreed that such rights and remedies may be exercised by Administrative Agent for the benefit of the Lenders under the terms of this Agreement. The Lenders further agree that this DO Guaranty may not be enforced against any director, officer, employee or stockholder of the DO Guarantors.

#### 15.9 Confirmation of Payment.

Administrative Agent and the Lenders will, upon request after payment in cash in full of the indebtedness and obligations which are the subject of the DO Guaranty and termination of the Commitments relating thereto, confirm to the Dutch Borrower, the DO Guarantors or any other Person that such indebtedness and obligations have been paid and the Commitments relating thereto terminated.

## **SECTION 16. RELEASE**

### **16.1 Release of Pre-Petition Claims.**

(a) On the date hereof, in consideration of the agreements of Administrative Agent and Lenders contained herein and the making of any Loans by Administrative Agent and Lenders, each Borrower and Guarantor, pursuant to this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, on behalf of itself and its respective successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Administrative Agent, Collateral Agent, each Lender and each other Secured Party and their respective successors and assigns, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees and other representatives (Administrative Agent, Collateral Agent, each Lender and each other Secured Party and all such other parties being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Pre-Petition Released Claim" and collectively, "Pre-Petition Released Claims") of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which any Borrower or Guarantor, or any of their respective successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any nature, cause or thing whatsoever which arises at any time on or prior to the day and date of this Agreement, including, without limitation, for or on account of, or in relation to, or in any way in connection with the Existing Loan Agreement, as amended and supplemented prior to the date hereof, and the other Existing Financing Agreements.

(b) On the date hereof, each Borrower and Guarantor, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Pre-Petition Released Claim released, remised and discharged by each Borrower and Guarantor pursuant to this Section 16.1. If any Borrower or Guarantor violates the foregoing covenant, Borrowers and Guarantors agree to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

### **16.2 Release of Post-Petition Claims.**

Upon (a) the receipt by Administrative Agent, on behalf of itself and the other Lenders, of payment in full of all Obligations in cash or other immediately available funds, plus cash collateral or other collateral security acceptable to Administrative Agent to secure any Obligations that survive or continue beyond the termination of the Financing Agreements, and (b) the termination of the Financing Agreements (the "Payment Date"), in consideration of the agreements of Administrative Agent and Lenders contained herein and the making of any Loans by Administrative Agent and Lenders, each Borrower and Guarantor hereby covenants and agrees to execute and deliver in favor of Administrative Agent and Lenders a valid and binding termination and release agreement, in form and substance satisfactory to Administrative Agent. If any Borrower or Guarantor violates such

covenant, Borrowers and Guarantor agree to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

**16.3 Releases Generally.**

(a) Each Borrower and Guarantor understands, acknowledges and agrees that the releases set forth above in Sections 16.1 and 16.2 hereof may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such releases.

(b) Each Borrower and Guarantor agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final and unconditional nature of the releases set forth in Section 16.1 hereof and, when made, Section 16.2 hereof.

**SECTION 17. ACKNOWLEDGMENT AND RESTATEMENT**

**17.1 Existing Obligations.**

Borrowers hereby acknowledge, confirm and agree that Borrowers are indebted to Administrative Agent and Lenders for (which amounts shall be repaid in full on the date hereof): (a) Loans and advances to Borrowers under the Existing Loan Agreement, as of the close of business on \_\_\_\_\_, 2010, in the aggregate principal amount of [\$\_\_\_\_\_] and (b) Letter of Credit Accommodations (as defined in the Existing Loan Agreement) incurred at the request or for the benefit of Borrowers in the aggregate principal amount of [\$\_\_\_\_\_], together with all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally owing by Borrowers to Administrative Agent and Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever.

**17.2 Acknowledgment of Security Interests.**

Borrowers and Guarantors hereby acknowledge, confirm and agree that Collateral Agent, for itself and the benefit of the other Secured Parties, has and shall continue to have a security interest in and lien upon the Collateral heretofore granted to Collateral Agent pursuant to the Existing Financing Agreements to secure the Obligations, as well as any Collateral granted under this Agreement or under any of the other Financing Agreements or otherwise granted to or held by Collateral Agent or Secured Parties. The liens and security interests of Collateral Agent, for itself and the benefit of the other Secured Parties, in the Collateral shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such liens and security interests, whether under the Existing Financing Agreements, this Agreement or any other Financing Agreements.

**17.3 Existing Loan Agreement.**

Borrowers and Guarantors hereby acknowledge, confirm and agree that: (a) the Existing Financing Agreements have been duly executed and delivered by Borrowers and Guarantors and are

in full force and effect as of the date hereof and (b) the agreements and obligations of Borrowers and Guarantors contained in the Existing Financing Agreements constitute the legal, valid and binding obligations of Borrowers and Guarantors enforceable against them in accordance with their respect terms and Borrowers and Guarantors have no valid defense to the enforcement of such obligations and (c) Agent and Lenders are entitled to all of the rights and remedies provided for in the Existing Financing Agreements.

17.4 Restatement.

(a) Except as otherwise stated in Section 17.2 hereof and this Section 17.4, as of the date hereof, the terms, conditions, agreements, covenants, representations and warranties set forth in the Existing Financing Agreements are hereby amended and restated in their entirety, and as so amended and restated, replaced and superseded, by the terms, conditions, agreements, covenants, representations and warranties set forth in this Agreement and the other Financing Agreements; except, that, nothing herein or in the other Financing Agreements shall impair or adversely affect the continuation of the liability of Borrowers and Guarantors for the Obligations heretofore incurred and the security interests, liens and other interests in the Collateral heretofore granted, pledged and/or assigned by Borrowers and Guarantors to Collateral Agent or any Secured Party. The amendment and restatement contained herein shall not, in any manner, be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of, the Indebtedness and other obligations and liabilities of Borrowers and Guarantors evidenced by or arising under the Existing Financing Agreements, and the liens and security interests securing such Indebtedness and other obligations and liabilities, which shall not in any manner be impaired, limited, terminated, waived or released.

(b) The principal amount of the Loans and Letter of Credit Accommodations outstanding as of the date hereof under the Existing Loan Agreement, if any, shall be allocated to the Loans and Letters of Credit hereunder in such manner and in such amounts as Administrative Agent shall determine.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Administrative Agent, Collateral Agent, Control Agent, Lenders, Borrowers and Guarantors have caused these presents to be duly executed as of the day and year first above written.

COMPANY:

THE NEWARK GROUP, INC.,  
Debtor and Debtor-in-Possession  
a New Jersey corporation

By: \_\_\_\_\_  
Name: Joseph E. Byrne  
Title: Vice President, Chief Financial Officer and  
Assistant Treasurer

DUTCH BORROWER:

NEWARK GROUP INTERNATIONAL B.V.,  
a private company with limited liability with its  
corporate seat in Amsterdam, the Netherlands

By: \_\_\_\_\_  
Name: Joseph E. Byrne  
Title: Authorized Representative

GUARANTORS:

NP COGEN, INC.,  
Debtor and Debtor-in-Possession  
a California corporation

By: \_\_\_\_\_  
Name: Joseph E. Byrne  
Title: Vice President, Chief Financial Officer and  
Assistant Treasurer

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

AGENTS AND LENDERS:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Administrative Agent,  
Collateral Agent, Control Agent, Swingline Lender  
and a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C**  
Budget

**THE NEWARK GROUP, INC.**  
**WEEKLY CASH FLOW FORECAST**

Week: #	1	2	3	4	5	6	7	8	9	10	11	12	13	W 1-13
	13 Week Cash Flow Forecast													
(\$ thousands)	11-Jun-10	18-Jun-10	25-Jun-10	02-Jul-10	09-Jul-10	16-Jul-10	23-Jul-10	30-Jul-10	06-Aug-10	13-Aug-10	20-Aug-10	27-Aug-10	03-Sep-10	Total
Receipts:														
Trade Receipts	\$ 11,667	\$ 13,360	\$ 13,710	\$ 13,129	\$ 12,770	\$ 12,504	\$ 12,924	\$ 13,742	\$ 10,738	\$ 11,730	\$ 12,306	\$ 11,438	\$ 13,000	\$ 163,018
Receipts from Foreign Operations	-	250	-	250	-	250	-	250	250	250	250	250	250	2,250
Total Receipts	11,667	13,610	13,710	13,379	12,770	12,754	12,924	13,992	10,988	11,980	12,556	11,688	13,250	165,268
Disbursements:														
Payroll (including taxes)	1,340	2,756	1,090	2,756	1,090	2,756	1,090	2,756	1,090	2,756	1,090	1,090	2,756	24,413
Utilities	2,100	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	18,900
Utilities - Deposit	-	1,450	1,450	-	-	-	-	-	-	(2,900)	-	-	-	-
Freight	1,000	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	15,400
Waste Paper	4,484	6,148	5,282	4,569	4,361	4,355	4,414	4,778	3,721	4,057	5,252	2,957	4,486	58,864
General AP	3,100	3,100	2,700	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	29,900
Insurance-Medical	1,250	-	250	510	510	510	510	510	510	510	510	510	510	6,600
Rent	147	105	105	220	105	105	105	220	220	105	105	220	105	1,867
Insurance-Business	-	58	-	-	275	-	-	-	412	-	-	-	275	1,021
Taxes	40	88	1	39	35	242	171	18	161	167	178	27	-	1,167
Employees T & E	15	15	15	15	15	15	15	15	15	15	15	15	15	195
Subtotal- Operations	13,476	16,320	13,493	12,809	11,091	12,683	11,004	12,997	10,828	9,410	11,849	9,519	12,848	158,326
Interest Paid	256	-	-	850	-	-	-	-	1,251	-	-	-	1,248	3,605
Debt Principal Payments / (Drawdowns)	73,735	-	-	-	-	-	-	-	-	-	-	-	-	73,735
DIP / Exit Term Loan Drawdown	(110,000)	-	-	-	-	-	-	-	-	-	-	-	-	(110,000)
Pension Contribution	-	-	-	-	-	-	-	-	-	-	-	-	-	-
401(k)	464	-	-	-	-	448	35	-	-	-	544	-	-	1,491
ESOP Funding	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commodity Hedges	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Financing Fees	5,000	-	-	25	-	-	-	25	-	-	-	-	25	5,075
Restructuring Professional Fees	1,056	300	-	550	-	-	-	1,270	-	-	-	2,590	-	5,766
Other	-	-	29	-	-	-	29	-	-	-	-	29	-	87
Total Disbursements	(16,013)	16,620	13,522	14,234	11,091	13,131	11,068	14,292	12,079	9,410	12,393	12,138	14,121	138,085
Net Cash Flow	\$ 27,680	\$ (3,010)	\$ 189	\$ (855)	\$ 1,679	\$ (378)	\$ 1,856	\$ (300)	\$ (1,091)	\$ 2,571	\$ 163	\$ (450)	\$ (871)	\$ 27,183
<b>AVAILABILITY</b>														
Beginning ABL Balance	28,583	903	3,913	3,724	4,580	2,900	3,278	1,422	1,722	2,813	242	79	529	28,583
Net Increase / (Decrease)	(27,680)	3,010	(189)	855	(1,679)	378	(1,856)	300	1,091	(2,571)	(163)	450	871	(27,183)
Net Outstanding ABL Balance	903	3,913	3,724	4,580	2,900	3,278	1,422	1,722	2,813	242	79	529	1,400	1,400
LC's Outstanding	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172	9,172
Swap Exposure	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Dutch Revolving Loans	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398	12,398
Total Borrowing	22,473	25,483	25,294	26,150	24,470	24,848	22,992	23,292	24,383	21,812	21,649	22,099	22,970	22,970
ABL Borrowing Availability	\$ 27,527	\$ 24,517	\$ 24,706	\$ 23,850	\$ 25,530	\$ 25,152	\$ 27,008	\$ 26,708	\$ 27,849	\$ 30,246	\$ 30,390	\$ 29,822	\$ 29,078	\$ 29,078
Availability Block	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)
Professional Fee Carveout	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	-	-	-	-	-	-
Borrowing Availability	\$ 22,527	\$ 19,517	\$ 19,706	\$ 18,850	\$ 20,530	\$ 20,152	\$ 22,008	\$ 21,708	\$ 24,849	\$ 27,246	\$ 27,390	\$ 26,822	\$ 26,078	\$ 26,078

**EXHIBIT D**  
Intercreditor Agreement

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[Draft 6/8/10]

INTERCREDITOR AGREEMENT

among

THE NEWARK GROUP, INC.,  
as a Borrower,

NEWARK GROUP INTERNATIONAL B.V.,  
as a Borrower,

CERTAIN DOMESTIC SUBSIDIARIES OF THE NEWARK GROUP, INC.,  
as Borrowers

and

THE OTHER DOMESTIC SUBSIDIARIES OF THE NEWARK GROUP, INC.,  
as Guarantors

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
successor by merger to Wachovia Bank, National Association  
as the Working Capital Agent and the Working Capital Administrative Agent

and

ORIX FINANCE CORP.  
as the Term Loan Agent and the Term Loan Administrative Agent

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
successor by merger to Wachovia Bank, National Association  
ORIX FINANCE CORP.  
each as the Control Agent as set forth herein

Dated as of June \_\_, 2010

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## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (the "Agreement"), dated as of June \_\_, 2010, is entered into by and among THE NEWARK GROUP, INC., a New Jersey corporation (the "Company"), NEWARK GROUP INTERNATIONAL B.V., a private company with limited liability with its corporate seat in Amsterdam, the Netherlands and a wholly-owned subsidiary of the Company (the "Dutch Borrower"), those certain Domestic Subsidiaries of the Company from time to time party to the Working Capital Credit Documents as borrowers (together, with the Company and the Dutch Borrower, the "Borrowers"), those certain other Domestic Subsidiaries of the Company from time to time party to the Term Loan Credit Documents as guarantors (together, with the Borrowers, the "Grantors"), ORIX FINANCE CORP., in its capacity as administrative agent for the Term Loan Lenders referenced below (in such capacity, the "Term Loan Administrative Agent") and its capacity as collateral agent for the Term Loan Lenders referenced below (in such capacity, together with its successors and assigns, the "Term Loan Agent"), WELLS FARGO BANK, NATIONAL ASSOCIATION, successor by merger to Wachovia Bank, National Association, in its capacity as administrative agent for the Working Capital Lenders referenced below (in such capacity, the "Working Capital Administrative Agent") and its capacity as collateral agent for the Working Capital Lenders referenced below (in such capacity, together with its successors and assigns, the "Working Capital Agent") and WELLS FARGO BANK, NATIONAL ASSOCIATION, successor by merger to Wachovia Bank, National Association, and ORIX FINANCE CORP., each in its capacity as control agent for the Working Capital Agent and the Term Loan Agent as set forth herein (in such capacity, together with their respective successors and assigns, each individually, a "Control Agent" and collectively, the "Control Agents").

### **RECITALS:**

WHEREAS, the Company and NP Cogen, Inc., a California corporation, have commenced the Chapter 11 Cases (as hereinafter defined) and each has retained possession of its assets and is authorized under the Bankruptcy Code (as hereinafter defined) to continue the operation of its business as a debtor-in-possession;

WHEREAS, the Grantors, the financial institutions from time to time party thereto as lenders (collectively, the "Working Capital Lenders"), the Working Capital Administrative Agent and the Working Capital Agent are parties to that certain Loan and Security Agreement dated as of March 9, 2007 (as amended, restated, supplemented or modified from time to time, the "Initial Working Capital Credit Agreement"), pursuant to which the Working Capital Lenders have made a revolving credit facility available to the Borrowers secured by a first priority security interest in certain assets of the Grantors, a second priority security interest in certain other assets of the Grantors and a third priority security interest in certain other assets of the Grantors, which Initial Working Capital Credit Agreement is amended and restated on the date hereof pursuant to the Amended and Restated Loan and Security Agreement, dated of even date herewith (as amended, restated, supplemented or modified from time to time, the "Amended and Restated Working Capital Credit Agreement");

WHEREAS, certain of the Grantors, the financial institutions from time to time party thereto as lenders (collectively, the "Term Loan Lenders"), the Term Loan Administrative Agent and the Term Loan Agent are parties to that certain Loan and Security Agreement, dated of even date herewith (as amended, restated, supplemented or modified from time to time, the "Initial Term Loan Credit Agreement"), pursuant to which the Term Loan Lenders have made a term loan credit facility available to the Company secured by a first priority security interest in certain assets of such Grantors and a second priority security interest in certain other assets of such Grantors;

WHEREAS, the Working Capital Agent, for and on behalf of the Working Capital Claimholders and the Term Loan Agent, for and on behalf of the Term Loan Claimholders, desire to enter into this Agreement to (i) confirm the relative priorities of their respective security interests in the assets and properties of the Grantors as between the Working Capital Claimholders and the Term Loan Claimholders, and (ii) provide for the orderly sharing among them, in accordance with such priorities, of the proceeds of such assets and properties upon any foreclosure thereon or other disposition thereof; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and other good and valuable consideration, the existence and sufficiency 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:

**"Account"** means, as to each Grantor, all present and future rights of such Person to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card.

**"Affiliate"** means, with respect to a specified Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (a) any Person which beneficially owns or holds ten (10%) percent or more of any class of Voting Stock of such Person or other equity interests in such Person, (b) any Person of which such Person beneficially owns or holds ten (10%) percent or more of any class of Voting Stock or in which such Person beneficially owns or holds ten (10%) percent or more of the equity interests and (c) any director or executive officer of such Person. For the purposes of this definition, the term "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise.

**"Agent"** means the Working Capital Agent or the Term Loan Agent, as applicable.

**"Aggregate Principal Exposure"** means that the aggregate principal amount of, without duplication, any issued but undrawn letters of credit, any reimbursement obligations for drawn letters of credit, term loans, revolving loans, bonds, debentures, notes or similar instruments (excluding, in any event, Bank Product Debt) issued under the Working Capital Credit Documents or the Term Loan Credit Documents, as applicable.

**"Agreement"** means this Agreement, as amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

**"Amended and Restated Working Capital Credit Agreement"** has the meaning set forth in the recitals hereto.

**"Attributable Indebtedness"** means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

**"Bank Products Agreement"** means any agreement pursuant to which a bank or other financial institution agrees to provide any of the following products, services or facilities extended to any Grantor by any Claimholder or any of its Affiliates: (a) Cash Management Services; (b) products under any Hedge Agreement and not for speculative purposes; (c) commercial credit card and merchant card services; and (d) other banking products or services as may be requested by any Grantor, other than letters of credit.

**"Bank Product Debt"** of any Person means any obligation of such Person pursuant to any Bank Products Agreement.

**"Bankruptcy Code"** means the United States Bankruptcy Code, being Title 11 of the United States Code (11 U.S.C. Sections 101-1330), as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all official rules and regulations thereunder.

**"Bankruptcy Court"** shall mean the United States Bankruptcy Court for the District of New Jersey.

**"Bankruptcy Law"** means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

**"Business Day"** means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of the State of North Carolina, and a day on which each Control Agent is open for the transaction of business.

**"Capital Lease"** means, as applied to any Person, any lease of (or any agreement conveying the right to use) any property (whether real, personal or mixed) by such Person as lessee which in accordance with GAAP, is required to be reflected as a liability on the balance sheet of such Person.

**"Capital Lease Obligations"** means the capitalized lease obligations relating to a Capital Lease determined in accordance with GAAP.

**"Capital Stock"** means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).

**"Cash Management Services"** means any services provided from time to time to the Grantors in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automatic clearinghouse, controlled disbursement, depository, electronic funds transfer, information reporting, lockbox, stop payment, overdraft and/or wire transfer services.

**"Certificated Security"** has the meaning set forth in the UCC.

**"Chapter 11 Cases"** shall mean the Chapter 11 cases of the Company and the other Grantors (other than Dutch Borrower) under the Bankruptcy Code referred to as In re Newark Group, Inc., et al., Chapter 11 Case No. [ ] (Jointly Administered), currently pending in the Bankruptcy Court.

**"Chattel Paper"** has the meaning set forth in the UCC.

**"CL Cap Amount"** has the meaning set forth in the definition of Term Loan Obligations.

**"CL Cash Collateral"** shall mean the Net Cash Proceeds (as such term is defined in the Term Loan Credit Agreement) that are deposited into a cash collateral account (at a depository institution satisfactory to the Term Loan Agent) pursuant to Section 2.5(b)(vi) of the Term Loan Credit Agreement as cash collateral for the Term Loan Obligations on terms reasonably acceptable to the Term Loan Agent; provided that any interest or investment income with respect to such cash collateral account shall be for the benefit of the Company and the Term Loan Agent shall upon the Company's direction invest the cash collateral in Cash Equivalents (as such term is defined in the Term Loan Credit Agreement).

**"CL Deposit Account "** means that certain segregated Deposit Account of the Company created on or after the date hereof to hold the proceeds of Term Loan Priority Collateral, together with any replacement or similar deposit account created to serve such purpose.

**"Claimholders"** means the Term Loan Claimholders and the Working Capital Claimholders.

**"Collateral"** means all of the assets and property of any Grantor, whether tangible or intangible, constituting both Working Capital Collateral and Term Loan Collateral.

**"Commercial Tort Claim"** has the meaning set forth in the UCC.

**"Company"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Control Agents"** shall mean (i) with respect to the Control Collateral constituting Working Capital Priority Collateral, Wells Fargo Bank, National Association, successor by merger to Wachovia Bank, National Association, in its capacity as collateral agent with respect to such Working Capital Priority Collateral under Section 5.3 hereof, together with any successor in such capacity appointed by the Term Loan Agent and the Working Capital Agent and (ii) with respect to the Control Collateral constituting Term Loan Priority Collateral, Orix Finance Corp., in its capacity as collateral agent with respect to such Term Loan Priority Collateral under Section 5.3 hereof, together with any successor in such capacity appointed by the Term Loan Agent and the Working Capital Agent; each sometimes individually referred to herein as a "Control Agent".

**"Control Collateral"** means any Collateral consisting of any Certificated Security, Instrument, Investment Property, Deposit Accounts, tangible Chattel Paper and cash.

**"Controlled Account"** means those certain Deposit Accounts of any Grantor required to be subject to deposit account control agreements pursuant to the terms of the Working Capital Collateral Documents and the Term Loan Collateral Documents.

**"Credit Documents"** means the Term Loan Credit Documents and the Working Capital Credit Documents.

**"Customer Contracts"** means all contracts for the provision of goods or services by any Grantor to any Person or by any Person to any Grantor.

**"Deposit Accounts"** has the meaning set forth in the UCC.

**"DIP Financing"** has the meaning set forth in Section 6.1.

**"Discharge of Obligations"** means a Discharge of Term Loan Obligations or a Discharge of Working Capital Obligations, as applicable.

**"Discharge of Term Loan Obligations"** means (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such interest is, or would be, allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the Term Loan Credit Documents and termination of all commitments to lend or otherwise extend credit under the Term Loan Credit Documents, and (ii) payment in full in cash of all other Term Loan Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in such Insolvency or Liquidation Proceeding), and (iii) termination or cash collateralization (in an amount reasonably satisfactory to the Term Loan Administrative Agent at the direction of the Required Lenders) of any Bank Products Agreement (to the extent obligations under such Bank Products Agreement constitute Term Loan Obligations) and the payment in full in cash of all Bank Product Debt (to the extent such Bank Product Debt constitutes Term Loan Obligations), subject, with respect to the aggregate amount of the items set forth in the foregoing clauses (i) through (iii), to the limitations set forth in the definition of CL Cap Amount.

**"Discharge of Working Capital Obligations"** means (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such interest is, or would be, allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the Working Capital Credit Documents and termination of all commitments to lend or otherwise extend credit under the Working Capital Credit Documents, (ii) payment in full in cash of all other Working Capital Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in such Insolvency or Liquidation Proceeding), (iii) termination, cancellation or cash collateralization (in an amount reasonably satisfactory to the Working Capital Administrative Agent) of, all letters of credit issued under the Working Capital Credit Documents and (iv) termination or cash collateralization (in an amount reasonably satisfactory to the Working Capital Administrative Agent) of any Bank Products Agreement (to the extent that the obligations under such Bank Products Agreement constitutes Working Capital Obligations) and the payment in full in cash of all Bank Product Debt (to the extent such Bank Product Debt constitutes Working Capital Obligations), subject, with respect to the aggregate amount of the items set forth in the foregoing clauses (i) through (iii), to the limitations set forth in the definition of Maximum Working Capital Obligations.

**"Documents"** has the meaning set forth in the UCC.

**"Domestic Subsidiaries"** shall mean, with respect to any Person, any Subsidiary of such Person which is incorporated or organized under the laws of any state of the United States or the District of Columbia.

**"Equipment"** has the meaning set forth in the UCC, including all machinery, apparatus, equipment, fittings, furniture, fixtures, motor vehicles and other tangible personal property (other than Inventory), and all parts, accessories and special tools therefor, and accessions thereto.

**"Financial Asset"** has the meaning set forth in the UCC.

**"Fixture"** has the meaning set forth in the UCC.

**"GAAP"** means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

**"General Intangible"** has the meaning set forth in the UCC.

**"Goods"** has the meaning set forth in the UCC.

**"Grantors"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Guaranty Obligations"** means, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting security therefor, (b) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including without limitation keep well agreements, maintenance agreements, comfort letters or similar agreements or arrangements) for the benefit of any holder of Indebtedness of such other Person, (c) to lease or purchase property, securities or services primarily for the purpose of assuring the holder of such Indebtedness, or (d) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

**"Hedge Agreement"** means an agreement that is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement rate, floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing or a master agreement for any the foregoing together with all supplements thereto) for the purpose of protecting against or managing exposure to fluctuations in interest or exchange rates, currency valuations or commodity prices; sometimes being collectively referred to herein as "Hedge Agreements".

**"Indebtedness"** means, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (other than an account payable to a trade creditor (whether or not an Affiliate) incurred in the ordinary course of business of such Person and payable in accordance with customary trade practices); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial

condition; (e) all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities issued by such Person; (f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account; (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; (h) all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values; (i) all obligations owed by such Person under license agreements with respect to non-refundable, advance or minimum guarantee royalty payments; (j) indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer to the extent such Person is liable therefor as a result of such Person's ownership interest in such entity, except to the extent that the terms of such indebtedness expressly provide that such Person is not liable therefor or such Person has no liability therefor as a matter of law and (k) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP.

**"Initial Term Loan Credit Agreement"** has the meaning set forth in the recitals hereto.

**"Initial Working Capital Credit Agreement"** has the meaning set forth in the recitals hereto.

**"Insolvency or Liquidation Proceeding"** means any case or proceeding (including, without limitation, the Chapter 11 Cases) commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other Bankruptcy Law or insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

**"Instrument"** has the meaning set forth in the UCC.

**"Investment Property"** has the meaning set forth in the UCC.

**"Inventory"** has the meaning set forth in the UCC, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in the Grantors' business (but excluding Equipment).

**"Letter of Credit Rights"** has the meaning set forth in the UCC.

**"Lien"** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

**"Maximum Working Capital Obligations"** has the meaning set forth in the definition of Working Capital Obligations.

**"Non-Priority Agent"** means, (a) with respect to the Working Capital Priority Collateral, the Term Loan Agent and (b) with respect to the Term Loan Priority Collateral, the Working Capital Agent.

**"Non-Priority Claimholders"** means, (a) with respect to the Working Capital Priority Collateral, the Term Loan Claimholders and (b) with respect to the Term Loan Priority Collateral, the Working Capital Claimholders.

**"Obligations"** means Term Loan Obligations or the Working Capital Obligations, as applicable.

**"Ordinary Course of Business"** means the ordinary course of business of the Company or Subsidiaries, consistent with past practices and undertaken in good faith (and not for the purpose of evading any provision of a Credit Document).

**"Payment Intangibles"** has the meaning set forth in the UCC.

**"Person"** means any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Internal Revenue Code of 1986), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

**"Priority Agent"** means, (a) with respect to the Working Capital Priority Collateral, the Working Capital Agent and (b) with respect to the Term Loan Priority Collateral, the Term Loan Agent.

**"Priority Claimholders"** means, (a) with respect to the Working Capital Priority Collateral, the Working Capital Claimholders and (b) with respect to the Term Loan Priority Collateral, the Term Loan Claimholders.

**"Priority Collateral"** means, as applicable, (a) with respect to the Working Capital Agent and the other Working Capital Claimholders, the Working Capital Priority Collateral and (b) with respect to the Term Loan Agent and the other Term Loan Claimholders, the Term Loan Priority Collateral.

**"Property"** means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

**"Proceeds"** has the meaning set forth in the UCC.

**"Recovery"** has the meaning set forth in Section 6.7.

**"Refinance"** means, in respect of any Indebtedness, to refinance, replace or repay, or to issue other Indebtedness, in exchange or replacement for, such indebtedness. **"Refinanced"** and **"Refinancing"** shall have correlative meanings.

**"Required Lenders"** has the meaning set forth in the Working Capital Credit Agreement or the Term Loan Credit Agreement, as applicable.

**"Subsidiary"** means, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business

entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

**"Supporting Obligations"** has the meaning set forth in the UCC.

**"Synthetic Lease Obligation"** means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of Property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

**"Term Loan Administrative Agent"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Term Loan Agent"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Term Loan Claimholders"** means, at any relevant time, the holders of Term Loan Obligations at such time, including without limitation the Term Loan Lenders and any agent under the Term Loan Credit Agreement.

**"Term Loan Collateral"** means all of the assets and property of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any Term Loan Obligations.

**"Term Loan Collateral Disposition"** has the meaning set forth in Section 5.1(a)(ii).

**"Term Loan Collateral Documents"** means the Security Documents (as defined in the Term Loan Credit Agreement as amended, restated, supplemented and/or modified from time to time) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Term Loan Obligations or under which rights or remedies with respect to such Liens are governed.

**"Term Loan Collateral Exercise of Remedies"** has the meaning set forth in Section 5.1(a)(i).

**"Term Loan Credit Agreement"** means (i) the Initial Term Loan Credit Agreement, as amended, restated, supplemented and/or modified from time to time and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase (subject to the limitations set forth herein), or Refinance in whole or in part the indebtedness and other obligations outstanding under the (x) Initial Term Loan Credit Agreement or (y) any subsequent Term Loan Credit Agreement (as amended, restated, supplemented or modified from time to time), unless such agreement or instrument expressly provides that it is not intended to be and is not a Term Loan Credit Agreement hereunder. Any reference to the Term Loan Credit Agreement hereunder shall be deemed a reference to any Term Loan Credit Agreement then in existence.

**"Term Loan Credit Documents"** means the Term Loan Credit Agreement, the Term Loan Collateral Documents and the other Financing Agreements (as defined in the Term Loan Credit Agreement as amended, restated, supplemented and/or modified from time to time) and each of the other agreements, documents and instruments providing for or evidencing any other Term Loan Obligation, and

any other document or instrument executed or delivered at any time in connection with any Term Loan Obligations, including any intercreditor or joinder agreement among holders of Term Loan Obligations, to the extent such are effective at the relevant time, as each may be modified from time to time.

**"Term Loan Lenders"** means any "Lender", "Hedging Agreement Provider" or "Bank Product Provider" as each term is defined in the Term Loan Credit Agreement.

**"Term Loan Obligations"** means any and all loans, letter of credit obligations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any Grantor, whether incurred before, during or after the commencement of an Insolvency or Liquidation Proceeding with respect to any of the Grantors, under (i) the Term Loan Credit Agreement, (ii) the other Term Loan Credit Documents and (iii) Bank Products Agreements with the Term Loan Agent, the Term Loan Administrative Agent, any Term Loan Lender or any Affiliate of a Term Loan Lender; provided that the aggregate principal amount of, without duplication, any letter of credit commitment, undrawn letters of credit, term loans, bonds, debentures, notes or similar instruments (excluding, in any event, any Bank Product Debt, and any capitalized interest, fees, costs and other charges) issued under the Term Loan Credit Agreement or any other Term Loan Credit Document (or any Refinancing thereof) in excess of \$130,000,000 (the **"CL Cap Amount"**), shall not constitute Term Loan Obligations for purposes of this Agreement. "Term Loan Obligations" shall include (x) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in accordance with the rate specified in the relevant Term Loan Credit Document and (y) all fees, costs and charges incurred in connection with the Term Loan Credit Documents and provided for thereunder, in the case of each of clause (x) and clause (y) whether before or after commencement of an Insolvency or Liquidation Proceeding and irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency or Liquidation Proceeding.

**"Term Loan Priority Collateral"** means all of the present and future assets and Property of the Company and any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any Term Loan Obligations, that do not constitute Working Capital Priority Collateral, including without limitation:

- (a) all of the Capital Stock of each of the present and future Subsidiaries of the Company;
- (b) all of the following present and future Property of the Company and each other Grantor:
  - (i) all present and future patents and patent license rights, trademarks and trademark license rights, copyrights and copyright license rights, trade secrets and processes and other intellectual property;
  - (ii) all present and future machinery and other Equipment, Goods, real Property (whether owned or leased), Fixtures, Financial Assets, Investment Property and Commercial Tort Claims;
  - (iii) the CL Deposit Account (to the extent any Grantor has rights therein) and all cash from time to time on deposit in the CL Deposit Account (to the extent any Grantor has rights therein);
  - (iv) Chattel Paper, Documents and Instruments (other than to the extent relating to Accounts (other than Accounts or other payment obligations constituting the proceeds of Term Loan Priority Collateral));

(v) the CL Cash Collateral and any deposit or investment account established by any Grantor and/or the Term Loan Agent to hold the CL Cash Collateral;

(vi) General Intangibles and other contract rights, including any indemnification rights;

(vii) all present and future claims, rights, interests, assets and properties to the extent arising from, in connection with, or related to the Term Loan Priority Collateral recovered by or on behalf of any Grantor, or any successor or assignor of such Grantor, including, without limitation, any trustee of any Grantor (whether in a Chapter 11 Case or any subsequent case to which any Chapter 11 Case is converted), including, without limitation, all claims by or on behalf of Grantor against any officer, director or other person or party for acts of negligence, misconduct or malfeasance, including, without limitation, breach of fiduciary duty, breach of the duty of loyalty, waste, mismanagement or misconduct of any kind, nature or description, including, a breach of the terms and conditions of any of the Term Loan Credit Documents; and

(c) all Proceeds (including, without limitation, insurance proceeds) and products of the Property and assets described in the foregoing clauses (a) and (b).

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"**Voting Stock**" means, with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

"**Working Capital Administrative Agent**" has the meaning set forth in the introductory paragraph of this Agreement.

"**Working Capital Agent**" has the meaning set forth in the introductory paragraph of this Agreement.

"**Working Capital Claimholders**" means, at any relevant time, the holders of Working Capital Obligations at such time, including without limitation the Working Capital Lenders and any agent under the Working Capital Credit Agreement, and including, in the case of Bank Products Agreements, Affiliates of Working Capital Lenders who are parties to Bank Products Agreements with any Grantor.

"**Working Capital Collateral**" means all of the assets and property of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any Working Capital Obligations (other than Working Capital Excluded Collateral).

"**Working Capital Collateral Disposition**" has the meaning set forth in Section 5.1(d)(ii).

"**Working Capital Collateral Documents**" means the Security Documents (as defined in the Working Capital Credit Agreement as amended or amended and restated from time to time) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Working Capital Obligations or under which rights or remedies with respect to such Liens are governed.

**"Working Capital Collateral Exercise of Remedies"** has the meaning set forth in Section 5.1(d)(i).

**"Working Capital Credit Agreement"** means (i) the Amended and Restated Working Capital Credit Agreement, as amended, restated, supplemented and/or modified from time to time and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase (subject to the limitations set forth herein), or Refinance in whole or in part the indebtedness and other obligations outstanding under the (x) Amended and Restated Working Capital Credit Agreement or (y) any subsequent Working Capital Credit Agreement (as amended, restated, supplemented, amended and restated or modified from time to time), unless such agreement or instrument expressly provides that it is not intended to be and is not a Working Capital Credit Agreement hereunder. Any reference to the Working Capital Credit Agreement hereunder shall be deemed a reference to any Working Capital Credit Agreement then in existence.

**"Working Capital Credit Documents"** means the Working Capital Credit Agreement, Working Capital Collateral Documents and the other Financing Agreements (as defined in the Working Capital Credit Agreement as amended, restated, supplemented, amended and restated or modified from time to time) and each of the other agreements, documents and instruments providing for or evidencing any other Working Capital Obligation, and any other document or instrument executed or delivered at any time in connection with any Working Capital Obligations, including any intercreditor or joinder agreement among holders of Working Capital Obligations, to the extent such are effective at the relevant time, as each may be modified from time to time.

**"Working Capital Excluded Collateral"** means the real Property (whether owned or leased) of the Grantors whether now owned or hereafter acquired.

**"Working Capital Lenders"** means any "Lender", "Hedge Agreement Provider" or "Bank Product Provider" as each term is defined in the Working Capital Credit Agreement.

**"Working Capital Obligations"** means any and all loans, letter of credit obligations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any Grantor, whether incurred before, during or after the commencement of an Insolvency or Liquidation Proceeding with respect to any of the Grantors, under (i) the Working Capital Credit Agreement, (ii) the other Working Capital Credit Documents and (iii) Bank Products Agreements with the Working Capital Agent, the Working Capital Administrative Agent, the Working Capital Lenders or any Affiliate of the Working Capital Lenders; provided that the aggregate principal amount of, without duplication, any revolving credit commitments, revolving credit loans, letters of credit, term loans, bonds, debentures, notes or similar instruments (excluding, in any event, Bank Product Debt) issued under the Working Capital Credit Agreement or any other Working Capital Credit Document (or any Refinancing thereof) in excess of \$95,000,000 (the **"Maximum Working Capital Obligations"**), shall not constitute Working Capital Obligations for purposes of this Agreement. "Working Capital Obligations" shall include (x) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in accordance with the rate specified in the relevant Working Capital Credit Document and (y) all fees, costs and charges incurred in connection with the Working Capital Credit Documents and provided for thereunder, in the case of each of clause (x) and clause (y) whether before or after commencement of an Insolvency or Liquidation Proceeding and irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency or Liquidation Proceeding.

**"Working Capital Priority Collateral"** means

(a) all of the following present and future Property of the Company and each other Grantor:

(i) Accounts (other than Accounts or other payment obligations constituting the proceeds of Term Loan Priority Collateral);

(ii) Inventory;

(iii) Chattel Paper, Instruments, Documents and Payment Intangibles, in each case only to the extent relating to Accounts (other than Accounts or other payment obligations constituting the proceeds of Term Loan Priority Collateral) or Inventory;

(iv) Deposit Accounts (other than the CL Deposit Account or any deposit or investment account established to hold the CL Cash Collateral);

(v) cash (other than cash which is CL Cash Collateral, cash in the CL Deposit Account, cash proceeds of Term Loan Priority Collateral required to be paid to the Term Loan Agent pursuant to Section 4.2(b) below or identifiable cash proceeds of Term Loan Priority Collateral);

(vi) Letter-of-Credit Rights and Supporting Obligations in respect of Inventory or Accounts (other than Accounts or other payment obligations constituting the proceeds of Term Loan Priority Collateral);

(vii) (A) all present and future claims, rights, interests, assets and properties to the extent arising from, in connection with, or related to the Working Capital Priority Collateral recovered by or on behalf of any Grantor, or any successor or assignor of such Grantor, including, without limitation, any trustee of any Grantor (whether in a Chapter 11 Case or any subsequent case to which any Chapter 11 Case is converted); (B) all present and future claims, rights, interests, assets and properties arising from, in connection with, or related to the Working Capital Priority Collateral recovered by or on behalf of any Grantor, or any successor or assignor of such Grantor, including, without limitation, any trustee of any Grantor, in a Chapter 11 Case or any subsequent case to which any Chapter 11 Case is converted, including, without limitation, all such property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to the Bankruptcy Code, applicable law, or otherwise, including without limitation, Sections 542, 545, 547, 548, 549, 550, 552 and 553 of the U.S. Bankruptcy Code, except for property recovered from such avoided transfers or obligations or actions that constitute Term Loan Priority Collateral, including property or payments recovered as a result of transfers or obligations avoided or actions maintained from transfers of Term Loan Priority Collateral; and (C) all present and future claims, rights, interests, assets and properties to the extent arising from, in connection with, or related to the Working Capital Priority Collateral recovered by or on behalf of any Grantor, or any successor or assignor of such Grantor, including, without limitation, any trustee of any Grantor (whether in a Chapter 11 Case or any subsequent case to which any Chapter 11 Case is converted), including, without limitation, all claims by or on behalf of Grantor against any officer, director or other person or party for acts of negligence, misconduct or malfeasance, including, without limitation, breach of fiduciary duty, breach of the duty of loyalty, waste, mismanagement or misconduct of any kind, nature or description,

including, a breach of the terms and conditions of any of the Working Capital Credit Documents;

- (viii) books and records and accounting systems relating to Accounts or Inventory;
- (ix) Customer Contracts;
- (x) tax refunds;
- (xi) any Bank Products Agreements consisting of Hedge Agreements; and

(b) all Proceeds (including, without limitation, insurance proceeds) and products of the Property described in the foregoing clause (a).

**1.2 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 (i) 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 or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) 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, (iv) all references herein to Exhibits or Sections shall be construed to refer to Exhibits or Sections of this Agreement and (v) 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

### LIEN PRIORITIES

**2.1 Scope of Collateral.** Each Agent hereby acknowledges, for itself and on behalf of the applicable Claimholders, that:

(a) Working Capital Agent, for and on behalf of the Working Capital Claimholders, has been granted Liens upon all of the Collateral pursuant to the Working Capital Credit Documents to secure the Working Capital Obligations; and

(b) Term Loan Agent, for and on behalf of the Term Loan Claimholders, has been granted Liens upon all of the Collateral and the Working Capital Excluded Collateral (other than the real property of the Dutch Borrower) pursuant to the Term Loan Credit Documents to secure the Term Loan Obligations.

### 2.2 Priority.

(a) Notwithstanding the order or time of attachment, or the order, time or manner of perfection, or the order or time of filing or recordation of any document or instrument, or other method of perfecting a Lien in favor of any Claimholder in any Working Capital Priority

Collateral, and notwithstanding any conflicting terms or conditions which may be contained in any of the Credit Documents, subject to Section 2.2(c), the Liens upon the Working Capital Priority Collateral securing the Working Capital Obligations shall have priority over the Liens upon the Working Capital Priority Collateral securing the Term Loan Obligations and such Liens upon the Working Capital Priority Collateral securing the Term Loan Obligations are and shall be junior and subordinate to the Liens upon the Working Capital Priority Collateral securing the Working Capital Obligations in all respects.

(b) Notwithstanding the order or time of attachment, or the order, time or manner of perfection, or the order or time of filing or recordation of any document or instrument, or other method of perfecting a Lien in favor of any Claimholder in any Term Loan Priority Collateral, and notwithstanding any conflicting terms or conditions which may be contained in any of the Credit Documents, subject to Section 2.2(d) and (e), as applicable, the Liens upon the Term Loan Priority Collateral securing the Term Loan Obligations shall have priority over the Liens upon the Term Loan Priority Collateral securing the Working Capital Obligations and such Liens upon the Term Loan Priority Collateral securing the Working Capital Obligations are and shall be junior and subordinate to the Liens upon the Term Loan Priority Collateral securing the Term Loan Obligations in all respects.

(c) Notwithstanding the foregoing clauses (a) and (b) or anything else in this Agreement to the contrary, the Aggregate Principal Exposure of extensions of credit made by the Working Capital Lenders to any of the Grantors that exceed the Maximum Working Capital Obligations, shall not be considered Working Capital Obligations for purposes of the Lien priority set forth in Section 2.2(a) above or Section 2.3 below with respect to the Working Capital Priority Collateral. To the extent provided under the Working Capital Credit Documents, all such extensions of credit in excess of the Maximum Working Capital Obligations shall continue to be secured by the Collateral (including without limitation the Working Capital Priority Collateral); provided, that the Liens on the Working Capital Priority Collateral securing such extensions of credit in excess of the Maximum Working Capital Obligations shall be junior and subordinate to the Liens on the Working Capital Priority Collateral securing the Term Loan Obligations.

(d) Notwithstanding the foregoing clauses (a) and (b) or anything else in this Agreement to the contrary, the Aggregate Principal Exposure of extensions of credit made by Term Loan Lenders to any of the Grantors that exceed the CL Cap Amount, shall not be considered Term Loan Obligations for purposes of the Lien priority set forth in Section 2.2(b) above or Section 2.3 below with respect to the Term Loan Priority Collateral. To the extent provided under the Term Loan Credit Documents, all such extensions of credit in excess of the CL Cap Amount shall continue to be secured by the Term Loan Collateral (including without limitation the Term Loan Priority Collateral); provided, that the Liens on the Term Loan Priority Collateral securing such extensions of credit in excess of the CL Cap Amount shall be junior and subordinate to the Liens on the Term Loan Priority Collateral securing the Working Capital Obligations.

**2.3 Failure to Perfect.** Subject to Section 2.2(c), the Liens upon the Working Capital Priority Collateral securing the Working Capital Obligations shall be and remain senior in all respects and prior to the Liens on the Working Capital Priority Collateral securing the Term Loan Obligations, and, subject to Section 2.2(d), the Liens on the Term Loan Priority Collateral securing the Term Loan Obligations shall be and remain senior in all respects and prior to the Liens on the Term Loan Priority Collateral securing the Working Capital Obligations, notwithstanding any failure of any Claimholder to perfect its security interest in its respective Priority Collateral, the subordination of its Lien on such

Priority Collateral to any Lien securing any other obligation of any Grantor, or the avoidance, invalidation or lapse of its Lien on such Priority Collateral.

**2.4 Prohibition on Contesting Liens.** Each of the Working Capital Agent, for itself and on behalf of each Working Capital Claimholder, and the Term Loan Agent, for itself and on behalf of each Term Loan Claimholder, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity or enforceability of a Lien held by or on behalf of any of the other Claimholders in any Collateral or Working Capital Excluded Collateral, as the case may be; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any such party to enforce this Agreement, including the priority of the Lien held by it or for its benefit on its respective Priority Collateral as provided in Sections 2.2 and 3.1.

**2.5 No New Liens.**

(a) Limitation on Collateral for Working Capital Claimholders. Until the Discharge of Term Loan Obligations shall have occurred, (i) the Working Capital Agent agrees that neither the Working Capital Agent nor any other Working Capital Claimholder shall acquire or hold any Lien on any assets of any Grantor (or any Subsidiary thereof) to secure any Working Capital Obligations which assets are not also subject to the Lien of the Term Loan Agent under the Term Loan Credit Documents, and (ii) each Grantor agrees not to grant any Lien on any of its assets, or permit any of its Subsidiaries to grant a Lien on any of its assets, in favor of the Working Capital Agent or the other Working Capital Claimholders unless it, or such Subsidiary, has granted a similar Lien on such assets in favor of the Term Loan Agent or the other Term Loan Claimholders. If any Working Capital Claimholder shall (nonetheless and in breach hereof) acquire any Lien on any assets of any Grantor or any of its Subsidiaries to secure the Working Capital Obligations, which assets are not also subject to a Lien in favor of the Term Loan Agent to secure the Term Loan Obligations, then such Working Capital Claimholder shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Working Capital Credit Document (x) also hold and be deemed to have held such Lien and security interest for the benefit of the Term Loan Agent as security for the Term Loan Obligations, subject to the priorities set forth herein, with any amounts received in respect thereof subject to distribution and turnover under Section 4, or (y) release such Lien.

(b) Limitation on Collateral for Term Loan Claimholders. Until the Discharge of Working Capital Obligations shall have occurred, (i) the Term Loan Agent agrees that neither the Term Loan Agent nor any Term Loan Claimholder shall acquire or hold any Lien on any assets of any Grantor (or any Subsidiary thereof) to secure any Term Loan Obligations which assets are not also subject to the Lien of the Working Capital Agent under the Working Capital Credit Documents (other than the Working Capital Excluded Collateral), and (ii) each Grantor agrees not to grant any Lien on any of its assets, or permit any of its Subsidiaries to grant a Lien on any of its assets (other than the Working Capital Excluded Collateral), in favor of the Term Loan Agent or the other Term Loan Claimholders unless it, or such subsidiary, has granted a similar Lien on such assets in favor of the Working Capital Agent or the other Working Capital Claimholders. If any Term Loan Claimholder shall (nonetheless and in breach hereof) acquire any Lien on any assets of any Grantor or any of its Subsidiaries to secure any Term Loan Obligations, which assets (other than the Working Capital Excluded Collateral) are not also subject to a Lien of the Working Capital Agent to secure the Working Capital Obligations, then such Term Loan Claimholder shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Term Loan Credit Document, (x) also hold and be deemed to have held such Lien and security interest for the benefit of the Working Capital

Agent as security for the Working Capital Obligations subject to the priorities set forth herein, with any amounts received in respect thereof subject to distribution and turnover under Section 4, or (y) release such Lien.

**2.6 Similar Liens and Agreements.** The parties hereto agree that it is their intention that the Working Capital Collateral and the Term Loan Collateral be identical except that the Working Capital Collateral shall not include the Working Capital Excluded Collateral. In furtherance of the foregoing and of Section 8.9, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by the Working Capital Agent or the Term Loan 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 Working Capital Collateral and the Term Loan Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Working Capital Credit Documents and the Term Loan Credit Documents; and

(b) that the documents and agreements creating or evidencing the Liens in Working Capital Collateral and the Term Loan Collateral securing the Working Capital Obligations and the Term Loan Obligations shall be in all material respects the same forms of documents other than with respect to the priority of the Liens contemplated hereunder.

### SECTION 3

#### ENFORCEMENT

##### 3.1 Enforcement.

(a) So long as the Discharge of Working Capital Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against Company or any other Grantor:

(i) each of the Term Loan Agent and the Term Loan Claimholders:

(A) will not exercise or seek to exercise any rights or remedies (including any right of set-off or recoupment) with respect to any Working Capital Priority Collateral (including, without limitation, the exercise of any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Term Loan Agent or any Term Loan Claimholder is a party) or institute or commence (or join with any other Person in commencing) any enforcement, collection, execution, levy or foreclosure action or proceeding (including, without limitation, any Insolvency or Liquidation Proceeding) with respect to any Lien on the Working Capital Priority Collateral held by it under the Term Loan Credit Documents or otherwise; and

(B) will not contest, protest or object to any foreclosure proceeding or action brought by the Working Capital Agent or any Working Claimholder with respect to the Working Capital Priority Collateral, or any other exercise by the Working Capital Agent or any other Working Capital Claimholder, of any rights and remedies relating to the Working Capital Priority Collateral under the Working Capital Credit Documents or otherwise; provided that the respective

interests of the Term Loan Claimholders attach to the proceeds thereof, subject to the relative priorities described in Section 2 and Section 4; and

(C) will not object to the forbearance by the Working Capital Agent or the other Working Capital Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Working Capital Priority Collateral; and

(ii) subject to Section 5.1, the Working Capital Agent and the other Working Capital Claimholders shall have the exclusive right to enforce rights, exercise remedies (including set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Working Capital Priority Collateral without any consultation with or the consent of the Term Loan Agent or any other Term Loan Claimholder; provided, that

(A) in any Insolvency or Liquidation Proceeding commenced by or against Company or any other Grantor, the Term Loan Administrative Agent or the Term Loan Agent may file a claim or statement of interest with respect to the Term Loan Obligations, as applicable,

(B) the Term Loan Agent may take any action (not adverse to the Liens on the Working Capital Priority Collateral securing the Working Capital Obligations, or the rights of the Working Capital Agent or the other Working Capital Claimholders to exercise remedies in respect thereof) in order to preserve or protect its Lien on the Working Capital Priority Collateral,

(C) the Term Loan Claimholders shall be entitled to 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 the Term Loan Claimholders, including without limitation any claims secured by the Working Capital Priority Collateral, if any, in each case in accordance with the terms of this Agreement,

(D) in any Insolvency or Liquidation Proceeding, the Term Loan Claimholders shall be entitled to file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Grantors arising under either Bankruptcy Law or applicable non-bankruptcy law, in each case in accordance with the terms of this Agreement,

(E) in any Insolvency or Liquidation Proceeding, the Term Loan Claimholders shall be entitled to vote on any plan of reorganization, except to the extent inconsistent with the provisions hereof, and

(F) the Term Loan Agent or any Term Loan Claimholder may exercise any of its rights or remedies with respect to the Term Loan Priority Collateral consistent with the terms of this Agreement.

(b) So long as the Discharge of Term Loan Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against Company or any other Grantor:

(i) the Working Capital Agent and the Working Capital Claimholders:

(A) will not exercise or seek to exercise any rights or remedies (including any right of set-off or recoupment) with respect to any Term Loan Priority Collateral (including, without limitation, the exercise of any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Working Capital Agent or any Working Capital Claimholder is a party) or institute or commence (or join with any other Person in commencing) any enforcement, collection, execution, levy or foreclosure action or proceeding (including, without limitation, any Insolvency or Liquidation Proceeding) with respect to any Lien on the Term Loan Priority Collateral held by it under the Working Capital Credit Documents or otherwise; and

(B) will not contest, protest or object to any foreclosure proceeding or action brought by the Term Loan Agent or any Term Loan Claimholder with respect to the Term Loan Priority Collateral, or any other exercise by the Term Loan Agent or any other Term Loan Claimholder, of any rights and remedies relating to the Term Loan Priority Collateral under the Term Loan Credit Documents, as applicable, or otherwise; provided that the respective interests of the Working Capital Claimholders attach to the proceeds thereof, subject to the relative priorities described in Section 2 and Section 4; and

(C) will not object to the forbearance by the Term Loan Agent or the other Term Loan Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Term Loan Priority Collateral; and

(ii) subject to Section 5.1, the Term Loan Agent and the other Term Loan Claimholders shall have the exclusive right to enforce rights, exercise remedies (including set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Term Loan Priority Collateral without any consultation with or the consent of the Working Capital Agent or any other Working Capital Claimholder; provided, that

(A) in any Insolvency or Liquidation Proceeding commenced by or against Company or any other Grantor, the Working Capital Administrative Agent or the Working Capital Agent may file a claim or statement of interest with respect to the Working Capital Obligations,

(B) the Working Capital Agent may take any action (not adverse to the Liens on the Term Loan Priority Collateral securing the Term Loan Obligations, or the rights of the Term Loan Agent or the other Term Loan Claimholders to exercise remedies in respect thereof) in order to preserve or protect its Lien on the Term Loan Priority Collateral,

(C) the Working Capital Claimholders shall be entitled to 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 the Working Capital Claimholders, including without limitation any claims secured by the Term Loan

Priority Collateral, if any, in each case in accordance with the terms of this Agreement,

(D) in any Insolvency or Liquidation Proceeding, the Working Capital Claimholders shall be entitled to file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Grantors arising under either Bankruptcy Law or applicable non-bankruptcy law, in each case in accordance with the terms of this Agreement,

(E) in any Insolvency or Liquidation Proceeding, the Working Capital Claimholders shall be entitled to vote on any plan of reorganization, except to the extent inconsistent with the provisions hereof, and

(F) the Working Capital Agent or any Working Capital Claimholder may exercise any of its rights or remedies with respect to the Working Capital Priority Collateral consistent with the terms of this Agreement.

(c) In exercising rights and remedies with respect to its or their Priority Collateral, the applicable Priority Agent and the Priority Claimholders may enforce the provisions of their respective Credit 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 the applicable Priority Agent and Priority Claimholders to sell or otherwise dispose of such Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(d) Each Agent, on behalf of itself and Claimholders for which it acts as Agent, agrees that it will not take or receive any Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including set-off or recoupment) with respect to any Collateral, except to the extent such Collateral, or proceeds thereof, constitutes its Priority Collateral, and that any such Collateral or proceeds thereof taken or received by it that does not constitute its Priority Collateral will be paid over to the applicable Priority Agent pursuant to Section 4.2, unless and until the Discharge of Obligations of the Priority Claimholders has occurred, except as expressly provided in Section 6.4. Without limiting the generality of the foregoing, (i) unless and until the Discharge of Working Capital Obligations has occurred, the sole right of the Term Loan Agent and the Term Loan Claimholders with respect to the Working Capital Priority Collateral is to hold a Lien on the Working Capital Priority Collateral pursuant to the Term Loan Credit Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of Working Capital Obligations has occurred in accordance with the terms of the Working Capital Credit Documents and applicable law, and (ii) unless and until the Discharge of Term Loan Obligations has occurred, the sole right of the Working Capital Agent and the Working Capital Claimholders with respect to the Term Loan Priority Collateral is to hold a Lien on the Term Loan Priority Collateral pursuant to the Working Capital Credit Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of Term Loan Obligations has occurred in accordance with the terms of the Term Loan Credit Documents and applicable law.

(e) Subject to the proviso in clause (ii) of Section 3.1(a) or Section 3.1(b), as applicable, each Agent, for itself and on behalf of the Claimholders for which it acts as Agent, (i) agrees that neither it nor such Claimholders will take any action that would hinder, delay or

impede any exercise of remedies by the other Agent and other Claimholders under the other Agreements with respect to such other Claimholders' respective Priority Collateral, including any sale, lease, exchange, transfer or other disposition of such Priority Collateral, whether by foreclosure or otherwise, and (ii) hereby waives any and all rights it or the Claimholders for which it acts as Agent may have as a junior lien creditor or otherwise to object to the manner or order in which the Priority Agent or the other Priority Claimholders seek to enforce the Liens granted in their respective Priority Collateral.

### **3.2 Actions Upon Breach.**

(a) If any Claimholder commences or participates in any action or proceeding against Company, any other Grantor or the Collateral and/or Working Capital Excluded Collateral in violation of this Agreement, the Agent for the other group of Claimholders may interpose in the name of such other Claimholders or in the name of Company or such Grantor the making of this Agreement as a defense or dilatory plea.

(b) Should any Claimholder in any way take, or attempt or threaten to take, contrary to this Agreement, any action with respect to Collateral and/or Working Capital Excluded Collateral, or fail to take any action required by this Agreement, the Agent for the other group of Claimholders (in its own name or in the name of a Grantor) may obtain relief against such offending Claimholder by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by all of the Claimholders that (i) the damages from such actions may be difficult to ascertain and may be irreparable, and (ii) the offending Claimholder waives any defense that the other group of Claimholders cannot demonstrate damage or be made whole by the awarding of damages.

## **SECTION 4**

### **PAYMENTS**

#### **4.1 Application of Proceeds.**

(a) So long as the Discharge of Term Loan Obligations have not occurred, any proceeds of Term Loan Priority Collateral received in connection with the sale or other disposition of such Term Loan Collateral, or collection on such Term Loan Collateral upon the exercise of remedies, shall be applied by the Term Loan Agent to the Term Loan Obligations in such order as specified in the relevant Term Loan Credit Documents. Upon the Discharge of Term Loan Obligations, the Term Loan Agent shall deliver to the Working Capital Agent any proceeds of Term Loan Priority Collateral held by it in the same form as received, with any necessary endorsements or, as a court of competent jurisdiction may otherwise direct, to be applied by the Working Capital Agent to the Working Capital Obligations in such order as specified in the Working Capital Credit Documents.

(b) So long as the Discharge of Working Capital Obligations has not occurred, any proceeds of Working Capital Priority Collateral received in connection with the sale or other disposition of such Collateral, or collection on such Collateral upon the exercise of remedies, shall be applied by the Working Capital Agent to the Working Capital Obligations in such order as specified in the relevant Working Capital Credit Documents. Upon the Discharge of Working Capital Obligations and prior to the Discharge of Term Loan Obligations, the Working Capital Agent shall deliver to the Term Loan Agent any proceeds of Working Capital Priority Collateral held by it in the same form as received, with any necessary endorsements or, as a court of

competent jurisdiction may otherwise direct, to be applied by the Term Loan Agent to the Term Loan Obligations in such order as specified in the Term Loan Credit Documents.

(c) Except as set forth in this Section 4.1(c), nothing in this Agreement shall require either Agent or any Claimholder to determine the source or priority of funds received by it and applied to its Obligations. Subject to Section 4.2 and Section 6.7, in the absence of fraudulent conduct, willful misconduct or gross negligence, the sole remedy of any Agent or Claimholder for the tender and application of proceeds of its Priority Collateral to the Obligations of the Non-Priority Claimholders shall be to proceed directly against the Grantors unless, prior to the application of such proceeds to the Obligations of the Non-Priority Claimholders, the Agent for the Non-Priority Claimholders shall have received a written notice that such proceeds are (or will be) the proceeds of the Priority Claimholders' Priority Collateral with such notice to contain the following information: (i) a description of the Priority Claimholders' Priority Collateral that is being sold, transferred or otherwise disposed of to generate the proceeds, (ii) a description of the transaction generating the proceeds and (iii) the actual or anticipated date of such transaction.

#### **4.2 Payment Turnover.**

(a) So long as the Discharge of Working Capital Obligations has not occurred, any Working Capital Priority Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in Section 6.4) received by the Term Loan Agent or any other Term Loan Claimholders in connection with the exercise of any right or remedy (including set-off or recoupment) in respect of the Working Capital Priority Collateral shall be segregated and held in trust and forthwith paid over to the Working Capital Agent for the benefit of the Working Capital Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Working Capital Agent is hereby authorized to make any such endorsements as agent for the Term Loan Agent or any such Term Loan Claimholders. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(b) So long as the Discharge of Term Loan Obligations has not occurred, any Term Loan Priority Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in Section 6.4) received by the Working Capital Agent or any other Working Capital Claimholders in connection with the exercise of any right or remedy (including set-off or recoupment) in respect of the Term Loan Priority Collateral shall be segregated and held in trust and forthwith paid over, if prior to the Discharge of Term Loan Obligations, to the Term Loan Agent for the benefit of the Term Loan Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Term Loan Agent is hereby authorized to make any such endorsements as agent for the Working Capital Agent or any such Working Capital Claimholders. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

### **SECTION 5**

#### **OTHER AGREEMENTS**

##### **5.1 Releases.**

(a) If, in connection with:

(i) the exercise of any Term Loan Agent's remedies in respect of the Term Loan Priority Collateral, including any sale, lease, exchange, transfer or other disposition of any such Term Loan Priority Collateral (a "**Term Loan Collateral Exercise of Remedies**"); or

(ii) any sale, lease, exchange, transfer or other disposition of any Term Loan Priority Collateral permitted or otherwise consented to under the terms of the Term Loan Credit Documents (whether or not an event of default thereunder, and as defined therein, has occurred and is continuing) (a "**Term Loan Collateral Disposition**");

the Term Loan Agent, for itself or on behalf of any of the Term Loan Claimholders, releases any of its Liens on any part of the Term Loan Priority Collateral other than in connection with or after the Discharge of Term Loan Obligations, then the Liens, if any, of the Working Capital Agent, for itself or for the benefit of the Working Capital Claimholders, on such Term Loan Priority Collateral, shall be automatically, unconditionally and simultaneously released (the "**Term Collateral Second Lien Release**") and the Working Capital Agent, for itself or on behalf of any such Working Capital Claimholders, promptly shall execute and deliver to the Term Loan Agent or such Grantor such termination statements, releases and other documents as the Term Loan Agent or such Grantor may request to effectively confirm such release; provided, however, that the Term Collateral Second Lien Release shall not occur without the consent of the Working Capital Agent, in the case of a Term Loan Collateral Exercise of Remedies, as to any Term Loan Priority Collateral the net proceeds of the disposition of which will not be applied to repay (and, to the extent applicable, to reduce permanently commitments with respect to) the Term Loan Obligations or to preserve or protect the Term Loan Priority Collateral or enhance the likelihood, or maximize the amount, of repayment by Grantors of the Term Loan Obligations.

(b) (i) Until the Discharge of Term Loan Obligations occurs, the Working Capital Agent, for itself and on behalf of the Working Capital Claimholders, hereby irrevocably constitutes and appoints the Term Loan Agent and any officer or agent of the Term Loan 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 the Working Capital Agent or such holder or in the Term Loan Agent's own name, from time to time in the Term Loan Agent's discretion, for the purpose of carrying out the terms of Section 5.1(a), to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of Section 5.1(a), including any endorsements or other instruments of transfer or release. The foregoing authorizations are coupled with an interest and are irrevocable until such time as this Agreement is terminated in accordance with its terms.

(c) Until the Discharge of Term Loan Obligations occurs, to the extent that the Term Loan Agent for itself and on behalf of the Term Loan Claimholders has released any Lien on Term Loan Priority Collateral and any such Liens are later reinstated or the Term Loan Agent, on behalf of the Term Loan Claimholders, obtain any new Liens from Grantors, then the Working Capital Agent for itself and on behalf of the Working Capital Claimholders shall be granted a Lien on any such Term Loan Priority Collateral or have its Lien reinstated, as the case may be, subject to the priorities set forth in Section 2.

(d) If, in connection with:

(i) the exercise of any Working Capital Agent's remedies in respect of the Working Capital Priority Collateral, including any sale, lease, exchange, transfer or other disposition of any such Collateral (a "**Working Capital Collateral Exercise of Remedies**"); or

(ii) any sale, lease, exchange, transfer or other disposition of any Working Capital Priority Collateral permitted or otherwise consented to under the terms of the Working Capital Credit Documents (whether or not an event of default thereunder, and as defined therein, has occurred and is continuing) (a "**Working Capital Collateral Disposition**");

the Working Capital Agent, for itself or on behalf of any of the Working Capital Claimholders, releases any of its Liens on any part of the Working Capital Priority Collateral other than in connection with or after the Discharge of Working Capital Obligations, then the Liens, if any, of the Term Loan Agent, for itself or for the benefit of the Term Loan Claimholders, on such Working Capital Priority Collateral, shall be automatically, unconditionally and simultaneously released (the "**Working Capital Collateral Second Lien Release**") and the Term Loan Agent, for itself or on behalf of any such Term Loan Claimholders, promptly shall execute and deliver to the Working Capital Agent or such Grantor such termination statements, releases and other documents as the Working Capital Agent or such Grantor may request to effectively confirm such release; provided, however, that the Working Capital Collateral Second Lien Release shall not occur without the consent of the Term Loan Agent, in the case of a Working Capital Collateral Exercise of Remedies, as to any Working Capital Priority Collateral, the net proceeds of the disposition of which will not be applied to repay the Working Capital Obligations or to preserve or protect the Working Capital Priority Collateral or enhance the likelihood, or maximize the amount, of repayment by Grantors of the Working Capital Obligations.

(e) Until the Discharge of Working Capital Obligations occurs, the Term Loan Agent, for itself and on behalf of the Term Loan Claimholders, hereby irrevocably constitute and appoint the Working Capital Agent and any officer or agent of the Working Capital 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 the Term Loan Agent or such holder or in the Working Capital Agent's own name, from time to time in the Working Capital Agent's discretion, for the purpose of carrying out the terms of Section 5.1(d), to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of Section 5.1(d), including any endorsements or other instruments of transfer or release. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(f) Until the Discharge of Working Capital Obligations occurs, to the extent that the Working Capital Agent for itself and on behalf of the Working Capital Claimholders has released any Lien on Working Capital Priority Collateral and any such Liens are later reinstated or the Working Capital Agent, on behalf of the Working Capital Claimholders, obtain any new Liens from Grantors, then the Term Loan Agent, for itself and on behalf of the Term Loan Claimholders, shall be granted a Lien on any such Working Capital Priority Collateral or have its Lien reinstated, as the case may be, subject to the priorities set forth in Section 2.

**5.2 Insurance.** The Working Capital Agent and the Term Loan Agent shall be named as additional insureds and the Control Agents shall be named as loss payee with respect to the applicable

Priority Collateral (on behalf of the Working Capital Agent, the Working Capital Claimholders, the Term Loan Agent and the Term Loan Claimholders, as their interests may appear) under any insurance policies maintained from time to time by any Grantor. As between the Working Capital Agent and the Working Capital Claimholders, on the one hand, and the Term Loan Agent and the Term Loan Claimholders, on the other, the applicable Priority Agent and the applicable Priority Claimholders shall have the sole and exclusive right, in accordance with the terms of the applicable Credit Documents, (a) to adjust or settle any insurance policy or claim in the event of any loss with respect to their respective Priority Collateral and (b) to approve any award granted in any condemnation or similar proceeding affecting their respective Priority Collateral. All proceeds of any such policy and any such award in respect of any such Priority Collateral that are payable to the Agents shall be paid to the applicable Priority Agent for the benefit of the applicable Priority Claimholders to the extent required under their respective Credit Documents and thereafter to the Non-Priority Agent for the benefit of the Non-Priority Claimholders to the extent required under their respective Credit Documents and then to the owner of the subject property or as a court of competent jurisdiction may otherwise direct. If any Claimholder shall, at any time, receive any proceeds of any such insurance policy or any such award in contravention of this Agreement, it shall pay such proceeds over to the applicable Priority Agent in accordance with the terms of Section 4.2.

### **5.3 Control Agent for Perfection.**

(a) The Term Loan Agent, on behalf of itself and the Term Loan Claimholders, and the Working Capital Agent, on behalf of itself and the Working Capital Claimholders, each hereby appoint (i) with respect to the Control Collateral constituting Term Loan Priority Collateral, Orix Finance Corp., as its collateral agent for the limited purpose of acting as the collateral agent on behalf of the Term Loan Agent (on behalf of itself and the Term Loan Claimholders) and the Working Capital Agent (on behalf of itself and the Working Capital Claimholders) with respect to such Control Collateral and (ii) with respect to the Control Collateral constituting Working Capital Priority Collateral, Wells Fargo Bank, National Association, as its collateral agent for the limited purpose of acting as the collateral agent on behalf of the Term Loan Agent (on behalf of itself and the Term Loan Claimholders) and the Working Capital Agent (on behalf of itself and the Working Capital Claimholders) with respect to such Control Collateral. Each Control Agent accepts such appointment and agrees to hold its applicable Control Collateral in its possession or control (or in the possession or control of its agents or bailees) as a Control Agent for the benefit of the Term Loan Agent (on behalf of itself and the Term Loan Claimholders) and the Working Capital Agent (on behalf of itself and the Working Capital Claimholders) and any permitted assignee of any thereof solely for the purpose of perfecting the security interest granted to such parties in such Control Collateral, subject to the terms and conditions of this Section 5.3. The Term Loan Agent and the Working Capital Agent hereby acknowledge that the applicable Control Agent shall obtain "control" under the UCC over each Controlled Account as contemplated by the Term Loan Documents and the Working Capital Collateral Documents for the benefit of each of the Term Loan Agent (on behalf of itself and the Term Loan Claimholders) and the Working Capital Agent (on behalf of itself and the Working Capital Claimholders) pursuant to a control agreements relating to a Controlled Account if requested by the Working Capital Agent and the Term Loan Agent.

(b) The Control Agents, the Term Loan Agent, on behalf of itself and the Term Loan Claimholders, and the Working Capital Agent, on behalf of itself and the Working Capital Claimholders, each hereby agrees that the applicable Priority Agent shall have the sole and exclusive right and authority to give instructions to, and otherwise direct, the applicable Control Agent in respect of the Control Collateral constituting such Priority Agent's Priority Collateral or any control agreement with respect to any Control Collateral constituting such Priority Agent's

Priority Collateral until the date upon which the Discharge of Obligations shall have occurred with respect to the Obligations owed to Claimholders for whom the Priority Agent acts as Agent, and none of the Non-Priority Claimholders will impede, hinder, delay or interfere with the exercise of such rights by the Priority Agent in any respect. The Grantors hereby jointly and severally agree to pay, reimburse, indemnify and hold harmless the Control Agents to the same extent and on the same terms that the Grantors are required to do so for the Working Capital Agent in accordance with the Working Capital Credit Agreement and for the Term Loan Agent in accordance with the Term Loan Credit Agreement. The Working Capital Claimholders and the Term Loan Claimholders hereby jointly and severally agree to pay, reimburse, indemnify and hold harmless the Control Agents to the same extent and on the same terms that the Working Capital Claimholders are required to do so for the Working Capital Agent in accordance with the Working Capital Credit Agreement and the Term Loan Claimholders are required to do so for the Term Loan Agent in accordance with the Term Loan Credit Agreement.

(c) Except as set forth below, the Control Agents shall have no obligation whatsoever to the Agents or any other Claimholder including, without limitation, any obligation to assure that the Control Collateral is genuine or owned by any Grantor or one of their respective Subsidiaries or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.3. In acting on behalf of the Agents and other Claimholders, the duties or responsibilities of each of the Control Agents under this Section 5.3 shall be limited solely to (i) physically holding the Control Collateral delivered to such Control Agent (and otherwise constituting Priority Collateral with respect to the Control Agent in its capacity as an Agent) by any Grantor, any Agent or any Claimholder as agent for the Term Loan Agent (on behalf of itself and the Term Loan Claimholders) and the Working Capital Agent (on behalf of itself and the Working Capital Claimholders) for purposes of perfecting the Lien held by the Term Loan Agent and the Working Capital Agent therein and (ii) delivering such collateral as set forth in Section 5.3(e) and (iii) complying with the control agreements to which it is a party in such capacity, including, without limitation, delivering notices or instructions from the applicable Priority Agent to the depository institution party thereto in accordance with the provisions thereof.

(d) The Control Agents shall not have, by reason of this Agreement or any other document, a fiduciary relationship in respect of the Term Loan Agent or any Term Loan Claimholder or the Working Capital Agent or any Working Capital Claimholder.

(e) Upon the Discharge of Obligations with respect to the Obligations owed to any group of Claimholders (other than in connection with a Refinancing of such Obligations), the Control Agents shall deliver any Control Collateral constituting Priority Collateral of such Claimholders in the possession of the Control Agents to the Agent to which such Control Collateral then constitutes Priority Collateral together with any necessary endorsements (or otherwise allow the Agent for such other Claimholders to obtain control of such Control Collateral) or as a court of competent jurisdiction may otherwise direct and such Agent shall accept and succeed to the role of the Control Agent as the agent for perfection on such Control Collateral.

(f) Each of the Control Agents shall have an unfettered right to resign as Control Agent upon 30 days notice to the Term Loan Agent and the Working Capital Agent. If upon the effective date of such resignation no successor to the applicable Control Agent(s) has been appointed by the Term Loan Agent and the Working Capital Agent, the resigning Control Agent(s) shall deliver the Control Collateral in its possession (or arrange for the control of its Control Collateral to be assigned or transferred) to the Agent to which such Collateral constitutes

Priority Collateral together with any necessary endorsements or as a court of competent jurisdiction may otherwise direct and such Priority Agent shall accept and succeed to the role of the Control Agent as the agent for perfection with respect to such Control Collateral.

#### **5.4 Access to Term Loan Priority Collateral.**

(a) In the event the Term Loan Agent shall acquire control or possession of any of the Term Loan Priority Collateral or shall, through the exercise of remedies under the Term Loan Credit Documents or otherwise, sell any of the Term Loan Priority Collateral to any third party (a "Third Party Purchaser"), the Term Loan Agent shall, to the extent permitted by law, permit the Working Capital Agent (or shall require as a condition of such sale to the Third Party Purchaser that the Third Party Purchaser agree to permit the Working Capital Agent), at the Working Capital Agent's option: (i) to enter any of the premises of any Grantor (or Third Party Purchaser) constituting such Term Loan Priority Collateral under such control or possession (or sold to a Third Party Purchaser) in order to inspect, remove or take any action with respect to the Working Capital Priority Collateral or to enforce the Working Capital Agent's rights with respect thereto, including, but not limited to, the examination and removal of Working Capital Priority Collateral and the examination and duplication of any Collateral (to the extent not Working Capital Priority Collateral) under such control or possession (or sold to a Third Party Purchaser) consisting of books and records of any Grantor related to the Working Capital Priority Collateral; (ii) to use the Collateral for the purpose of manufacturing or processing raw materials or work-in-process into finished inventory; (iii) to use any of the Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of computers or other data processing equipment related to the storage or processing of records, documents or files pertaining to the Working Capital Priority Collateral and use any Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of other equipment to handle, deal with or dispose of any Working Capital Priority Collateral pursuant to the Working Capital Agent's rights as set forth in the Working Capital Credit Documents, the UCC of any applicable jurisdiction and other applicable law, and (iv) to use any of the Collateral consisting of intellectual property rights owned or controlled by the Term Loan Agent or the other Term Loan Claimholders as is or may be necessary for the Working Capital Agent to liquidate the Working Capital Priority Collateral. Such use by Working Capital Agent of the Collateral and Working Capital Excluded Collateral shall not be on an exclusive basis.

(b) The Working Capital Agent hereby acknowledges, for itself and on behalf of the other Working Capital Claimholders that, during the period any Working Capital Priority Collateral shall be under control or possession of Term Loan Agent, the Term Loan Agent shall not be obligated to take any action to protect or to procure insurance with respect to such Working Capital Priority Collateral, it being understood that Term Loan Agent shall have no responsibility for loss or damage to the Working Capital Priority Collateral (other than as a result of the gross negligence or willful misconduct of the Term Loan Agent or its agents, as determined by a final non-appealable judgment of a court of competent jurisdiction) and that all the risk of loss or damage to the Working Capital Priority Collateral shall remain with the Working Capital Claimholders; provided, that to the extent insurance obtained by Term Loan Agent provides coverage for risks relating to access to or use of Working Capital Priority Collateral, the Working Capital Agent will be made an additional named insured thereunder.

(c) The rights of Working Capital Agent set forth in Section 5.4(a)(i)-(iii) above shall continue until the later of (i) 180 days after the date Working Capital Agent receives written notice from Term Loan Agent that Term Loan Agent has control or possession of the Term Loan Priority Collateral at issue and (ii) the sale or other disposition of such Priority Collateral by Term

Loan Agent or the other Term Loan Claimholders. Such time period shall be tolled during the pendency of any Insolvency Proceeding of any Grantor or other proceedings pursuant to which the Working Capital Claimholders and the Term Loan Claimholders are effectively stayed from enforcing their rights against the Working Capital Priority Collateral. In no event shall any Term Loan Claimholder take any action to interfere, limit or restrict the rights of Working Capital Agent or the exercise of such rights by Working Capital Agent to have access to or to use any of such Collateral pursuant to Section 5.4(a) prior to the expiration of such period.

(d) During the actual occupation by Working Capital Agent, its agents or representatives, of any real property constituting Term Loan Priority Collateral during the access and use period permitted by Section 5.4(a) above, the Working Capital Claimholders shall be obligated to pay to Term Loan Claimholders (or to any Third Party Purchaser) any rent payable to third parties (other than any Third Party Purchaser in its capacity as such) and all utilities, taxes and other maintenance and operating costs of such real property during any such period of actual occupation by Working Capital Agent, but only to the extent Term Loan Claimholders are required to pay or are otherwise paying any such rent, utilities, taxes or other maintenance and operating costs during the actual occupation of such real property by Working Capital Agent, its agents or representatives.

**5.5 Consent to Limited License.** Each of the Term Loan Agent, for itself and on behalf of the other Term Loan Claimholders, (a) acknowledges and consents to the grant to the Working Capital Agent by the Company (and the other Grantors, as applicable) on the date hereof of a limited, non-exclusive royalty-free license in the form of Exhibit A hereto (the "**Closing Date License**") and (b) agrees that, until the Discharge of Working Capital Obligations, its Liens in the Term Loan Priority Collateral shall be subject to the Closing Date License; provided, that, after the end of the 180 day period set forth in Section 5.4(d) above, the Closing Date License shall not apply to any inventory, which is not on hand, but is purchased or otherwise acquired by any Grantor, Working Capital Agent or any Working Capital Claimholder after the expiration of such 180 day period. Furthermore, Term Loan Agent agrees that, in connection with any foreclosure sale conducted by the Term Loan Agent in respect of Term Loan Priority Collateral of the type described in the Closing Date License (the "**IP Collateral**"), (x) any notice required to be given by the Term Loan Agent in connection with such foreclosure shall contain an acknowledgement that the Term Loan Agent's Lien is subject to the Closing Date License until the Discharge of Working Capital Obligations, (y) the Term Agent shall deliver a copy of the Closing Date License to any purchaser at such foreclosure and provide written notice to such purchaser that the Term Loan Agent's Lien and the purchaser's rights in the transferred IP Collateral are subject to the Closing Date License until the Discharge of Working Capital Obligations and (z) the purchaser shall acknowledge in writing that it purchased the IP Collateral subject to the Closing Date License until the Discharge of Working Capital Obligations.

## SECTION 6

### INSOLVENCY OR LIQUIDATION PROCEEDINGS

#### 6.1 Use of Cash Collateral and Financing Issues.

(a) As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, if Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the Priority Agent shall desire to permit the use of cash collateral which constitutes such Priority Agent's Priority Collateral or to permit Company or any other Grantor to obtain financing secured by such Priority Collateral (and not by any Collateral which does not constitute such Priority Agent's Priority

Collateral), from one or more of the Claimholders for whom such Priority Agent acts as Agent, under Section 363 or Section 364 of the Bankruptcy Code or any similar Bankruptcy Law (the aggregate principal amount of any such financing, not to exceed the Maximum Working Capital Obligations or the CL Cap Amount, respectively, a "**DIP Financing**"), then (i) the Non-Priority Agent, on behalf of itself and the Non-Priority Claimholders, (A) agrees that it will raise no objection to such use of cash collateral or DIP Financing nor support any other Person objecting to, such sale, use, or lease of cash collateral or DIP Financing and will not request any form of adequate protection or any other relief in connection therewith (except as agreed by the Priority Agent or to the extent expressly permitted by Section 6.4) and, to the extent the Liens securing the Priority Obligations are subordinated to or pari passu with the Liens securing such DIP Financing, the Non-Priority Agent will subordinate its Liens in the Priority Agent's Priority Collateral to (1) the Liens securing such DIP Financing (and all Obligations relating thereto), (2) any adequate protection Liens provided to the Priority Claimholders and (3) any "carve-out" for professional or United States Trustee fees agreed to by the Priority Agent; and (B) agrees that notice received two (2) calendar days prior to the entry of an order approving such usage of cash collateral or approving such DIP Financing shall be adequate notice; provided that the foregoing shall not prohibit the Non-Priority Agent or the Non-Priority Claimholders from objecting solely to any provisions in any agreement regarding the use of cash collateral or any DIP Financing relating to, describing or requiring any provision or content of a plan of reorganization other than any provisions requiring that the DIP Financing be paid in full in cash, and (ii) the Priority Agent shall maintain a senior lien in its Priority Collateral (unless Priority Agent and the Priority Claimholders agree otherwise, in their sole discretion).

(b) Each of the Term Loan Administrative Agent and the Term Loan Agent, each on behalf of itself and the Term Loan Lenders, agrees that it shall not, directly or indirectly, seek to provide DIP Financing secured by Liens equal or senior to the Liens of Working Capital Agent on the Working Capital Priority Collateral, without the written consent of the Working Capital Agent and Working Capital Administrative Agent.

(c) Each of the Working Capital Agent and the Working Capital Administrative Agent, each on behalf of itself and the Working Capital Lenders, agrees that it shall not, directly or indirectly, seek to provide DIP Financing secured by Liens equal or senior to the Liens of Term Loan Agent on the Term Loan Priority Collateral, without the written consent of, in the case of the Liens of Term Loan Agent, the Term Loan Administrative Agent and the Term Loan Agent.

**6.2 Sale Issues.** As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that it will raise no objection to or oppose a sale or other disposition of any Collateral which does not constitute its Priority Collateral free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code if the Priority Agent has consented to such sale or disposition of such assets so long as the interests of the such Agent and the Claimholders for whom it acts as Agent in such Collateral (and/or Working Capital Excluded Collateral, as applicable) attach to the proceeds thereof, subject to the terms of this Agreement. If requested by the Priority Agent in connection therewith, the Non-Priority Agent shall affirmatively consent to such a sale or disposition.

**6.3 Relief from the Automatic Stay.** As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that none of them shall (i) seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of any Collateral (and/or Working Capital Excluded Collateral, as applicable) which does not constitute its Priority Collateral, without the prior written consent of the Priority Agent, or (ii) oppose any request by the Priority Agent or any Priority Claimholder

to seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of their respective Priority Collateral.

#### **6.4 Adequate Protection.**

(a) As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, may seek adequate protection of its interest in its respective Priority Collateral and the other Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that none of them shall contest (or support any other person contesting) (i) any such request for adequate protection by the Priority Agent or (ii) any objection by the Priority Agent or the Priority Claimholders to any motion, relief, action or proceeding based on the Priority Agent or the Priority Claimholders claiming a lack of adequate protection of their interests in their respective Priority Collateral. As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, each Agent acknowledges and agrees that any superpriority administrative expense claim granted to such Agent or arising under 11 U.S.C. § 507(b) as adequate protection of its interest in its respective Priority Collateral shall be *pari passu* with any superpriority administrative expense claim granted to the *other* Agent as adequate protection of its interest in *its* respective Priority Collateral, except that any superpriority administrative expense claim granted to Working Capital Agent and the Working Capital Claimholders in connection with permitting the use of cash collateral pursuant to 11 U.S.C. § 363 or providing DIP Financing pursuant to 11 U.S.C. § 364 with respect to the Working Capital Priority Collateral shall be senior to any superpriority administrative expense claim granted Term Loan Agent pursuant to 11 U.S.C. § 507(b).

(b) As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, each Agent on behalf of itself and the Claimholders for whom it acts as Agent, may seek adequate protection of its junior interest in Collateral, subject to the provisions of this Agreement, only if (A) the Priority Agent is granted adequate protection in the form of a replacement Lien on post-petition collateral of the same type as the Priority Collateral, and (B) such additional protection requested by such Agent is in the form of a replacement Lien on such post-petition collateral of the same type as the Priority Collateral, which Lien, if granted, will be subordinated to the adequate protection Liens granted in favor of the Priority Agent on such post-petition collateral and the Liens securing any DIP financing (and all Obligations relating thereto) secured by such Priority Collateral on the same basis as the Liens of the Non-Priority Agent on such Priority Collateral are subordinated to the Liens of the Priority Agent on such Priority Collateral under this Agreement. As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, in the event an Agent, on behalf of itself or any of the Claimholders for whom it acts as Agent, seeks or requests (or is otherwise granted) adequate protection of its junior interest in Collateral in the form of a replacement Lien on additional collateral in any form, then such Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that the Priority Agent shall also be granted a replacement Lien on such additional collateral as adequate protection of its senior interest in Collateral (and/or Working Capital Excluded Collateral, as applicable) and that such Agent's replacement Lien shall be subordinated to the replacement Lien of the Priority Agent. As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, if any Agent or Claimholder receives as adequate protection a Lien on post-petition assets of the same type as its pre-petition Priority Collateral, then such post-petition assets shall also constitute

Priority Collateral of such Person to the extent of any allowed claim secured by such adequate protection Lien. No Agent or Claimholder shall seek disgorgement from any other Agent or Claimholder of any payments (in the form of adequate protection or otherwise) made to such Agent or Claimholder in respect of any Obligations, which payments are made after the entry of an approval order by the Bankruptcy Court (or any other court with jurisdiction thereof) during any Insolvency Proceeding and prior to the effective date of confirmation of any plan in such Insolvency Proceeding.

(c) As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, each Agent on behalf of itself and the Claimholders for whom it acts as Agent, may seek and receive additional adequate protection of its junior interest in Collateral, subject to the provisions of this Agreement, in the form of a superpriority administrative expense claim, including a claim arising under 11 U.S.C. § 507(b), which superpriority administrative expense claim shall be junior in all respects to any superpriority administrative expense claim granted to the Priority Claimholders with respect to such Collateral constituting their Priority Collateral. As between the Term Loan Agent and the other Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders, on the other hand, in the event an Agent, on behalf of itself and the Claimholders for whom it acts as Agent, seeks or receives protection of its junior interest in Collateral and is granted a superpriority administrative expense claim, including a claim arising under 11 U.S.C. § 507(b), then such Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that the Priority Claimholders shall receive a superpriority administrative expense claim which shall be senior in all respects to the superpriority administrative expense claim granted to such Agent with respect to such Collateral. Such superpriority administrative expense claim of Term Loan Agent (on behalf of the Term Loan Claimholders) arising under 11 U.S.C. § 507(b) shall be junior and subordinate to the superpriority administrative expense claims of Working Capital Agent (on behalf of the Working Capital Claimholders) in connection with permitting the use of cash collateral or providing DIP Financing in accordance with Section 6.4(a) herein.

**6.5 Separate Grants of Security and Separate Classification.** Each of the Grantors and each of the Claimholders acknowledges and agrees with respect to each class of Priority Collateral that (i) the grants of Liens pursuant to the Working Capital Collateral Documents and the Term Loan Collateral Documents constitute three separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral (and Working Capital Excluded Collateral), the Working Capital Obligations and the Term Loan Obligations are fundamentally different from one another and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the Working Capital Claimholders and the Term Loan Claimholders in respect of any Priority Collateral, constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the Priority Claimholders shall be entitled to receive, in addition to amounts distributed to them from, or in respect of, their Priority Collateral in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, costs and other charges, irrespective of whether a claim for such amounts is allowed or allowable in such Insolvency or Liquidation Proceeding, before any distribution from, or in respect of, any such Priority Collateral is made in respect of the claims held by the Non-Priority Claimholders, with the Non-Priority Claimholders hereby acknowledging and agreeing to turn over to the Priority Claimholders amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Non-Priority Claimholders.

**6.6 Post-Petition Claims.** No Agent, nor any of the Claimholders for which they act as Agent, shall oppose or seek to challenge (a) any claim by the Priority Agent or any Priority Claimholder for allowance in any Insolvency or Liquidation Proceeding of Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the lien of the Priority Agent in such Priority Agent's Priority Collateral, without regard to the existence of the Lien of the other Agent in such Collateral and/or Working Capital Excluded Collateral, or (b) any claim by the Non-Priority Agent or any Junior Claimholder for allowance in any Insolvency or Liquidation Proceeding of Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the lien of the Non-Priority Agent in such Collateral.

**6.7 Avoidance Issues.** If any Priority Claimholder is required in any Insolvency or Liquidation Proceeding, or otherwise, to turn over or otherwise pay to the estate of any Borrower or any Subsidiary of any Borrower any amount in respect of any Working Capital Obligation or any Term Loan Obligation, as applicable (a "Recovery"), then such Claimholders shall be entitled to a reinstatement of their Obligations with respect to all such recovered amounts. 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. Priority Collateral or proceeds thereof received by the Non-Priority Agent or any other Non-Priority Claimholder after a Discharge of the Obligations of the Priority Claimholders and prior to the reinstatement of such Obligations shall be delivered to the Priority Agent upon such reinstatement in accordance with Section 4.2.

**6.8 Expense Claims.** Each Agent, for itself and on behalf of the Claimholders for whom it acts as Agent, agrees that it will not (i) contest the payment of fees, expenses or other amounts to the Priority Agent or any Priority Claimholder under Section 506(b) of the Bankruptcy Code or otherwise to the extent of the value of the lien of the Priority Agent in such Priority Agent's Priority Collateral and to the extent provided for in the applicable Credit Agreement or (ii) assert or enforce any claim under Section 506(c) of the Bankruptcy Code senior to or on parity with the Lien of the Priority Agent for costs or expenses of preserving or disposing of the other Agent's Priority Collateral.

**6.9 Effectiveness in Insolvency or Liquidation Proceedings.** This Agreement, which the parties hereto expressly acknowledge is a "subordination agreement" under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Grantor shall include such Person as a debtor-in-possession (together with its successor upon conclusion of such Insolvency or Liquidation Proceeding) and any receiver or trustee for such Person in any Insolvency or Liquidation Proceeding .

## SECTION 7

### RELiance; WAIVERS; ETC.

#### 7.1 Non-Reliance

(a) The consent by the Working Capital Claimholders to the execution and delivery of the Term Loan Credit Documents and the grant to the Term Loan Agent on behalf of the Term Loan Claimholders of a Lien on the Working Capital Priority Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Working Capital Claimholders to the Grantors (and the amendment and restatement of the Working Capital Credit Documents contemplated to occur at the conclusion of the Chapter 11 Cases) shall be deemed to have been given and made in reliance upon this Agreement. Each of the Term Loan Agent and the Term Loan Administrative Agent, on behalf of themselves and the other Term Loan

Claimholders, acknowledge that they and the Term Loan Claimholders have, independently and without reliance on the Working Capital Agent or any other Working Capital Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into, as applicable, the Term Loan Credit Agreement, the other Term Loan Credit Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under, as applicable, the Term Loan Credit Agreement, the other Term Loan Credit Documents, or this Agreement.

(b) The consent by the Term Loan Claimholders to the execution and delivery of the Working Capital Credit Documents and the grant to the Working Capital Agent on behalf of the Working Capital Claimholders of a Lien on the Term Loan Priority Collateral (other than Working Capital Excluded Collateral) and all loans and other extensions of credit made or deemed made on and after the date hereof by the Term Loan Claimholders to the Grantors (and the restructuring of the Term Loan Obligations contemplated to occur at the conclusion of the Chapter 11 Cases) shall be deemed to have been given and made in reliance upon this Agreement. The Working Capital Agent and the Working Capital Administrative Agent, on behalf of themselves and the other Working Capital Claimholders, acknowledge that they and the Working Capital Claimholders have, independently and without reliance on the Term Loan Agent or any other Term Loan Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the Working Capital Credit Agreement, the other Working Capital Credit Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the Working Capital Credit Agreement, the other Working Capital Credit Documents or this Agreement.

**7.2 No Warranties or Liability.** The Working Capital Agent, on behalf of itself and the Working Capital Claimholders, acknowledges and agrees that each of the Term Loan Agent and the Term Loan Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Term Loan Credit Documents, the ownership of any Collateral (and/or Working Capital Excluded Collateral) or the perfection or priority of any Liens thereon. The Term Loan Claimholders will be entitled to manage and supervise their respective loans, letters of credit and extensions of credit under the Term Loan Credit Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Term Loan Agent, on behalf of itself and the Term Loan Claimholders, acknowledges and agrees that the Working Capital Agent and the Working Capital Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Working Capital Credit Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The Working Capital Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Working Capital Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Term Loan Agent and the Term Loan Claimholders shall have no duty to the Working Capital Agent or any of the Working Capital Claimholders, and the Working Capital Agent and the Working Capital Claimholders shall have no duty to the Term Loan Agent or any of the Term Loan Claimholders, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with Company or any Grantor (including the Working Capital Credit Documents and the Term Loan Credit Documents), regardless of any knowledge thereof which they may have or be charged with.

### 7.3 No Waiver of Lien Priorities.

(a) No right of the Working Capital Agent and the Working Capital Claimholders, the Term Loan Agent and the Term Loan Claimholders, the Control Agents or any of them to enforce any provision of this Agreement or their respective Credit Documents shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of Company or any other Grantor or by any act or failure to act by such party, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement or their respective Credit Documents, regardless of any knowledge thereof which such party may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of Company and the other Grantors under the applicable Credit Documents), the Working Capital Agent and the Working Capital Claimholders, and the Term Loan Agent and the Term Loan Claimholders, and any of them may, at any time and from time to time in accordance with their respective Credit Documents or applicable law, without the consent of, or notice to, the other Claimholders and without incurring any liabilities to the other Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the other Claimholders is affected, impaired or extinguished thereby) do any one or more of the following:

(i) make loans and advances to any Grantor or issue, guaranty or obtain letters of credit for account of any Grantor or otherwise extend credit to any Grantor, in any amount and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any default or event of default or failure of condition is then continuing (subject, in each case, to any limitations expressly set forth in this Agreement);

(ii) subject to the provisions of this Agreement, change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of their respective Obligations or guaranty thereof or any liability of Company or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of their respective Obligations, without any restriction as to the amount, tenor or terms of any such increase or extension, subject to any limitations expressly set forth in this Agreement) or, subject to the provisions of this Agreement, otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by such Agent or such Claimholders, their respective Obligations or any of their respective Credit Documents; provided, however, the foregoing shall not prohibit the other Agent and the other Claimholders from enforcing, consistent with the other terms of this Agreement, any right arising under their respective Credit Agreement as a result of any Grantor's violation of the terms hereof;

(iii) subject to the provisions of this Agreement, sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Collateral (and/or, as applicable, the Working Capital Excluded Collateral) or any liability of Company or any other Grantor to such Claimholders or such Agent, or any liability incurred directly or indirectly in respect thereof;

(iv) subject to the provisions hereof, settle or compromise their respective Obligations or any portion thereof or any other liability of Company or any other Grantor

or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including their respective Obligations) in any manner or order;

(v) subject to the restrictions set forth in this Agreement, exercise or delay in or refrain from exercising any right or remedy against Company or any security or any other Grantor or any other Person, elect any remedy and otherwise deal freely with Company, any other Grantor or any Collateral (and/or, as applicable, the Working Capital Excluded Collateral) and any security and any guarantor or any liability of Company or any other Grantor to such Claimholders or any liability incurred directly or indirectly in respect thereof;

(vi) take or fail to take any Lien securing their respective Obligations or any other collateral security for such Obligations or take or fail to take any action which may be necessary or appropriate to ensure that any Lien securing such Obligations or any other Lien upon any property is duly enforceable or perfected or entitled to priority as against any other Lien, provided that Liens taken in violation of Section 2.5 shall be subject to the provisions of Section 2.5; or

(vii) without limiting the duties or obligations, if any, that the Agent may have to the Claimholders for which it is acting as Agent, otherwise release, discharge or permit the lapse of any or all Liens securing their respective Obligations or any other Liens upon any property at any time securing any such Obligations.

(c) Each Agent, on behalf of itself and the Claimholders for which it acts as Agent, also agrees that the Priority Agent and the Priority Claimholders shall have no liability to such Agent or the Claimholders for which it acts as Agent, and such Agent on behalf of itself and the Claimholders for which it acts as Agent, hereby waives all claims against the Priority Agent and the Priority Claimholders, arising out of any and all actions which the Priority Agent or the Priority Claimholders may take or permit or omit to take with respect to their Priority Collateral. Each Agent, on behalf of itself and the Claimholders for which it acts as Agent, agrees that the Priority Agent and Priority Claimholders shall have no duty to them in respect of the maintenance or preservation of the Priority Agent's Priority Collateral.

(d) Each Agent, on behalf of itself and the Claimholders for which it acts as Agent, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to Collateral (and/or the Working Capital Excluded Collateral) that does not constitute its Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

**7.4 Obligations Unconditional.** All rights, interests, agreements and obligations of the Working Capital Agent and the Working Capital Claimholders, and the Term Loan Agent and the Term Loan Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Working Capital Credit Documents or any Term Loan Credit Documents or any setting aside or avoidance of any Lien;

(b) except as otherwise set forth in the Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the Working Capital Obligations or

Term Loan Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Working Capital Credit Document or any Term Loan Credit Document;

(c) except as otherwise set forth in the Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Working Capital Obligations or Term Loan Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of Company or any other Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, Company or any other Grantor in respect of the Working Capital Obligations or the Term Loan Obligations.

## **7.5 Certain Notices.**

(a) Promptly upon Discharge of Working Capital Obligations, the Working Capital Agent shall deliver written notice confirming same to the Term Loan Agent; provided that the failure to give any such notice shall not result in any liability of the Working Capital Agent or the other Working Capital Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder. Promptly upon Discharge of Term Loan Obligations, the Term Loan Agent shall deliver written notice confirming same to the Working Capital Agent; provided that the failure to give any such notice shall not result in any liability of the Term Loan Agent or the other Term Loan Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

(b) No later than five (5) days prior to the commencement by such Priority Agent of any enforcement action or the exercise of any remedy with respect to its Priority Collateral (including by way of a public or private sale of such Priority Collateral), such Priority Agent shall notify the other Agents of such intended action; provided that the failure to give any such notice shall not result in any liability of such Priority Agent or the other Priority Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

## **SECTION 8**

### **MISCELLANEOUS**

**8.1 Conflicts.** In the event of any conflict between the provisions of this Agreement and the provisions of the Term Loan Credit Documents or the Working Capital Credit Documents, the provisions of this Agreement shall govern and control. The parties hereto acknowledge that the terms of this Agreement are not intended to negate any specific rights granted to Company in the Term Loan Credit Documents or the Working Capital Credit Documents.

**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 the Working Capital Claimholders and Term Loan Claimholders may each continue, at any time and without notice to the other Claimholders, to extend credit and other financial accommodations and lend monies to or for the benefit of Company or any Grantor constituting Working Capital Obligations or Term Loan Obligations, as applicable in reliance hereof. The terms of this

Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction 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 Company or any other Grantor shall include Company or such Grantor as debtor and debtor-in-possession and any receiver or trustee for Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect upon the earliest to occur of the Discharge of Term Loan Obligations (in accordance with the provisions hereof) or the Discharge of Working Capital Obligations (in accordance with the provisions hereof).

**8.3 Amendments; Waivers.** No amendment, modification or waiver of any of the provisions of this Agreement by the Working Capital Agent or the Term Loan Agent shall be deemed to be made 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. Notwithstanding the foregoing, Company shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights or obligations are directly affected.

**8.4 Information Concerning Financial Condition of Company and its Subsidiaries.**

(a) The Term Loan Agent and the Term Loan Claimholders, and the Working Capital Agent and the Working Capital Claimholders, shall each be responsible for keeping themselves informed of (a) the financial condition of Company and its Subsidiaries and all endorsers or guarantors of the Term Loan Obligations or the Working Capital Obligations, as applicable, and (b) all other circumstances bearing upon the risk of nonpayment of the Term Loan Obligations or the Working Capital Obligations, as applicable. No Agent or Claimholder shall have a duty to advise any other Agent or Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event that any Agent or any Claimholder, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any other Agent or Claimholder, it or they shall be under no obligation (w) to make, and such party shall not be deemed to make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

(b) The Grantors agree that any information provided to the Control Agent, any Term Loan Claimholder or any Working Capital Claimholder may be shared by such Person with the Control Agent, any Term Loan Claimholder and any Working Capital Claimholder notwithstanding any request or demand by such Grantor that such information be kept confidential; provided, that such information shall otherwise be subject to the respective confidentiality provisions in the Working Capital Credit Agreement and the Term Loan Credit Agreement, as applicable.

**8.5 Subrogation.** Each Agent, for itself and on behalf of the Claimholders for which it acts as Agent, hereby waives any rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of Obligations has occurred with respect to the other group of Claimholders.

**8.6 [Reserved]**

**8.7 Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.**

(a) The validity, interpretation and enforcement of this Agreement and the other Credit Documents (except as otherwise provided therein) and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York.

(b) The parties hereto irrevocably consent and submit to the non-exclusive jurisdiction of the courts of the State of New York sitting in New York County, New York and the United States District Court of the Southern District of New York, whichever the Agents may elect, and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Credit Document or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Credit Documents or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that the Agents and the Claimholders shall have the right to bring any action or proceeding against any Grantor or its or their property in the courts of any other jurisdiction which such Agent or Claimholder deems necessary or appropriate in order to realize on the Collateral (and/or the Working Capital Excluded Collateral, as applicable) or to otherwise enforce its rights against any Grantor or its or their property).

(c) Each Grantor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at the Agents' option, by service upon any Grantor in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, such Grantor shall appear in answer to such process, failing which such Grantor shall be deemed in default and judgment may be entered by the Agents against such Grantor for the amount of the claim and other relief requested.

(d) EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. EACH PARTY HERETO HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) None of the Agents or any Claimholders shall have any liability to any Grantor (whether in tort, contract, equity or otherwise) for losses suffered by such Grantor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this

Agreement, or any act, omission or event occurring in connection herewith, unless, with respect to a particular Agent or Claimholder, it is determined by a final and non-appealable judgment or court order binding on such Agent and/or Claimholder that the losses were the result of acts or omissions constituting gross negligence or willful misconduct of such Agent and/or Claimholder. In any such litigation, the Agents and the Claimholders shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement. Each Grantor: (i) certifies that neither the Agents, the Claimholders nor any representative, agent or attorney acting for or on behalf of the Agents or the Claimholders has represented, expressly or otherwise, that the Agents and the Claimholders would not, in the event of litigation, seek to enforce any of the waivers provided for in this Agreement or any of the other Credit Documents and (ii) acknowledges that in entering into this Agreement and the other Credit Documents, the Agents and the Claimholders are relying upon, among other things, the waivers and certifications set forth in this Section 8.7 and elsewhere herein and therein.

**8.8 Notices.** All notices to the Control Agent, the Term Loan Claimholders and the Working Capital Claimholders permitted or required under this Agreement shall also be sent to the Working Capital Agent and the Term Loan Agent, respectively. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of electronic mail or four Business Days after deposit in the U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

**8.9 Further Assurances.** The Working Capital Agent, on behalf of itself and the Working Capital Claimholders, the Term Loan Agent, on behalf of itself and the Term Loan Claimholders, and Company, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Working Capital Agent or the Term Loan Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

**8.10 [Reserved]**

**8.11 Binding on Successors and Assigns.** This Agreement shall be binding upon the Working Capital Agent, the other Working Capital Claimholders, the Term Loan Agent, the other Term Loan Claimholders, the Control Agent and their respective successors and assigns.

**8.12 Specific Performance.** Each of the Working Capital Agent and the Term Loan Agent may demand specific performance of this Agreement. The Working Capital Agent, on behalf of itself and the other Working Capital Claimholders under its Working Capital Credit Documents, and the Term Loan Agent, on behalf of itself and the other Term Loan Claimholders, hereby irrevocably waives 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 the Working Capital Agent or the Term Loan Agent, as the case may be.

**8.13 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.

**8.14 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 or other electronic method of transmission shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

**8.15 Authorization.** By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

**8.16 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 each of the Working Capital Agent, the other Working Capital Claimholders, the Term Loan Agent, the other Term Loan Claimholders, the Control Agent and the Company. No other Person shall have or be entitled to assert rights or benefits hereunder.

**8.17 Provisions Solely to Define Relative Rights.** The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights as between the Working Capital Claimholders and the Term Loan Claimholders. Nothing in this Agreement is intended to or shall impair the rights of Company or any other Grantor, or the obligations of Company or any other Grantor, which are absolute and unconditional, to pay the Working Capital Obligations, and the Term Loan Obligations as and when the same shall become due and payable in accordance with their terms.

**8.18 Complete Agreement.** This Agreement is intended by the parties as a final expression of their agreement and is intended as a complete statement of the terms and conditions of their agreement.

[Signature Pages Follow]

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

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Working Capital Agent,

By: \_\_\_\_\_  
Name:  
Title:

Notice Address:

Wells Fargo Bank, National Association, as Working Capital Agent  
12 East 49<sup>th</sup> Street  
New York, New York 10017  
Attention: Portfolio Manager - Newark Group  
Telecopier: (212) 545-4420  
Telephone: (212) 545-4535

ORIX FINANCE CORP.,  
as Term Loan Agent,

By: \_\_\_\_\_  
Name:  
Title:

Notice Address:

ORIX Finance Corp., as Term Loan Agent  
1717 Main Street, Suite 1100  
Dallas, Texas 75201  
Attention: Portfolio Manager - Newark  
Telecopier: 214-237-2352  
Telephone: 214-237-2000

ORIX FINANCE CORP.,  
as a Control Agent,

By: \_\_\_\_\_  
Name:  
Title:

Notice Address:

ORIX Finance Corp., as Control Agent  
1717 Main Street, Suite 1100  
Dallas, Texas 75201  
Attention: Portfolio Manager - Newark  
Telecopier: 214-237-2352  
Telephone: 214-237-2000

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as a Control Agent,

By: \_\_\_\_\_  
Name:  
Title:

Notice Address:

Wells Fargo Bank, National Association, as Control Agent  
12 East 49<sup>th</sup> Street  
New York, New York 10017  
Attention: Portfolio Manager - Newark Group  
Telecopier: (212) 545-4420  
Telephone: (212) 545-4535

THE NEWARK GROUP, INC.,  
Debtor and Debtor-in-Possession  
a New Jersey corporation

By: \_\_\_\_\_  
Name:  
Title

NEWARK GROUP INTERNATIONAL B.V.,  
a private company with limited liability with  
its corporate seat in Amsterdam, the Netherlands

By: \_\_\_\_\_  
Name:  
Title:

NP COGEN, INC.,  
Debtor and Debtor-in-Possession  
a California corporation

By: \_\_\_\_\_  
Name:  
Title:

Notice Address:

The Newark Group, Inc.  
20 Jackson Drive  
Cranford, New Jersey 07016  
Attention: Mr. Joseph E. Byrne, Vice President – Planning & Finance  
Telecopier: (908) 276-2888  
Telephone: (908) 276-4000

with a copy to:

Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, New Jersey 07068  
Attention: Daniel J. Barkin  
Telecopier: (973) 597-2400  
Telephone: (973) 597-2500

EXHIBIT A

Closing Date License

**LICENSE TO USE INTELLECTUAL PROPERTY RIGHTS**

For the purpose of enabling Wells Fargo Bank, National Association, as Collateral Agent ("Collateral Agent") under that certain Amended and Restated Loan and Security Agreement dated as of \_\_\_\_\_, 2010 (as the same now exists and may be amended, restated, renewed, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") among The Newark Group, Inc., a New Jersey corporation (the "Company"), Newark Group International B.V., a private company with limited liability with its corporate seat in Amsterdam, the Netherlands and a wholly-owned subsidiary of the Company (the "Dutch Borrower"), those certain Domestic Subsidiaries of the Company from time to time party to the Credit Documents as borrowers (together, with the Company and the Dutch Borrower, the "Borrowers"), those certain other Domestic Subsidiaries of the Company from time to time party to the Credit Documents as guarantors (together, with the Borrowers, the "Grantors"), Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "Administrative Agent") and as Collateral Agent and the lenders from time to time party thereto (collectively, the "Lenders"), to enforce any Lien held by the Collateral Agent upon any of the Collateral and to the extent appropriate, in the good faith opinion of Collateral Agent, to process, ship, produce, store, complete, supply, lease, sell, or otherwise dispose of any of the Collateral or to collect or otherwise realize upon any Accounts, at such time as Collateral Agent shall be lawfully entitled to exercise such rights and remedies, Grantors hereby grant to the Collateral Agent, for the benefit of Collateral Agent, the Collateral Agent, and the Lenders, and only to the extent set forth above, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to Grantors) to use, license, or sublicense any intellectual property rights now owned or hereafter acquired by the Grantors (except to the extent the terms of any of the agreements granting the foregoing rights prohibit such grant to the Collateral Agent), and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. Grantors agree and acknowledge that no further performance is required of the Collateral Agent under the terms of the license granted pursuant hereto and that this license shall not constitute an executory contract. Capitalized terms not otherwise defined herein shall have the meanings given thereto in the Loan Agreement.

**THIS LICENSE TO USE INTELLECTUAL PROPERTY RIGHTS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

Dated: \_\_\_\_\_, 2010

*Remainder of Page Intentionally Blank.  
Signature Page to Follow.*

THE NEWARK GROUP, INC.,  
Debtor and Debtor-in-Possession  
a New Jersey corporation

By: \_\_\_\_\_  
Name:  
Title:

NEWARK GROUP INTERNATIONAL B.V.,  
a private company with limited liability with  
its corporate seat in Amsterdam, the Netherlands

By: \_\_\_\_\_  
Name:  
Title:

NP COGEN, INC.,  
Debtor and Debtor-in-Possession  
a California corporation

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT E**

ORIX DIP Facility Credit Agreement

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**LOAN AND SECURITY AGREEMENT**

by and among

**THE NEWARK GROUP, INC.**  
Debtor and Debtor-In-Possession,  
as Borrower

and

**CERTAIN DOMESTIC SUBSIDIARIES OF THE NEWARK GROUP, INC.**  
**FROM TIME TO TIME PARTIES HERETO,**  
as Guarantors

**THE LENDERS FROM TIME TO TIME PARTY HERETO**

**ORIX FINANCE CORP.,**  
as Administrative Agent and Collateral Agent

**Dated as of \_\_\_\_\_, 2010**

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## **LOAN AND SECURITY AGREEMENT**

This Loan and Security Agreement dated as of \_\_\_\_\_, 2010 is entered into by and among **THE NEWARK GROUP, INC.**, Debtor and Debtor-In-Possession, a New Jersey corporation (the "Borrower"), **NP COGEN, INC.**, Debtor and Debtor-In-Possession, a California corporation ("NP Cogen") and those other Domestic Subsidiaries of the Borrower, each as Debtor and Debtor-In-Possession, from time to time party hereto as guarantors (together with NP Cogen, each individually a "Guarantor" and collectively, "Guarantors" as hereinafter further defined in Section 1.1 below) **[all Domestic Subsidiaries other than JD Corp. will be Guarantors]**, the parties hereto from time to time as lenders, whether by execution of this Agreement or an Assignment and Acceptance (each individually, a "Lender" and collectively, "Lenders" as hereinafter further defined) and **ORIX FINANCE CORP.**, a Delaware corporation, in its capacity as administrative agent, collateral agent and as a control agent for Lenders (in each such capacity, "Administrative Agent", "Collateral Agent" and a "Control Agent" as hereinafter further defined; collectively, in all of such capacities, the "Agent").

### **WITNESSETH:**

**WHEREAS**, on \_\_\_\_\_, 2010 (the "Petition Date"), the Borrower and NP Cogen, each, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court") and commenced cases jointly administered under Case No. \_\_\_\_\_ ("Case(s)");

**WHEREAS**, the Borrower and Guarantors have requested that Administrative Agent and Lenders enter into financing arrangements with the Borrower pursuant to which Lenders will make loans and provide other financial accommodations to the Borrower in the aggregate amount of up to \$110,000,000; and

**WHEREAS**, each Lender is willing to agree (severally and not jointly) to make such loans and provide such financial accommodations to the Borrower on the terms and conditions set forth herein and Administrative Agent is willing to act as agent for Lenders on the terms and conditions set forth herein and in the other Financing Agreements;

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **SECTION 1 DEFINITIONS**

### **Section 1.1      Definitions.**

For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

"ABL Administrative Agent" shall mean Wells Fargo Bank, National Association, successor by merger to Wachovia Bank, National Association, in its capacity as administrative agent and/or collateral agent under the ABL Credit Agreement and the other ABL Financing Agreements.

"ABL Credit Agreement" shall mean that certain Amended and Restated Loan and Security Agreement dated as of the date hereof by and among the Borrower, Newark B.V., the guarantors from time to time party thereto, the ABL Lenders and the ABL Administrative Agent, pursuant to which the ABL Lenders agree to provide revolving credit facilities available to the Borrower and Newark B.V.,

as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"ABL Financing Agreements" shall have the meaning specified for the term "Financing Agreements" in the ABL Credit Agreement.

"ABL Lenders" shall mean those certain lenders and other financial institutions from time to time party to the ABL Credit Agreement.

"ABL Obligations" shall have the meaning specified for the term "Obligations" in the ABL Credit Agreement.

"ABL Priority Collateral" shall have the meaning specified for the term "Working Capital Priority Collateral" in the Intercreditor Agreement.

"ABL Support Letter" shall mean that certain Letter re Acknowledgement Relating to Certain Documents dated as of \_\_\_\_\_, 2010 by Wells Fargo Bank, National Association, successor by merger to Wachovia Bank, National Association, as agent, and agreed to by the Borrower.

"Account Control Agreement" shall mean an agreement in writing, in form and substance reasonably satisfactory to Administrative Agent, by and among the applicable Control Agent, the applicable Credit Party with an account at any depository institution and such depository institution at which such account is at any time maintained which provides that such depository institution will comply with instructions originated by such Control Agent directing disposition of the funds in the deposit account without further consent by such Credit Party and has such other terms and conditions as Administrative Agent or Collateral Agent may reasonably require (for the avoidance of doubt, the Account Control Agreement may be entered into for the benefit of the Administrative Agent and the ABL Administrative Agent).

"Accounts" shall mean, as to each Newark Group Party, all of the following now owned or hereafter arising or acquired (i) present and future rights of such Newark Group Party to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card and (ii) other "accounts" (as defined in the UCC) of such Newark Group Party.

"Adjusted Eurodollar Rate" shall mean, with respect to each Interest Period for any Eurodollar Rate Loan comprising part of the same borrowing (including conversions, extensions and renewals), the greater of (x) 3.00% per annum and (y) offered rate per annum for deposits of Dollars for the applicable Interest Period that appears on Reuters Screen LIBO Page as of 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period. If no such offered rate exists, such rate will be the rate of interest per annum, as determined by Agent at which deposits of Dollars in immediately available funds are offered at 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period by major financial institutions reasonably satisfactory to Agent in the London interbank market for such Interest Period for the applicable principal amount on such date of determination.

"Administrative Agent" shall mean ORIX Finance Corp., in its capacity as administrative agent on behalf of Lenders pursuant to the terms hereof and any replacement or successor administrative agent hereunder.

"Administrative Details Form" shall mean, with respect to any Lender, a document containing such Lender's contact information for purposes of notices provided under this Agreement and account details for purposes of payments made to such Lender under this Agreement.

"Affiliate" shall mean, with respect to a specified Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (a) any Person which beneficially owns or holds ten (10%) percent or more of any class of Voting Stock of such Person or other equity interests in such Person and (b) any Person of which such Person beneficially owns or holds ten (10%) percent or more of any class of Voting Stock or in which such Person beneficially owns or holds ten (10%) percent or more of the equity interests. For the purposes of this definition, the term "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise.

"Agent" has the meaning ascribed to such term in the Recitals hereto.

"Agreement" shall mean this Loan and Security Agreement, as amended, modified, restated or supplemented from time to time in accordance with the terms hereof.

"Amended Environmental Permit" shall mean the amended and/or new "Comprehensive Plan Approval(s)" required to be obtained under the Settlement Agreement.

"Asset Disposition" shall mean the disposition of any or all of the assets (including, without limitation, the Capital Stock of a Subsidiary or any ownership interest in a joint venture) of the Borrower or any Domestic Subsidiary, whether by sale, lease, transfer or otherwise. The term "Asset Disposition" shall not include (i) the sale, lease or transfer of assets permitted by subsection 9.7(a)(i) and (a)(iii), and to the extent expressly provided that the proceeds, thereof are not required to be used to prepay the Loans, subsection 9.7(a)(ii), (ii) the sale, lease or transfer of any ABL Priority Collateral to the extent the Net Cash Proceeds therefrom are (A) applied to reduce the ABL Obligations or (B) used by the ABL Administrative Agent to preserve or protect the ABL Administrative Agent's Lien on the ABL Priority Collateral, or (iii) any Equity Issuance.

"Assignment and Acceptance" shall mean an Assignment and Acceptance substantially in the form of Exhibit A attached hereto (with blanks appropriately completed) delivered to Administrative Agent in connection with an assignment of a Lender's interest hereunder in accordance with the provisions of Section 13.7 hereof.

"Authorized Officers" shall mean the officers listed on the attached Exhibit E or such replacement Exhibit that any Authorized Officer may in the future provide to the Administrative Agent in writing.

"Bankruptcy Code" shall mean the United States Bankruptcy Code, being Title 11 of the United States Code (11 U.S.C. Sections 101-1330), as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all official rules and regulations thereunder.

"Bankruptcy Court" shall have the meaning ascribed to such term in the Recitals hereto.

"Borrower" shall have the meaning set forth in the Preamble of this Agreement.

"Budget" shall mean the initial budget delivered to Administrative Agent in accordance with Section 8.32 hereof (attached hereto as Exhibit F), setting forth the Projected Information (as such term is defined in Section 8.32 hereof) for the periods covered thereby, together with any subsequent or amended budgets thereto delivered to Administrative Agent and Lenders, in accordance with the terms and conditions hereof.

"Business Day" shall mean any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of the State of New York and a day on which Administrative Agent is open for the transaction of business; except, that, if a determination of a Business Day shall relate to any Eurodollar Rate Loans, the term Business Day shall also exclude any day on which banks are closed for dealings in dollar deposits in the London interbank market or other applicable Eurodollar Rate market.

"B.V. Intercompany Notes" shall mean (i) that certain second amended and restated promissory note dated October 13, 2009 in the original principal amount of €6,563,295.99 evidencing the loan from Borrower to Newark B.V., as in effect on the date hereof, and (ii) that certain promissory note dated as of March 9, 2007 in the original principal amount of €14,034,497.36 evidencing a loan from Borrower to Newark B.V., as in effect on the date hereof. **[Please send us a copy of the Notes.]**

"Capital Lease" shall mean, as applied to any Person, any lease of (or any agreement conveying the right to use) any property (whether real, personal or mixed) by such Person as lessee which in accordance with GAAP, is required to be reflected as a liability on the balance sheet of such Person.

"Capital Stock" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).

"Carve-Out" shall have the meaning set forth in Section 5.5(c) hereof.

"Case(s)" has the meaning ascribed to such term in the Recitals hereto.

"Cash Collateral" shall mean the Net Cash Proceeds of any mandatory prepayment pursuant to Section 2.5(b)(vi) that are to be deposited into a cash collateral account at a depository institution reasonably satisfactory to the Collateral Agent as cash collateral for the Obligations on terms reasonable acceptable to the Collateral Agent; provided that any interest or investment income with respect to such cash collateral account shall be for the benefit of the Borrower and the Collateral Agent shall upon the Borrower's direction invest the cash collateral in Cash Equivalents. In the absence of such direction from Borrower, the cash collateral in such cash collateral account will remain uninvested.

"Cash Equivalents" shall mean, at any time, (a) any evidence of Indebtedness with a maturity date of ninety (90) days or less issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof; (b) certificates of deposit or bankers' acceptances with a maturity of 364 days or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$250,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of ninety (90) days or less issued by a corporation (except an Affiliate of any Newark Group Party) organized under the laws of any State of the United States of America or the District of Columbia and rated at least A-1 by Standard & Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc. or at least P-1 by Moody's Investors Service, Inc.; (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any financial institution

having combined capital and surplus and undivided profits of not less than \$250,000,000; (e) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any governmental agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within ninety (90) days or less from the date of acquisition; provided, that, the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985; and (f) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the types described in clauses (a) through (e) of this definition.

"Change of Control" shall mean the occurrence of any of the following events: (a) the failure of the Borrower to own, directly or indirectly, 100% of the combined voting power of all Voting Stock and the economic interests of the Newark B.V., (b) Continuing Directors shall cease for any reason to constitute a majority of the members of the board of directors of the Borrower then in office, (c) any Person or group, other than the Permitted Holder having beneficial ownership, directly or indirectly, of more than 40% of the Voting Stock of the Borrower, unless the Permitted Holder has beneficial ownership, directly or indirectly, of a greater percentage of Voting Stock of the Borrower than such Person or group, or (d) the occurrence of a "Change of Control" under and as defined in the ABL Financing Agreements. As used herein, "beneficial ownership" and "group" shall have the meanings provided in Rule 13d-3 of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934.

"Closing Date" shall mean the date by which all of the conditions precedent set forth in Section 4.1 hereof have been satisfied and/or waived in accordance with the provisions hereof.

"Code" shall mean the Internal Revenue Code of 1986, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

"Collateral" shall mean a collective reference to all real and personal property pledged to Administrative Agent and/or the Collateral Agent pursuant to the terms of this Agreement, the other Financing Agreements or otherwise, as is more specifically described in Section 5.1 hereof and in such Financing Agreements and, including, without limitation, the Term Loan Priority Collateral and the ABL Priority Collateral.

"Collateral Access Agreement" shall mean an agreement in writing, in form and substance reasonably satisfactory to Administrative Agent, from any lessor of premises to the Borrower or any Guarantor, or any other person to whom any Collateral is consigned or who has custody, control or possession of any such Collateral or is otherwise the owner or operator of any premises on which any of such Collateral is located, in favor of Collateral Agent with respect to the Collateral at such premises or otherwise in the custody, control or possession of such lessor, consignee or other person.

"Collateral Agent" shall mean ORIX Finance Corp., in its capacity as collateral agent on behalf of Lenders pursuant to the terms hereof and any replacement or successor collateral agent hereunder.

"Compliance Certificate" shall have the meaning provided in Section 9.6(a)(i).

"Consolidated EBITDA" shall mean, for any period, the sum (without duplication) of (a) Consolidated Net Income for such period, plus (b) an amount which, in the determination of Consolidated Net Income for such period, has been deducted for (i) interest expense, (ii) total federal, state, local and foreign income, value added and similar taxes, (iii) depreciation and amortization expense, (iv) non-cash charges (excluding non-cash charges that are expected to become cash charges in a future

period or that are reserves for future cash charges but including non-cash charges related to foreign currency translation and remeasurement), (v) non-cash charges related to stock-related compensation, (vi) non-capitalized fees and expenses related to reorganization and refinancing and other cash restructuring charges in an aggregate amount not to exceed \$ \_\_\_\_\_ over the term of this Agreement, provided, that, the actual amount of restructuring charges will be updated each month end prior to the Closing Date and each month thereafter, and (vii) pension plan expenses, all as determined in accordance with GAAP, minus (c) actuarially determined minimum pension funding obligations minus (d) to the extent included in determining such Consolidated Net Income, all non-cash income and any gains related to foreign currency translation and remeasurement. For the avoidance of doubt, Consolidated EBITDA shall not include any cancellation of indebtedness income arising in connection with the cancellation and discharge of any of the Newark Group Parties' Indebtedness and other liabilities in connection with the Case(s) or otherwise.

"Consolidated Net Income" shall mean, for any period, net income (excluding extraordinary items and excluding income received from joint venture investments to the extent not received in cash) after taxes for such period of the Borrower and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

"Continuing Directors" shall mean during any period of 24 consecutive months commencing after the Closing Date, individuals who at the beginning of such 24 month period were directors of the Borrower (together with any new director (i) whose election by the Borrower's board of directors or whose nomination for election by the Borrower's shareholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) or (ii) who was designated or appointed by the Permitted Holder pursuant to a designation or appointment right of the Permitted Holder contained in the certificate of incorporation and/or bylaws of the Borrower).

"Contractual Obligation" shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" shall have the meaning described in Sections 104 and 106 of Article 9 of the UCC and, solely with respect to the Newark Paperboards Capital Stock, if the context so requires, Section 1(1.1) of the PPSA.

"Control Agent" shall have the meaning provided in the Intercreditor Agreement.

"Control Collateral" shall have the meaning provided in the Intercreditor Agreement.

"Credit Facility" shall mean the Term Loans provided to or for the benefit of the Borrower pursuant to and/or evidenced by Section 2.1 hereof.

"Credit Parties" shall mean, collectively, the Borrower and the Guarantors and "Credit Party" shall mean any one of them.

"Debt Issuance" shall mean the issuance of any Indebtedness by any Newark Group Party or any of its Subsidiaries (excluding any Equity Issuance or any Indebtedness of any Newark Group Party and its Subsidiaries permitted to be incurred pursuant to Section 9.9 other than any Indebtedness of any Newark Group Party and its Subsidiaries permitted to be incurred pursuant to Section 9.9(j) hereof).

"Debtor Relief Laws" means the Bankruptcy Code, the Dutch Bankruptcy Act (*Faillissementswet*), the Canadian insolvency laws and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency,

reorganization, *faillissement*, (*voorlopige*) *surseance van betaling* or similar debtor relief Laws of the United States, The Netherlands, and Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

"Default Rate" shall have the meaning set forth in the definition of "Interest Rate".

"Dollars" and "\$" shall mean dollars in lawful currency of the United States of America.

"Domestic Subsidiaries" shall mean, with respect to any Person, any Subsidiary of such Person which is incorporated or organized under the laws of any state of the United States or the District of Columbia.

"Dutch Deed of Pledge" shall mean that certain Deed of Pledge providing for a right of pledge over 65% of the Voting Stock (and all other Capital Stock) of Newark B.V. dated on or about the Closing Date by and among Borrower, Newark B.V. and Collateral Agent, as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

"Eligible Transferee" shall mean (a) any Lender; (b) the parent company of any Lender and/or any Affiliate of such Lender which is at least fifty (50%) percent owned by such Lender or its parent company or any Related Fund of such Lender; and (c) any other commercial bank, financial institution or "accredited investor" (as defined in Regulation D under the Securities Act of 1933) approved by Administrative Agent (provided that Administrative Agent's approval shall not be unreasonably withheld); provided, that, (i) neither the Borrower nor any Guarantor or any Affiliate or Subsidiary of the Borrower or any Guarantor shall qualify as an Eligible Transferee (other than any Affiliate of the Borrower and/or any Guarantor that is a Lender or an Affiliate or a Related Fund of a Lender as of the Closing Date but solely to the extent that such Affiliate is not the Borrower or a Guarantor or a Subsidiary of Borrower or a Guarantor), (ii) no Person (other than a Lender) to whom any Indebtedness which is in any way subordinated in right of payment to any other Indebtedness of any Newark Group Party shall qualify as an Eligible Transferee, except as Administrative Agent and Required Lenders may otherwise specifically agree and (iii) no Person in substantially the same line of business as the Borrower shall qualify as an Eligible Transferee. In any event, each of Cascade Investment L.L.C., Bill & Melinda Gates Foundation Trust and Somerset Special Opportunities Master Fund, L.P. and each of their respective Affiliates shall be Eligible Transferees with respect to any assignment made by ORIX or any of its Affiliates.

"EMU" shall mean Economic and Monetary Union as contemplated in the Treaty on European Union.

"EMU Legislation" shall mean legislative measures of the European Council (including without limitation European Council regulations) for the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise), being in part the implementation of the third stage of EMU.

"Environmental Laws" shall mean all foreign, federal, state and local laws (including common law), legislation, rules, codes, licenses, permits (including any conditions imposed therein), authorizations, judicial or administrative decisions, injunctions or agreements between Borrower or any Guarantor and any Governmental Authority, (a) relating to pollution and the protection, preservation or restoration of the environment (including air (outdoor and indoor), water vapor, surface water, ground water, drinking water, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, (b) relating to the exposure to, or the use, storage,

recycling, treatment, generation, manufacture, processing, distribution, transportation, handling, labeling, production, release or disposal, or threatened release, of Hazardous Materials, or (c) relating to all laws with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials. The term "Environmental Laws" includes (i) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, including the federal Superfund Amendments and Reauthorization Act, the federal Water Pollution Control Act of 1972, the federal Clean Water Act, the federal Clean Air Act, the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984, the federal Toxic Substances Control Act, the federal Insecticide, Fungicide and Rodenticide Act, and the Federal Safe Drinking Water Act of 1974, (ii) applicable foreign, state or local counterparts to such laws and (iii) any common law or equitable doctrine that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Hazardous Materials.

"Equipment" shall mean, as to each Newark Group Party, all of such Newark Group Party's now owned and hereafter acquired (i) equipment, wherever located, including without limitation, all machinery, data processing and computer equipment (whether owned or licensed and including embedded software), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed to any of the foregoing or used in connection therewith, and substitutions and replacements thereof, wherever located and (ii) other "equipment" (as defined in the UCC) and all attachments, accessions and property now or hereafter affixed to any of the foregoing or used in connection therewith, and substitutions and replacements thereof, wherever located.

"Equity Issuance" shall mean any issuance by any Newark Group Party or any Newark Group Party's Subsidiary to any Person which is not a Newark Group Party of (a) shares of its Capital Stock (including, without limitation, any issuance of shares of its Capital Stock pursuant to the exercise of options or warrants or pursuant to the conversion of any debt securities to equity) or (b) warrants or options that are exercisable for shares of its Capital Stock. The term "Equity Issuance" shall not include (i) any Asset Disposition or (ii) any Debt Issuance.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

"ERISA Affiliate" shall mean any person, trades or businesses (whether or not incorporated) required to be aggregated with any Newark Group Party or any of their respective Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Pension Plan, other than events as to which the requirement of notice has been waived in regulations issued by the Pension Benefit Guaranty Corporation; (b) the adoption of any amendment to a Pension Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (c) a complete or partial withdrawal by any Newark Group Party or any ERISA Affiliate from a Multiemployer Plan or a cessation of operations which is treated as such a withdrawal or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a Pension Plan; (e) an 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 Plan; (f) the imposition of any liability under Title IV of ERISA, other than the Pension Benefit Guaranty Corporation premiums due but not delinquent under Section 4007 of ERISA, upon any Newark Group Party or any ERISA Affiliate in excess of \$1,000,000; (g) any other event or condition with respect to a Plan including any Pension Plan subject to Title IV of ERISA maintained, or contributed to, by any ERISA Affiliate that could reasonably

be expected to result in liability of any Newark Group Party in excess of \$1,000,000 and (h) an event or transaction which might reasonably be expected to give rise to liability under Sections 4069 or 4212(c) of ERISA.

"ESOP Plan" shall mean The Newark Group, Inc. Employees' Stock Ownership Plan dated as of April 22, 2002, as such ESOP Plan may be amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

"ESOP Settlement Agreement" shall mean the Agreement by and between Grandview Capital Strategies, Inc. (in its capacity as Independent Fiduciary of The Newark Group, Inc. Employee Stock Ownership Plan) and The Newark Group, Inc., dated [May \_\_\_, 2010], as the same now exists or may be amended, modified, extended, restated, replaced or supplemented from time to time.

"Euro", "EUR" and "€" mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

"Eurodollar Rate Loans" shall mean any Loans or portion thereof on which interest is payable based on the Adjusted Eurodollar Rate in accordance with the terms hereof.

"Event of Default" shall mean the occurrence or existence of any event or condition described in Section 10.1 hereof.

"Excess Availability" shall have the meaning set forth in the ABL Credit Agreement, as in effect on the date hereof.

"Exchange Act" shall mean the Securities Exchange Act of 1934, together with all rules, regulations and interpretations thereunder or related thereto.

"Excluded Deposit Accounts" shall have the meaning given to such term in Section 5.2(d).

"Excluded Subsidiaries" shall mean NP Cogen, Inc. and JD Corp.

"Existing CL Loan Agreement" shall have the meaning set forth in Section 4.1(a) hereof.

"Exit Mortgage Properties" shall mean the properties listed on Schedule 4 attached hereto.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upward to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Administrative Agent on such day on such transactions as determined by Agent in a commercially reasonable manner.

"Fee Letter" shall mean shall mean the letter agreement, dated as of March 23, 2010, by and among the Borrower, Administrative Agent and ORIX setting forth certain fees payable by Borrower for the account of Administrative Agent and certain other Persons, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Final Judgment" shall mean the final judgment issued or to be issued by the Superior Court of Suffolk County, Massachusetts or other applicable court with respect to the Settlement Agreement and/or the agreements set forth therein.

"Final Order" shall mean an order or judgment of the Bankruptcy Court duly entered on the docket of the Bankruptcy Court that (i) has not been modified or amended without the consent of Administrative Agent and the Required Lenders, or vacated, reversed, revoked, rescinded, stayed or appealed from, except as Administrative Agent and the Required Lenders may otherwise specifically agree, (ii) with respect to which the time to appeal, petition for certiorari, application or motion for reversal, rehearing, reargument, stay, or modification has expired, (iii) no petition, application or motion for reversal, rehearing, reargument, stay or modification thereof or for a writ of certiorari with respect thereto has been filed or granted or the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order or judgment was appealed and (iv) is no longer subject to any or further appeal or petition, application or motion for reversal, rehearing, reargument, stay or modification thereof or for any writ of certiorari with respect thereto or further judicial review in any form.

"Financial Advisor" shall have the meaning set forth in Section 8.33 hereof.

"Financing Agreements" shall mean, collectively, this Agreement, the Intercreditor Agreement, the Fee Letter, the Information Certificate, the Security Documents and Term Notes, all other notes, guarantees, Account Control Agreements, investment property control agreements, subordination and intercreditor agreements and all other agreements, documents and instruments now or at any time hereafter executed and/or delivered by any Credit Party in connection with this Agreement. For the avoidance of doubt, Financing Agreements shall not include the ABL Financing Agreements (other than the Intercreditor Agreement).

"Financing Order" shall mean the INTERIM ORDER (A) AUTHORIZING DEBTORS TO OBTAIN INTERIM POST-PETITION FINANCING AND GRANT SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. §§ 105 AND 364(c); (B) MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362; (C) AUTHORIZING DEBTORS TO ENTER INTO DIP ABL FINANCING AGREEMENTS WITH WELLS FARGO BANK, N.A., AS AGENT; (D) AUTHORIZING DEBTORS TO ENTER INTO DIP FINANCING AGREEMENTS WITH ORIX FINANCE CORP., AS AGENT; (E) AUTHORIZING REPAYMENT OF PRE-PETITION SECURED DEBT OWING TO WELLS FARGO BANK, N.A., AS EXISTING AGENT FOR PRE-PETITION ABL LENDERS; (F) AUTHORIZING REPAYMENT OF PRE-PETITION SECURED DEBT OWING TO WACHOVIA BANK, N.A., AS EXISTING AGENT FOR THE LENDERS UNDER THE EXISTING CL LOAN AGREEMENT; AND (G) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001 entered by the United States Bankruptcy Court for the District of New Jersey in the Case(s) after notice pursuant to Section 364 of the Bankruptcy Code and any other supplemental orders relating thereto, which Financing Order, in form and substance satisfactory to Administrative Agent in its sole discretion, shall authorize post-petition financing under the terms set forth in this Agreement, and shall contain such other terms or provisions as Administrative Agent and its counsel shall require

"Foreign Lender" shall mean any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" shall mean, with respect to any Person, any Subsidiary of such Person which is not a Domestic Subsidiary. The Foreign Subsidiaries of the Newark Group Parties as of the date hereof are listed on Schedule 3 attached hereto.

"Funded Indebtedness" shall mean, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (other than an account payable to a trade creditor (whether or not an Affiliate) incurred in the ordinary course of business of such Person and payable in accordance with customary trade practices, but including without limitation, all earn-outs and similar deferred payment obligations); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) except with respect to the ESOP Plan, all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities issued by such Person; (f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account; (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; (h) indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer to the extent such Person is liable therefor as a result of such Person's ownership interest in such entity, except to the extent that the terms of such indebtedness expressly provide that such Person is not liable therefor or such Person has no liability therefor as a matter of law, (i) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP, (j) in respect of letters of credit issued on behalf of such Person (and/or in connection with such Persons have reimbursement obligations) and (k) all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements, hedging agreements, collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values.

"Funding Bank" shall have the meaning given to such term in Section 3.3 hereof.

"GAAP" shall mean generally accepted accounting principles in the United States of America as in effect from time to time as 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 which are applicable to the circumstances as of the date of determination consistently applied, except that, for purposes of calculating the financial covenants set forth in Section 9.17, subject to Section 13.2(g), GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered to Administrative Agent prior to the date hereof.

"Governmental Authority" shall mean any nation or government, any state, province, or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guarantors" shall mean NP Cogen and any other Domestic Subsidiaries of the Borrower, each as Debtor and Debtor-In-Possession, that become Guarantors hereunder pursuant to

Section 9.22 hereof (and the Foreign Subsidiaries of Borrower that become Guarantors hereunder pursuant to Section 9.22 hereof).

"Guaranty" shall mean the guaranty of the Guarantors set forth in Section 14.

"Guaranty Obligations" shall mean, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting security therefor, (b) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including without limitation keep well agreements, maintenance agreements, comfort letters or similar agreements or arrangements) for the benefit of any holder of Indebtedness of such other Person, (c) to lease or purchase property, securities or services primarily for the purpose of assuring the holder of such Indebtedness, or (d) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

"Hazardous Materials" shall mean any hazardous, toxic or dangerous substances, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, mold, fungi, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

"Indebtedness" shall mean, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (other than an account payable to a trade creditor (whether or not an Affiliate) incurred in the ordinary course of business of such Person and payable in accordance with customary trade practices, but including without limitation, all earn-outs and similar deferred payment obligations); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities issued by such Person; (f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account; (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; (h) all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to

protect such person against fluctuations in interest rates or currency or commodity values; (i) all obligations owed by such Person under License Agreements with respect to non-refundable, advance or minimum guarantee royalty payments; (j) indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer to the extent such Person is liable therefor as a result of such Person's ownership interest in such entity, except to the extent that the terms of such indebtedness expressly provide that such Person is not liable therefor or such Person has no liability therefor as a matter of law and (k) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP.

"Independent Financial Advisor" shall mean a firm (a) that does not, and whose directors, officers and employees or Affiliates do not, have a direct or indirect financial interest in any Newark Group Party and (b) that, in the judgment of the Board of Directors of the Borrower, is otherwise independent and qualified to perform the task for which it is to be engaged.

"Information Certificate" shall mean, collectively, the Information Certificates of the Newark Group Parties constituting Exhibit B hereto containing material information with respect to the Newark Group Parties, their respective businesses and assets provided by or on behalf of the Newark Group Parties to Administrative Agent in connection with the preparation of this Agreement and the other Financing Agreements and the financing arrangements provided for herein. **[ORIX will need to review this, along with all other Schedules to this Agreement.]**

"Installments" shall have the meaning ascribed to such term in Section 2.1(b) hereof.

"Intellectual Property" shall mean, as to each the Newark Group Party, such Newark Group Party's now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright applications, copyright registrations, trademarks, servicemarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing and all applications, registrations and recordings relating to any of the foregoing as may be filed in the United States Copyright Office, the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country or jurisdiction, together with all rights and privileges arising under applicable law with respect to any Newark Group Party's use of any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or servicemark, or the license of any trademark or servicemark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration; software and contract rights relating to computer software programs, in whatever form created or maintained.

"Intercreditor Agreement" shall mean that certain Intercreditor Agreement dated as of the Closing Date by and among Administrative Agent (in its capacity as such and in its capacity as Collateral Agent), the ABL Administrative Agent (in its capacity as such and in its capacity as collateral agent under the ABL Financing Agreements), and the Control Agent, as amended, restated, supplemented and/or modified from time to time in accordance with the provisions thereof.

"Interest Period" shall mean for any Eurodollar Rate Loan, a period of approximately one (1), two (2), or three (3) months duration as the Borrower may elect, the exact duration to be determined in accordance with the customary practice in the applicable Eurodollar Rate market; provided, that, the Borrower may not elect an Interest Period which will end after the Termination Date.

"Interest Rate" shall mean

(a) For any day, for (i) Term Loans that are Prime Rate Loans, the rate per annum equal to the sum of (A) the Prime Rate plus (B) 8.50%, and (ii) Term Loans that are Eurodollar Rate Loans, the rate per annum equal to (A) the Adjusted Eurodollar Rate plus (B) 9.50%.

(b) Notwithstanding anything to the contrary contained in clause (a) of this definition, the Interest Rate shall mean the rate two percent (2%) per annum in excess of the applicable amount set forth in clause (a) of this definition (the "Default Rate"), at the election of Administrative Agent or Required Lenders, without notice, (i) either (A) for the period on and after the date of termination hereof until such time as all Obligations are indefeasibly paid and satisfied in full in immediately available funds, or (B) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Administrative Agent.

(c) Any change in the Interest Rate resulting from a publicly announced change in the Prime Rate shall be effective commencing on the date of the public announcement thereof.

"Inventory" shall mean, as to each Newark Group Party, all of such Newark Group Party's now owned and hereafter existing or acquired (i) goods, wherever located, which (a) are leased by such Newark Group Party as lessor; (b) are held by such Newark Group Party for sale or lease or to be furnished under a contract of service; (c) are furnished by such Newark Group Party under a contract of service; or (d) consist of raw materials, work in process, finished goods or materials used or consumed in its business and (ii) other "inventory" (as defined in the UCC) wherever located.

"Investment Banker" shall have the meaning set forth in Section 8.34 hereof.

"Investment Property Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to Administrative Agent, by and among the applicable Control Agent, any Credit Party (as the case may be) and any securities intermediary, commodity intermediary or other person who has custody, control or possession of any investment property of such Credit Party acknowledging that such securities intermediary, commodity intermediary or other person has custody, control or possession of such investment property on behalf of such Control Agent, that it will comply with entitlement orders originated by such Control Agent with respect to such investment property, or other instructions of such Control Agent, in each case, without further consent by the Credit Parties, and has such other terms and conditions as Administrative Agent and/or Collateral Agent may require.

"Jackson Drive Real Property" has the meaning ascribed to such term in Section 8.29 hereof.

"JD Corp." shall mean Jackson Drive Corp.

"Lenders" shall have the meaning ascribed to such term in the Preamble of this Agreement.

"License Agreements" shall have the meaning set forth in Section 8.11 hereof.

"Loans" or "Term Loans" shall mean the loans made by or on behalf of any Lender (or its predecessor in interest) or by Administrative Agent for the account of any Lender pursuant to this Agreement and evidenced hereby.

"Material Adverse Effect" shall mean a material adverse effect on (a) the financial condition, business, performance or operations of the Newark Group Parties; (b) the legality, validity or enforceability of this Agreement or any of the other Financing Agreements; (c) the legality, validity,

enforceability, perfection or priority of the security interests and liens of Collateral Agent upon the Collateral; (d) the Collateral or its value; (e) the ability of the Borrower to repay its Obligations or of any Credit Party to perform its obligations under this Agreement or any of the other Financing Agreements as and when to be performed; (f) the ability of Administrative Agent or any Lender to enforce the Obligations or realize upon the Collateral or otherwise with respect to the rights and remedies of Administrative Agent and Lenders under this Agreement or any of the other Financing Agreements.

"Material Contract" shall mean any contract or other agreement (other than the Financing Agreements), whether written or oral, to which any Newark Group Party is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect.

"Mortgaged Property" shall mean any owned Real Property of a Credit Party subject to a Mortgage or otherwise subject to a lien or security interest in favor of Collateral Agent as of the date hereof, a list of which is set forth on Schedule 1 and any other Real Property of a Credit Party subject to a Mortgage or otherwise subject to a lien or security interest in favor of Collateral Agent pursuant to Sections 5.2(j) and/or 9.29 hereof.

"Mortgages" shall mean any mortgage, deed of trust or deed to secure debt executed by a Credit Party in favor of the Agent, for the benefit of the Secured Parties and any amendments thereto, as each of the foregoing may be amended, modified, extended, restated, replaced, or supplemented from time to time.

"Multiemployer Plan" shall mean a "multi-employer plan" as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by any Newark Group Party or any ERISA Affiliate or with respect to which any Newark Group Party or any ERISA Affiliate may incur any liability.

"Net Cash Proceeds" shall mean the aggregate cash proceeds received by any Newark Group Party or any Subsidiary in respect of any Asset Disposition, Equity Issuance, Debt Issuance, or Recovery Event, net of (a) direct costs (including, without limitation, legal, accounting and investment banking fees and sales commissions, and with respect to any Asset Disposition, remediation, maintenance and other costs associated with the preparation of the properties for sale incurred since the public announcement of such Asset Disposition) associated therewith, (b) amounts held in escrow to be applied as part of the purchase price of any Asset Disposition, (c) taxes paid or payable as a result of such Asset Disposition, Equity Issuance, Debt Issuance, or Recovery Event, (d) with respect to any Asset Disposition or Recovery Event, payment of the outstanding principal amount of, premium (if any) and interest on any Indebtedness secured by a Lien (so long as such Lien is senior to the Lien on such assets securing the Obligations) on the assets subject to such Asset Disposition or Recovery Event and (e) with respect to any Recovery Event, amounts payable directly or indirectly to Governmental Authorities or which are payable pursuant to the regulations of or the order or directive of any Governmental Authorities or pursuant to any Environmental Law for such Recovery Event to the extent required by such Governmental Authorities or Contractual Obligations; it being understood that "Net Cash Proceeds" shall include, without limitation, any cash proceeds from the sale or other disposition of any non-cash consideration (but only as and when such cash is actually received) received by any Newark Group Party or any Subsidiary in any Asset Disposition, Equity Issuance, Debt Issuance or Recovery Event and any cash released from escrow as part of the purchase price in connection with any Asset Disposition.

"Newark B.V." shall mean Newark Group International B.V., a private company with limited liability with its corporate seat in Amsterdam, the Netherlands and a wholly-owned subsidiary of the Borrower.

"Newark Group Parties" shall mean, collectively, the Borrower, the Guarantors and the Newark B.V. and "Newark Group Party" shall mean any one of them.

"Newark Paperboards Capital Stock" shall mean the Capital Stock issued by Newark Paperboards Products, Ltd.

"NP Cogen" shall mean NP Cogen, Inc., Debtor and Debtor-In-Possession, a California corporation, and its successors and assigns.

"Obligations" shall mean any and all Loans and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any Credit Party to Administrative Agent, Collateral Agent, each Control Agent (solely in its capacity as control agent for the benefit of the Agent and Lenders) or any Lender and/or any of their Affiliates, including principal, interest (including capitalized interest if any), charges, fees, costs and expenses (including without limitation, all fees, costs, expenses and other items referenced under Section 9.21 hereof), however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Agreement, any of the other Financing Agreements, whether now existing or hereafter arising, whether arising before, during or after the term of this Agreement or before, during or after the commencement of the Case(s) or any other case(s) with respect to such Credit Party under the Debtor Relief Laws or any similar statute (including the payment of interest and other amounts which would accrue and become due but for the commencement of the Case(s) or any other such case, whether or not such amounts are allowed or allowable in whole or in part in the Case(s) or such case(s)), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, or secured or unsecured (other than the Borrower's Parallel Debts).

"OFAC" shall mean the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Operating Leases" shall mean, as applied to any Person, any lease (including, without limitation, leases which may be terminated by the lessee at any time of any property (whether real, personal or mixed) which is not a Capital Lease other than any such lease in which that Person is the lessor.

"ORIX" shall mean ORIX Finance Corp. in its individual capacity, and its successors and permitted assigns.

"Other Taxes" shall have the meaning given to such term in Section 6.5 hereof.

"Parallel Debt" shall mean, in relation to an Underlying Debt (and subject to Section 13.11(e)), an obligation to pay to Collateral Agent an amount equal to (and in the same currency as) the amount of that Underlying Debt.

"Participant" shall mean any financial institution that acquires and holds a participation in the interest of any Lender in any of the Loans or any of the other Obligations in conformity with the provisions of Section 13.7 of this Agreement governing participations.

"Participating Member States" means the states of the European Union that have adopted the Euro as their lawful currency as of the Closing Date (being, Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Slovenia and Spain).

"Patriot Act" shall mean the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001.

"Pension Plan" shall mean a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA which any Newark Group Party sponsors, maintains, or to which any Newark Group Party or ERISA Affiliate makes, is making, is obligated to make contributions, has made contributions at any time during the immediately preceding six (6) plan years or may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during any preceding six year period, or could reasonably be expected to be deemed to be a contributing sponsor under Section 4069 of ERISA other than a Multiemployer Plan.

"Permitted Holder" shall mean any of Edward K. Mullen or Robert H. Mullen.

"Permitted Investments" shall have the meaning set forth in Section 9.10.

"Permitted Liens" shall have the meaning set forth in Section 9.8.

"Person" or "person" shall mean any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Code), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

"Petition Date" has the meaning ascribed to such term in the Recitals hereto.

"Plan" shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) which any Newark Group Party sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a Multiemployer Plan has made contributions at any time during the immediately preceding six (6) plan years or with respect to which any Newark Group Party may incur liability.

"Plan of Reorganization" shall mean that certain Plan of Reorganization, an execution copy of which is attached to the Plan Support Agreement, to be filed with and confirmed by the Bankruptcy Court without material modification in connection with the Cases.

"Plan Support Agreement" shall mean that certain Plan Support Agreement dated as of \_\_\_\_\_, 2010 among (a) the Credit Parties, (b) the holders of the senior Subordinated Notes holding not less than 66⅔% in principal amount of such notes and other amounts owing thereunder and not less than half the number of holders of claims thereunder and (c) ORIX pursuant to which the parties thereto agree, subject to the terms and conditions thereof, to support the terms of the Plan of Reorganization.

"Pledge Agreement" shall mean the Pledge Agreement dated as of the date hereof, executed by the Credit Parties party thereto in favor of Administrative Agent, Collateral Agent and the applicable Control Agent, for the benefit of the Administrative Agent and Lenders, as hereafter amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

"PPSA" shall mean the Personal Property Security Act as in effect in British Columbia, Canada, and any successor statute as in effect from time to time (except that terms used herein solely with respect to the Newark Paperboards Capital Stock which are defined in the Personal Property Security Act as in effect in British Columbia, Canada on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as Administrative Agent may otherwise determine).

"Prime Rate" shall mean, for any day, a rate of interest per annum equal to the greatest of (a) the rate of interest which is identified as the "Prime Rate" and normally published in the Money Rates section of The Wall Street Journal (or, if such rate ceases to be so published, as quoted from such other

generally available and recognizable source as the Administrative Agent may select) and (b) one percentage point plus the three-month Adjusted Eurodollar Rate in effect as of the most recent to occur of (i) the date of the borrowing of the Loans on the Closing Date, (ii) the date that the applicable portion of the Loan is converted from a Eurodollar Rate Loan to a Prime Rate Loan, (iii) the first day of the most recent month, or (iv) the date of the most recent change in the Prime Rate described in clause (a) above. Any change in the Prime Rate due to a change in the "Prime Rate" described in clause (a) above shall be effective on the effective date of such change in the "Prime Rate."

"Prime Rate Loans" shall mean any Loans or portion thereof on which interest is payable based on the Prime Rate in accordance with the terms thereof.

"Pro Forma Basis" shall mean, with respect to any transaction, that such transaction shall be deemed to have occurred as of the first day of the twelve-month period ending as of the most recent month end preceding the date of such transaction.

"Pro Rata Share" shall mean as to any Lender, the fraction (expressed as a percentage) the numerator of which is the unpaid amount of such Lender's Loans and the denominator of which is the aggregate amount of all unpaid Loans.

"Projected Information" shall have the meaning set forth in Section 8.32 hereof.

"Real Property" shall mean all now owned and hereafter acquired real property of each Newark Group Party, including, without limitation, leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located.

"Receivables" shall mean all of the following now owned or hereafter arising or acquired property of each Newark Group Party: (a) all Accounts; (b) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; (c) all payment intangibles of such Newark Group Party; (d) letters of credit, indemnities, guarantees, security or other deposits and proceeds thereof issued payable to any Newark Group Party or otherwise in favor of or delivered to any Newark Group Party in connection with any Account; or (e) all other accounts, contract rights, chattel paper, instruments, notes, general intangibles and other forms of obligations owing to any Newark Group Party, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles), rendition of services or from loans or advances by any Newark Group Party or to or for the benefit of any third person (including loans or advances to any Affiliates or Subsidiaries of any Newark Group Party) or otherwise associated with any Accounts, Inventory or general intangibles of any Newark Group Party (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to any Newark Group Party in connection with the termination of any Plan or other employee benefit plan and any other amounts payable to any Newark Group Party from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which any Newark Group Party is a beneficiary).

"Records" shall mean, as to each Newark Group Party, all of such Newark Group Party's present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of any Newark Group Party with respect to the foregoing maintained with or by any other person).

"Recovery Event" shall mean the receipt by the Newark Group Parties or any of their Domestic Subsidiaries of any cash insurance proceeds or condemnation or expropriation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective property or assets.

"Register" shall have the meaning set forth in Section 13.7(a) hereof.

"Related Fund" shall mean any person (whether a corporation, partnership, trust or otherwise) that is engaged in the business of making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or with respect to any Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor (which is at least fifty (50%) percent owned by such investment advisor or its parent company).

"Required Lenders" shall mean, at any time, Lenders to whom more than fifty (50%) percent of the then outstanding Obligations are owing; provided that unless there is only one Lender, Required Lenders must include at least two Lenders (Lenders that are Affiliates of each other shall be considered to be a single Lender for the purposes of this proviso).

"Restricted Payment" shall mean (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of the Borrower 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 shares of any class of Capital Stock of the Borrower or any of its Subsidiaries, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of the Borrower or any of its Subsidiaries, now or hereafter outstanding, (d) any payment with respect to any earnout obligation, (e) any payment or prepayment of principal of, premium, if any, or interest on, redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Subordinated Debt, (f) any payment or prepayment of principal of, premium, if any, or interest on, redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Indebtedness the proceeds of which are used to refinance or repay the ABL Obligations, (g) the payment by Borrower or any of its Subsidiaries of any management or consulting fee to any Person or of any salary, bonus or other form of compensation to any Person who is directly or indirectly a significant partner, shareholder, owner or executive officer of any such Person, to the extent such management fee, consulting fee, salary, bonus or other form of compensation is not included in the Budget or otherwise approved by the Bankruptcy Court, or (h) any cash payments by any Borrower or Guarantor to their respective pension plans in excess of (A) the actuarially determined minimum funding obligations with respect to such plans (including expenses of maintaining and administering such plans) and (B) such amounts as are otherwise required to be contributed to or paid with respect to such plans pursuant to applicable law as approved by the Bankruptcy Court.

"Sanctioned Country" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html>, or as otherwise published from time to time.

"Sanctioned Person" shall mean (a) a Person named on the list of "Specially Designated Nationals and Blocked Persons" maintained by OFAC available at <http://www.treas.gov/offices/eotffc/ofac/sdn/index.html>, or as otherwise published from time to time, or (b) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

"Scheduled Asset Sales" shall mean the sale, lease, conveyance, disposition or other transfer of the following Real Property of the Newark Group Parties: (i) the paperboard mills in Newark, New Jersey, Natick, Massachusetts, Lawrence, Massachusetts, Middletown, Ohio, North Hoosick, New York, Haverhill, Massachusetts, and Stockton, California, (ii) the water rights with respect to certain real property located in Los Angeles, California, and (iii) the property located at 99-107 Lockwood Street, Newark, New Jersey.

"Secured Parties" shall mean Collateral Agent, Administrative Agent, and the Lenders.

"Security Documents" shall mean the Pledge Agreement, the Dutch Deed of Pledge, Investment Account Control Agreement, Account Control Agreements, the Mortgages, if any, and all other agreements, documents and instruments relating to, arising out of, or in any way connection with any of the foregoing documents or granting to Collateral Agent, liens or security interests to secure, inter alia, the Obligations whether executed and/or filed prior to the Closing Date or now or hereafter executed and/or filed, each as may be amended, restated, modified and/or supplemented from time to time in accordance with the terms hereof, executed and delivered in connection with the granting, attachment and perfection of Collateral Agent's security interests and liens arising hereunder, including, without limitation, UCC financing statements.

"Senior Subordinated Note Indenture" shall mean that certain Indenture dated as of March 12, 2004 by and between the Borrower, the guarantors from time to time party thereto and The Bank of New York, as trustee, as it may be amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

"Senior Subordinated Notes" shall mean those certain 9<sup>3</sup>/<sub>4</sub>% senior unsecured subordinated notes due 2014 issued by the Borrower on March 12, 2004, as amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

"Settlement Agreement" shall mean the Settlement Agreement and Final Judgment dated September 18, 2007, by and between the Commonwealth of Massachusetts and the Borrower related to allegations of violations of Environmental Laws asserted by the Commonwealth of Massachusetts against the Borrower.

"Specified Sales" shall mean (a) the sale, transfer, lease or other disposition of inventory and materials in the ordinary course of business and (b) the sale, transfer or other disposition of Permitted Investments described in clause (a) of Section 9.10.

"Subordinated Debt" shall mean (a) subordinated Indebtedness of the Borrower evidenced by a subordinated seller note that contains subordination and other terms reasonably acceptable to the Administrative Agent and (b) any other any Indebtedness incurred by any Newark Group Party or any of their Subsidiaries, in each case which by its terms or a separate subordinate agreement is specifically subordinated in right of payment to the prior payment of the Obligations and contains subordination and other terms reasonably acceptable to the Administrative Agent, including without limitation the Senior Subordinated Notes.

"Subsidiary" or "subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

"Term Loans" or "Loans" shall mean the loans made by or on behalf of any Lender or by Administrative Agent for the account of any Lender pursuant to this Agreement or on the Closing Date, and evidenced hereby.

"Term Loan Priority Collateral" shall mean all "Term Loan Priority Collateral" as defined in the Intercreditor Agreement, including, upon the payment in full of the ABL Obligations and the termination of the commitments under the ABL Credit Agreement, all ABL Priority Collateral.

"Term Note" or "Term Notes" shall mean the promissory notes of Borrower provided pursuant to Section 2.1(c) in favor of any of the Lenders evidencing the Term Loans provided by any such Lender pursuant to this Agreement (and evidenced hereby), individually or collectively, as appropriate, as such promissory notes may be amended, modified, extended, restated, replaced or supplemented from time to time.

"Termination Date" shall mean the earliest to occur of (i) the date that is one hundred and eighty (180) days after the commencement of the Case(s), (ii) the date that is sixty (60) days after the entry of the Financing Order if the Final Order has not been entered prior to the expiration of such 60-day period, (iii) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the "effective date") of a plan of reorganization filed in the Case(s) that is confirmed pursuant to an order entered by the Bankruptcy Court in form and substance satisfactory to Administrative Agent, (iv) the date of confirmation of a plan of reorganization or liquidation for the Borrower or Guarantors in the Case(s), (v) the date on which all Obligations are paid and satisfied in full in immediately available funds and the Financing Agreements are terminated, (iv) the acceleration of any or all of the Obligations hereunder and (v) the date any Case is converted to a Chapter 7 case under the Bankruptcy Code.

"Treaty on European Union" shall mean the Treaty of Rome of March 25, 1957, as amended by the Single European Act 1986 and the Maastricht Treaty (which was signed at Maastricht on February 1, 1992 and came into force on November 1, 1993), as amended from time to time.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of New York, and any successor statute, as in effect from time to time (except that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as Administrative Agent may otherwise determine).

"Underlying Debt" shall mean, in relation to the Borrower and at any given time, each obligation (whether present or future, actual or contingent) owing by the Borrower to a Lender under the Financing Agreements (including, for the avoidance of doubt, any change or increase in those obligations pursuant to or in connection with any amendment or supplement or restatement or novation of any Financing Agreement, in each case whether or not anticipated as of the date of this Agreement), excluding the Borrower's Parallel Debts.

"von Zuben Settlement Agreement" shall mean that certain Plan Support and Claim Settlement Agreement dated as of \_\_\_\_\_, 2010 among between Borrower and Frederick G. von Zuben.

"Voting Stock" shall mean with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

## SECTION 2 CREDIT FACILITIES

### Section 2.1 Term Loan Facility.

(a) Term Loan. Upon the effectiveness of this Agreement on the Closing Date, Lenders shall make Term Loans to the Borrower in the amounts set forth on Schedule A hereto. After the Closing Date, the Lenders shall have no obligation to make Term Loans or any other loans to Credit Parties. Amounts repaid or prepaid on any Term Loan shall not be reborrowed.

(b) Repayment of Term Loan. The principal amount of the Term Loan, together with all accrued but unpaid interest and all other amounts owed hereunder with respect thereto (and all other outstanding Obligations), shall be repaid in full in cash on the Termination Date.

(c) Term Notes. The Borrower's obligation to pay each Lender's portion of the Term Loan shall be evidenced, upon such Lender's request, by a Term Note made payable to such Lender.

### Section 2.2 Reserved.

### Section 2.3 Reserved.

### Section 2.4 Reserved.

### Section 2.5 Prepayments; Commitment Reductions.

(a) Optional Prepayments. The Borrower shall have the right to prepay the Term Loans in whole or in part from time to time as the Borrower may elect; provided, however, that each partial prepayment of Term Loans shall be in a minimum principal amount of \$1,000,000 and integral multiples of \$100,000 in excess thereof. The Borrower shall give at least three (3) Business Days' (but not more than five (5) Business Days') irrevocable notice in the case of Eurodollar Rate Loans and at least one (1) Business Day's (but not more than five (5) Business Days') irrevocable notice in the case of Prime Rate Loans, to the Administrative Agent (which shall notify the Lenders thereof as soon as practicable). Subject to the foregoing terms, amounts prepaid under this Section 2.5(a) shall be applied first to Prime Rate Loans and then to Eurodollar Rate Loans in direct order of Interest Period maturities. Interest on the principal amount prepaid shall be due and payable on any date that a prepayment is made hereunder through the date of prepayment. Simultaneous with the voluntary prepayment of any principal portion of the Term Loan, the Borrower shall pay to Administrative Agent (for the ratable benefit of the Lenders) a prepayment fee equal to three percent (3.0%) multiplied by the outstanding principal amount of the Term Loan prepaid.

#### (b) Mandatory Prepayments.

##### (i) Reserved.

##### (ii) Reserved.

(iii) (A) Asset Dispositions. Promptly following any Asset Disposition (or related series of Asset Dispositions), the Borrower shall make a prepayment in an aggregate amount equal to 100% of the Net Cash Proceeds derived from such Asset Disposition (or related series of Asset Dispositions) (such prepayment to be applied as set forth in clause (vii) below) provided that the first \$1,000,000 of Net Cash Proceeds received during any calendar year from such Asset Dispositions shall not be required to be prepaid in accordance with this Section 2.5 provided that the Asset Disposition(s) from which such Net Cash Proceeds are derived comply with clauses (A), (B) and (C) immediately

following Section 9.7(a)(vii) hereof and such Net Cash Proceeds are invested in or used by the Credit Parties for purposes that are not otherwise prohibited hereunder; and

(B) BV Intercompany Notes. Promptly, upon receipt by any Credit Party of any principal payment(s) (whether a scheduled payment or voluntary/mandatory prepayment) on account of any of the BV Intercompany Notes, the Credit Parties shall prepay the Loans and other Obligations in an amount equal to the amount of such payment(s) (such prepayments to be applied as set forth in clause (vii) below).

(iv) Debt Issuances. The proceeds of any Debt Issuance shall be applied as follows: promptly, upon receipt by any Newark Group Party or any of its Subsidiaries of (i) proceeds from any Debt Issuance (other than a Debt Issuance permitted under Section 9.9(j) hereof), the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of such Debt Issuance (such prepayment to be applied as set forth in clause (vii) below) and (ii) proceeds from any Debt Issuance permitted under Section 9.9(j) hereof, the Borrower shall prepay the Loans in an aggregate amount equal to 50% of the Net Cash Proceeds of such Debt Issuance (such prepayments to be applied as set forth in clause (vii) below).

(v) Issuances of Equity. Promptly, upon receipt by any Credit Party or any of their Domestic Subsidiaries of proceeds from any Equity Issuance, the Borrower shall prepay the Loans in an aggregate amount equal to 50% of the Net Cash Proceeds of such Equity Issuance.

(vi) Recovery Event. To the extent Net Cash Proceeds received in connection with any Recovery Event (with respect to Term Loan Priority Collateral) are not used to acquire fixed or capital assets (constituting Term Loan Priority Collateral) in replacement of the assets subject to such Recovery Event within 180 days of the receipt of such Net Cash Proceeds, immediately following the 180th day occurring after the receipt of such Net Cash Proceeds, subject to the terms of the Intercreditor Agreement, the Borrower shall prepay the Loans in an aggregate amount equal to 100% of such Net Cash Proceeds (such prepayment to be applied as set forth in clause (vii) below); provided that, (A) any Net Cash Proceeds shall be delivered to the Administrative Agent to be held in escrow (and as Cash Collateral) until the earlier of (I) reinvestment and/or prepayment of the Loans and other Obligations, in each case, in accordance with the terms of this Section 2.5(b)(vi) and (II) the occurrence of an Event of Default at which time the Net Cash Proceeds (and related Cash Collateral) shall be used to prepay the Loans as set forth herein (such prepayment to be applied as set forth in clause (vii) below) and (B) after the occurrence and during the continuance of an Event of Default, any Net Cash Proceeds (and related Cash Collateral) received in connection with any Recovery Event (with respect to Term Loan Priority Collateral) shall be promptly used to prepay the Loans (such prepayment to be applied as set forth in clause (vii) below) and the Borrower and its Subsidiaries shall not have the right to reinvest such Net Cash Proceeds.

(vii) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 2.5(b) shall be applied first to Prime Rate Loans and then to Eurodollar Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.5(b) shall be subject to Section 3.3(d) and be accompanied by interest on the principal amount prepaid through the date of prepayment.

## **Section 2.6                    Acknowledgement of Obligations and Security Interests.**

The Borrower and each Guarantor, each, acknowledges and agrees that it is unconditionally liable to the Agent and Lenders, as applicable, for the full and timely payment and performance of the Term Loans outstanding as of the date hereof and described on Schedule A attached hereto and that Borrower and Guarantor, each, has no defenses, counterclaims or set-offs with respect to the full and timely payment of any or all of such Obligations. Borrower and Guarantors hereby

acknowledge, confirm and agree that Collateral Agent, for itself and the benefit of Administrative Agent and Lenders, has a security interest in and lien upon the Collateral as granted herein to secure the Obligations, as well as any Collateral granted under this Agreement and/or under any of the other Financing Agreements or otherwise granted to or held by Collateral Agent or any Lender.

### **SECTION 3 INTEREST AND FEES**

#### **Section 3.1      Interest.**

(a) Borrower shall pay to Administrative Agent, for the benefit of Lenders, interest on the outstanding principal amount of the Loans at the Interest Rate. All interest accruing during the continuance of an Event of Default or on and after the termination of this Agreement shall be payable on demand.

(b) As of the Closing Date, all Loans shall constitute Prime Rate Loans. On or after the Closing Date, the Borrower may from time to time request that Prime Rate Loans be converted to Eurodollar Rate Loans or that any existing Eurodollar Rate Loans continue for an additional Interest Period. Such request from the Borrower shall (i) be made not later than 12:00 Noon (New York City, New York time) on the third Business Day prior to the date of the requested conversion, (ii) specify the date of the requested conversion (which shall be a Business Day), (iii) specify the aggregate principal amount to be converted (subject to the limits set forth below) and (iv) specify the Interest Period to be applicable to such Eurodollar Rate Loans. Subject to the terms and conditions contained herein, three (3) Business Days after receipt by Administrative Agent of such a request from Borrower, such Prime Rate Loans shall be converted to Eurodollar Rate Loans or such Eurodollar Rate Loans shall continue, as the case may be, provided, that, (i) if a Default or Event of Default shall exist or have occurred and be continuing Agent and Required Lenders may elect to not allow such a Eurodollar Rate Loan, (ii) the Borrower shall have complied with such customary procedures as are established by Administrative Agent and specified by Administrative Agent to Borrower from time to time for requests by Borrower with respect to conversions to or continuation of Eurodollar Rate Loans, (iii) no more than four (4) Interest Periods may be in effect at any one time, (iv) the aggregate amount of the Eurodollar Rate Loans must be in an amount not less than \$3,000,000 or an integral multiple of \$1,000,000 in excess thereof, (v) unless permitted by the Administrative Agent, the maximum amount of the Eurodollar Rate Loans in the aggregate at any time requested by Borrower shall not exceed the amount of the Loans which it is anticipated will be outstanding during the applicable Interest Period, in each case as determined by Administrative Agent in good faith (but with no obligation of Administrative Agent or Lenders to make such Loans), and (vi) Administrative Agent and each Lender shall have determined that the Interest Period or Adjusted Eurodollar Rate is available to Administrative Agent and such Lender and can be readily determined as of the date of the request for conversion to or continuation of a Eurodollar Rate Loan by Borrower. Any request by Borrower to convert Prime Rate Loans to Eurodollar Rate Loans or to continue any existing Eurodollar Rate Loans shall be irrevocable. Notwithstanding anything to the contrary contained herein, Administrative Agent and Lenders shall not be required to purchase United States Dollar deposits in the London interbank market or other applicable Eurodollar Rate market to fund any Eurodollar Rate Loans, but the provisions hereof shall be deemed to apply as if Administrative Agent and Lenders had purchased such deposits to fund the Eurodollar Rate Loans.

(c) Any Eurodollar Rate Loans shall automatically convert to Prime Rate Loans upon the last day of the applicable Interest Period, unless the Borrower requests that such Eurodollar Rate Loans continue for an additional Interest Period in accordance with Section 3.1(b). Any Eurodollar Rate Loans shall be subsequently converted to Prime Rate Loans in the event that this Agreement shall terminate. Borrower shall pay to Administrative Agent, for the benefit of Lenders, upon demand by Administrative Agent (or Administrative Agent may, at its option, charge any loan account of Borrower) any amounts required to compensate any Lender or Participant for any loss (including loss of anticipated

profits), cost or expense incurred by such person, as a result of the conversion of Eurodollar Rate Loans to Prime Rate Loans pursuant to any conversion as a result of a termination described in the previous sentence.

(d) Interest shall be payable by Borrower to Administrative Agent, for the account of the Lenders as applicable, monthly in arrears not later than the first day of each calendar month and shall be calculated on the basis of a three hundred sixty (360) day year (or 365/366, in the case of Loans for which the Prime Rate is used) and actual days elapsed. The interest rate on non-contingent Obligations (other than Eurodollar Rate Loans) shall increase or decrease by an amount equal to each increase or decrease in the Prime Rate effective on the date of any change in such Prime Rate.

(e) No agreements, conditions, provisions or stipulations contained in this Agreement or any other instrument, document or agreement between Borrower and any Agent or any Lender or default of Borrower, or the exercise by any Agent or any Lender of the right to accelerate the payment or the maturity of principal and interest, or to exercise any option whatsoever contained in this Agreement or any other Financing Agreement, or the arising of any contingency whatsoever, shall entitle any Lender to contract for, charge, or receive, in any event, consideration for the use, forbearance or detention of money ("interest") at a rate exceeding the maximum rate of interest permitted by applicable state or federal law in effect from time to time (hereinafter "Maximum Legal Rate"). In no event shall Borrower be obligated to pay interest at any rate exceeding such Maximum Legal Rate and all agreements, conditions or stipulations, if any, which may in any event or contingency whatsoever operate to bind, obligate or compel Borrower to pay a rate of interest exceeding the Maximum Legal Rate, shall be without binding force or effect, at law or in equity, to the extent only of the excess of interest determined at a rate over such Maximum Legal Rate. In the event any interest is contracted for, charged or received at any rate in excess of the Maximum Legal Rate ("Excess"), Borrower acknowledges and stipulates that any such contract, charge, or receipt shall be the result of an accident and bona fide error, and that any Excess received by any Lender shall be applied, first, to reduce the principal then unpaid hereunder; second, to reduce the other Obligations; and third, returned to Borrower, it being the intention of the parties hereto not to enter at any time into a usurious or otherwise illegal relationship. Borrower recognizes that, with fluctuations in the Adjusted Eurodollar Rate, the Prime Rate and the Maximum Legal Rate, such a result could inadvertently occur. By the execution of this Agreement, Borrower covenants that (i) the credit or return of any Excess shall constitute the acceptance by Borrower of such Excess, and (ii) Borrower shall not seek or pursue any other remedy, legal or equitable, against any Agent or any Lender, based in whole or in part upon the contracting for, charging or receiving of any interest in excess of the maximum authorized or the receiving of any interest in excess of the maximum authorized by applicable law. To the extent applicable, for the purpose of determining whether or not any Excess has been contracted for, charged or received by any Agent or any Lender, all interest at any time contracted for, charged or received by any Agent and any Lender in connection with this Agreement shall be amortized, prorated, allocated and spread in equal parts during the full stated term of this Agreement and otherwise as provided in Tex. Fin Code section 306.004 (or the successor(s) thereof). If, as a result of any circumstances whatsoever, fulfillment of any provision hereof or of any related agreement, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by applicable usury law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity.

### **Section 3.2        Fees.**

(a) Borrower shall pay to Administrative Agent the fees and amounts set forth in the Fee Letter in the amounts and at the times specified therein.

(b) Borrower shall pay to Administrative Agent, for the ratable benefit of the Lenders party to this Agreement as of the Closing Date, a commitment fee of \$1,100,000, which commitment fee shall be fully-earned and payable as of the Closing Date.

**Section 3.3**

**Changes in Laws and Increased Costs of Loans.**

(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 Lender or any banking or financial institution from whom any Lender borrows funds or obtains credit (a "Funding Bank"), or (ii) a Funding Bank or any Lender complies with any future guideline or request from any central bank or other Governmental Authority or (iii) a Funding Bank or any Lender 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 Lender 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 Lender's capital as a consequence of its obligations hereunder to a level below that which such Lender could have achieved but for such adoption, change or compliance (taking into consideration the Funding Bank's or Lender's policies with respect to capital adequacy) by an amount deemed by such Lender 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 Lender of funding or maintaining the Loans, then the Borrower and Guarantors shall from time to time upon demand by Administrative Agent pay to Administrative Agent additional amounts sufficient to indemnify such Lender 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 Borrower by Administrative Agent or the applicable Lender and shall be conclusive, absent manifest error.

(b) If prior to the first day of any Interest Period, (i) Administrative Agent shall have determined in good faith (which determination shall be conclusive and binding upon the Credit Parties) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Adjusted Eurodollar Rate for such Interest Period, (ii) Administrative Agent has received notice from the Required Lenders that the Adjusted Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to Lenders of making or maintaining Eurodollar Rate Loans during such Interest Period, or (iii) Dollar deposits in the principal amounts of the Eurodollar Rate Loans to which such Interest Period is to be applicable are not generally available in the London interbank market, Administrative Agent shall give telecopy or telephonic notice thereof to Borrower as soon as practicable thereafter, and will also give prompt written notice to Borrower when such conditions no longer exist. If such notice is given (A) any Loans that were to have been converted on the first day of such Interest Period to or continued as Eurodollar Rate Loans shall be converted to or continued as Prime Rate Loans and (B) each outstanding Eurodollar Rate Loan shall be converted, on the last day of the then-current Interest Period thereof, to Prime Rate Loans. Until such notice has been withdrawn by Administrative Agent, no further Eurodollar Rate Loans shall be continued as such, nor shall the Borrower have the right to convert Prime Rate Loans to Eurodollar Rate Loans.

(c) Notwithstanding any other provision herein, if the adoption of or any change in any law, treaty, rule or regulation or final, non-appealable determination of an arbitrator or a court or other Governmental Authority or in the interpretation or application thereof occurring after the date hereof shall make it unlawful for Administrative Agent or any Lender to make or maintain Eurodollar Rate Loans as contemplated by this Agreement, (i) Administrative Agent or such Lender shall promptly give written notice of such circumstances to Borrower (which notice shall be withdrawn whenever such circumstances no longer exist), (ii) the commitment of such Lender hereunder to continue Eurodollar Rate Loans as such and convert Prime Rate Loans to Eurodollar Rate Loans shall forthwith be canceled and, until such time as it shall no longer be unlawful for such Lender to maintain Eurodollar Rate Loans, such Lender shall then have a commitment only to maintain Prime Rate Loans and (iii) such Lender's Loans then outstanding as Eurodollar Rate Loans, if any, shall be converted automatically to Prime Rate Loans

on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Rate Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Credit Parties shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.3(d) below.

(d) The Credit Parties shall indemnify Administrative Agent and each Lender and to hold Administrative Agent and each Lender harmless from any loss or expense which Administrative Agent or such Lender may sustain or incur as a consequence of (i) default by the Borrower in conversion into or extension of Eurodollar Rate Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (ii) default by the Borrower in making any prepayment of a Eurodollar Rate Loan after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, and (iii) the making of a prepayment of Eurodollar Rate Loans on a day which is not the last day of an Interest Period with respect thereto. With respect to Eurodollar Rate Loans, such indemnification may include an amount equal to the excess, if any, of (A) the amount of interest which would have accrued on the amount so prepaid, or not so converted or extended, for the period from the date of such prepayment or of such failure to convert or extend to the last day of the applicable Interest Period (or, in the case of a failure to convert or extend, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Rate Loans provided for herein over (B) the amount of interest (as determined by such Administrative Agent or such Lender) which would have accrued to Administrative Agent or such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. This covenant shall survive the termination of this Agreement and the payment of the Obligations.

(e) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.3 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.3 for any increased costs incurred more than six months prior to the date that such Lender notifies the Borrower of the change in law giving rise to such increased costs and of such Lender'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).

#### **SECTION 4**

##### **CONDITIONS PRECEDENT**

##### **Section 4.1      Conditions Precedent to the Effectiveness of this Agreement.**

The effectiveness of this Agreement is subject to the prior or concurrent satisfaction of, or waiver of, each of the following conditions precedent:

(a) Administrative Agent shall have received, in form and substance satisfactory to Administrative Agent, all releases, terminations and such other documents as Administrative Agent may request to evidence and effectuate the termination by the lenders party to the Existing CL Loan Agreement and Wachovia Bank, National Association, as administrative agent and collateral agent for such lenders, of their respective financing arrangements with Borrower and Guarantors and the termination and release by it or them, as the case may be, of any interest in and to any assets and properties of Borrower and each Guarantor, duly authorized, executed and delivered by it or each of them, including, but not limited to, authorization to file UCC termination statements for all UCC financing statements previously filed by it or any of them or their predecessors, as secured party and Borrower or any Guarantor, as debtor. As used herein "Existing CL Loan Agreement" shall mean the Loan and Security Agreement, dated as of March 9, 2007, by and among the Borrower, the guarantors party thereto, the lenders party thereto and Wachovia Bank, National Association, as administrative agent and collateral

agent for such lenders, as amended or otherwise modified, in connection with providing a term loan facility.

(b) All requisite corporate action and proceedings in connection with this Agreement and the other Financing Agreements shall be reasonably satisfactory in form and substance to Administrative Agent, and Administrative Agent shall have received all information and copies of all documents, including records of requisite corporate action and proceedings which Administrative Agent may have requested in connection therewith, such documents where requested by Administrative Agent or its counsel to be certified by appropriate corporate officers or Governmental Authority (and including a copy of the certificate of incorporation (or foreign equivalent) of the Borrower and each Guarantor certified by the Secretary of State (or equivalent Governmental Authority) which shall set forth the same complete corporate name of the Borrower or Guarantor as is set forth herein and such document as shall set forth the organizational identification number of the Borrower or Guarantor, if one is issued in its jurisdiction of incorporation).

(c) No material adverse change in the business, operations, profits, assets, financial condition or prospects of the Borrower, individually, or the Borrower and its Subsidiaries, taken as a whole, shall have occurred since January 31, 2010, and, except for the filing of the Case(s), no pending or threatened litigation, proceeding, bankruptcy or insolvency, injunction, order or claims with respect to any Newark Group Party shall exist that could reasonably be expected to have a Material Adverse Effect (it being understood that the commencement of the Case(s), any defaults under agreements that have no effect under the terms of the Bankruptcy Code as a result of the commencement thereof, reduction in payment terms by suppliers, and reclamation claims shall not be deemed a material adverse change).

(d) Administrative Agent shall have received an original executed version of each of the BV Intercompany Notes which shall each provide for regularly scheduled monthly interest payments.

(e) Subject to the terms of Section 9.32, Administrative Agent shall have received, in form and substance satisfactory to Administrative Agent, all consents, waivers, acknowledgments and other agreements from third persons which Administrative Agent may reasonably deem necessary or desirable in order to permit, protect and perfect Collateral Agent's security interests in and liens upon the Collateral (solely with respect to perfection, subject to the provisions of Article 5 hereof which limit the requirement that the Borrower and Guarantors perfect the Agent's liens on all of the Collateral) or to effectuate the provisions or purposes of this Agreement and the other Financing Agreements.

(f) Administrative Agent shall have received, in form and substance satisfactory to Administrative Agent, an Account Control Agreement from each depository institution where the Borrower or any Guarantor has deposit account(s) (covering all of the Borrower's and Guarantors' deposit accounts (as of the Closing Date) other than the Excluded Deposit Accounts), in each case, duly authorized, executed and delivered by such depository institution and the Borrower or such Guarantor, as the case may be.

(g) Administrative Agent shall have received evidence, in form and substance satisfactory to Administrative Agent, that Collateral Agent has a valid perfected first priority security interest in the Term Loan Priority Collateral (subject to the provisions of Article 5 hereof which limit the requirement that the Borrower and the Guarantors perfect the Agent's liens on all of the Collateral) and a valid perfected second priority security interest in all of the ABL Priority Collateral (subject to the provisions of Article 5 hereof which limit the requirement that the Borrower and the Guarantors perfect the Agent's liens on all of the Collateral), subject only to Permitted Liens.

(h) Administrative Agent shall have received and reviewed lien and judgment search results for the jurisdiction of organization of the Borrower and each Guarantor, the jurisdiction of the chief executive office of the Borrower and each Guarantor and all jurisdictions in which assets of the

Borrower and each Guarantor are located, which search results shall be in form and substance satisfactory to Administrative Agent.

(i) Administrative Agent shall have received searches of ownership of intellectual property in the appropriate governmental offices of such patent/trademark/copyright filings as requested by Administrative Agent.

(j) Administrative Agent shall have received evidence that originals of the shares of the stock certificates, if any, representing all of the issued and outstanding shares of the Capital Stock of each Newark Group Party (and any other Person) that is owned by the Borrower and each Guarantor, in each case together with stock powers duly executed in blank with respect thereto have been delivered to the applicable Control Agent, to the extent such shares constitute Collateral required under this Agreement.

(k) Administrative Agent shall have received evidence that all instruments and chattel paper in possession of the Borrower or any Guarantor, together with such allonges or assignments as may be necessary or appropriate to perfect Collateral Agent's security interest in the Collateral that are required to be delivered under Section 5.2(b), have been delivered to the applicable Control Agent.

(l) Administrative Agent shall have received evidence of insurance coverage and lender's loss payee endorsements required hereunder and under the other Financing Agreements, in form and substance reasonably satisfactory to Administrative Agent, and certificates of insurance policies and/or endorsements naming Administrative Agent as loss payee for casualty insurance, including casualty, liability and business interruption insurance.

(m) Administrative Agent shall have received, in form and substance reasonably satisfactory to Administrative Agent, such opinion letters of counsel to the Borrower and the Guarantors (other than NP Cogen) with respect to the Financing Agreements, and such other matters as Administrative Agent may request and are customarily required for similar financings.

(n) Administrative Agent shall have received all financial information, projections, budgets, business plans, cash flows and such other information as Administrative Agent shall reasonably request, including, each in form and substance satisfactory to Administrative Agent, (i) an income statement and balance sheet as of the end of the most recent fiscal month for each of the Borrower's operating divisions (including RFD, Mills, BCI, NPP and Europe) which shall not reflect the impact of the elimination of intercompany transactions, and a comparison of such information to information for the same period in the immediately preceding year, provided, that, if the Case(s) commences on or prior to the twelfth (12th) Business Day of any calendar month, such income statement and balance sheet may be as of the end of the fiscal month immediately preceding the most recent fiscal month, (ii) projected monthly consolidated balance sheets, income statements, statements of cash flows and availability of the Newark Group Parties for the period through the end of the Termination Date (but not for a period earlier than one hundred and eighty (180) days after the date hereof), in each case as to the projections, with the results and assumptions set forth in all of such projections in form and substance satisfactory to Administrative Agent, and an opening pro forma balance sheet for Borrower and Guarantors in form and substance satisfactory to Administrative Agent, (iii) any updates or modifications to the projected financial statements of the Newark Group Parties previously received by Administrative Agent, in each case in form and substance satisfactory to Administrative Agent, (iv) copies of satisfactory interim unaudited financial statements for each month ended since the last audited financial statements for which financial statements are available, (v) current agings of receivables, current perpetual inventory records and/or roll-forwards of accounts and inventory through the date of this Agreement, together with supporting documentation, each in form and substance satisfactory to Administrative Agent and (vi) the initial Budget.

(o) No material misstatements in or omissions from the materials previously furnished to Administrative Agent and/or Lenders by or on behalf of the Newark Group Parties shall have been made. Administrative Agent shall be satisfied that any financial statements and reports delivered to it fairly present the business and financial condition of (i) the Borrower and (ii) the Borrower and its Subsidiaries taken as a whole.

(p) No defaults or events of default (including without limitation, no Default or Events of Default) on the Closing Date under the Financing Agreements or the ABL Financing Agreements or on any other material debt or any Material Contract of any Newark Group Party shall exist after giving effect to the transactions contemplated hereunder (other than any such defaults or events of default that have no effect under the terms of the Bankruptcy Code as a result of the commencement of the Case(s) and which are stayed).

(q) (i) All conditions precedent to the closing and initial extensions of credit under the ABL Credit Agreement shall have been, or concurrently with the Closing Date shall be, satisfied, waived or subject to a post-closing undertaking, (ii) the ABL Credit Agreement shall provide the Borrower with no less than \$50,000,000 of revolving loan commitments and letter of credit commitments, (iii) Administrative Agent shall be satisfied that the initial extensions of credit under the ABL Credit Agreement shall have occurred (or are otherwise available to Borrower) and (iv) after giving effect to the transactions contemplated hereby to occur on the Closing Date, Excess Availability is at least \$12,500,000.

(r) At least five (5) Business Days prior to the Closing Date, Administrative Agent shall have received a certificate satisfactory thereto for benefit of itself and the Lenders, provided by the Borrower that sets forth information required by the Patriot Act including, without limitation, the identity of the Borrower and the Guarantors, the name and address of the Borrower and the Guarantors and other information that will allow Administrative Agent or any Lender, as applicable, to identify the Borrower and the Guarantors in accordance with the Patriot Act.

(s) This Agreement and the other Financing Agreements and all agreements, instruments and documents hereunder and thereunder required to be executed and delivered by the Newark Group Parties by the Closing Date, including without limitation, this Agreement, the Pledge Agreement, the Dutch Deed of Pledge, notice of grant of security interest in trademarks and the notice of grant of security interest in patents, shall have been duly executed and delivered to Administrative Agent, in form and substance satisfactory to Administrative Agent.

(t) Consolidated EBITDA as determined by Administrative Agent, as of the date hereof, for the most recently ended trailing twelve (12) fiscal month period shall be not less than \$44,000,000, it being understood that Consolidated EBITDA at closing shall include restructuring charges in an amount not to exceed \$24,000,000.

(u) Receipt by Administrative Agent of a statement of sources and uses of funds covering all loans made to and/or notes issued by Borrower and all payments reasonably expected to be made by Borrower and its Subsidiaries in connection with the transactions contemplated by the Financing Agreements to be consummated on or about the Closing Date, including an itemized estimate of all fees, expenses and other closing costs.

(v) Receipt by Administrative Agent of a fully executed copy of the Intercreditor Agreement, each in form and substance satisfactory to Agent and Lenders.

(w) The Borrower shall have (i) retained the Financial Advisor who shall, among other things, continue to have the authority previously granted to it, continue to perform the duties previously performed by it, and assist Borrower in the preparation of and compliance with, on an ongoing

basis, the Budget and compliance with, on and ongoing basis, the terms and conditions set forth in the Financing Agreements, (ii) retained an investment banking firm who shall continue to have the authority previously granted to it and to perform the duties previously performed by it, and the foregoing engagements under clauses (i) and (ii) shall each have been approved under the Financing Order and (iii) provided such Financial Advisor and investment banking firm with such information as they may require.

(x) Borrower and Guarantors shall have commenced the Case(s) by no later than June 11, 2010.

(y) The Financing Order shall have been entered in the Case(s) by the Bankruptcy Court, in form and substance satisfactory to Administrative Agent, and such Financing Order shall be in full force and effect and shall not have been reversed, stayed, modified or amended without the express written consent of Lender, and no application or motion shall have been made to the Bankruptcy Court for any stay, modification or amendment of such Financing Order and no stay with respect to same shall be pending. Borrower and Guarantors shall have complied in full with the notice and other requirements of the Bankruptcy Code in a manner acceptable to Administrative Agent and its counsel, with respect to the Financing Order and Administrative Agent shall have received such evidence thereof as it shall reasonably require.

(z) No trustee, or other disinterested person with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code, shall have been appointed or designated with respect to Borrower or any Guarantor or their respective business, properties or assets, including with limitation, the Collateral and other property which is security for the Obligations, and no motion shall be pending seeking any such relief.

(aa) All of the first day orders entered by the Bankruptcy Court at the time of the commencement of the Case(s) shall be in form and substance reasonably satisfactory to Administrative Agent. A cash management order approving the cash management arrangements of Borrower and Guarantors consistent with the requirements under this Agreement shall have been entered, in form and substance reasonably satisfactory to Administrative Agent, and shall be in full force and effect.

(bb) The solicitation package to solicit acceptances to a prepackaged plan of reorganization on behalf of the Borrower (the "Solicitation") shall be in form and substance reasonably satisfactory to Administrative Agent.

(cc) The Plan Support Agreement shall continue to be effective.

(dd) The ABL Support Letter shall continue to be effective.

(ee) Plan support agreements between the Borrower, on the one hand, and all classes of creditors that would have a vote on the Plan of Reorganization (other than the Plan Support Agreement and the ABL Support Letter), including without limitation the von Zuben Settlement Agreement and the ESOP Settlement Agreement, shall continue to be effective, each of which shall be in form and substance satisfactory to Administrative Agent.

(ff) The Borrower shall have (i) proposed the Plan of Reorganization, which shall, in all respects be satisfactory to the Administrative Agent and the Lenders, and include repayment in full in cash and refinancing of the Obligations or the entry into an exit facility on terms and conditions acceptable to Administrative Agent and Lenders, (ii) prepared a disclosure statement relating to such Plan of Reorganization (the "Disclosure Statement"), in all respects satisfactory to the Administrative Agent and the Lenders and (iii) filed with the Bankruptcy Court a motion, in form and substance satisfactory to

the Administrative Agent and the Lenders, to schedule a date not more than sixty (60) days after the Closing Date for a hearing to approve the Disclosure Statement.

(gg) Borrower shall have submitted a Budget to Administrative Agent which has been rolled forward to cover the thirteen (13) week period from and after the Petition Date.

(hh) The projections attached hereto as Exhibit G shall be in form and substance satisfactory to Administrative Agent.

(ii) Administrative Agent's completion of its business, legal and environmental due diligence, with results satisfactory to Administrative Agent.

(jj) Administrative Agent shall be reasonably satisfied with the corporate and capital structure and management of Borrower and Guarantors and with all legal, tax, accounting and other matters relating to Borrower and Guarantors.

(kk) All representations and warranties contained herein and in the other Financing Agreements shall be true and correct as of the Closing Date.

(ll) Administrative Agent shall have received a copy of the Borrowing Base Certificate (as defined in the ABL Credit Agreement) setting forth the U.S. Borrowing Base (as defined in the ABL Credit Agreement) and any other borrowing base referenced in the ABL Credit Agreement, in each case, as of the date set forth therein (which shall not be more than three days prior to the date hereof), duly authorized, executed and delivered by the Borrower.

(mm) No injunction, writ, restraining order, or other order, judgment or decree of any nature (whether temporary, preliminary or permanent) restricting or prohibiting, directly or indirectly, the execution of this Agreement or the consummation of the transactions contemplated hereunder shall have been issued and remain in force by any Governmental Authority (including, without limitation, the Bankruptcy Court) against any Newark Group Party, Agent or any Lender, and this Agreement shall not violate any requirement of applicable laws.

(nn) No law, regulation, order, judgment or decree of any Governmental Authority shall exist, and no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or Governmental Authority, which (i) purports to enjoin, prohibit, restrain or otherwise affect (A) the making of the Loans, or (B) the consummation of the transactions contemplated pursuant to the terms hereof or the other Financing Agreements or (ii) has or has a reasonable likelihood of having a Material Adverse Effect.

(oo) Payment to Administrative Agent and Lenders, in cash, of all interest, fees, costs and expenses accrued, assessed and/or owed by the Borrower or any Guarantor to the Lenders and Administrative Agent under this Agreement and the Financing Agreements through the Closing Date, including without limitation, payment of the fees set forth in the Fee Letter required to be paid on or before the Closing Date, all of which, for avoidance of doubt, may be paid by the Borrower from proceeds of the Loan.

## **SECTION 5**

### **GRANT AND PERFECTION OF SECURITY INTEREST**

#### **Section 5.1            Grant of Security Interest.**

To secure payment and performance of all Obligations, each Credit Party hereby grants to Collateral Agent, for the benefit of Collateral Agent, the Lenders and Administrative Agent, a continuing

security interest in, a lien upon, and a right of set off against, and hereby assigns to Collateral Agent, for the benefit of itself, the Lenders and Administrative Agent, as security, all of its right, title and interest in, to and under all personal property, real property and other interests of such Credit Party, whether now owned or hereafter acquired or existing, and wherever located (collectively, the "Collateral"), including without limitation:

- (a) all Accounts;
- (b) all general intangibles, including, without limitation, all Intellectual Property;
- (c) all goods, including, without limitation, Inventory and Equipment;
- (d) all Mortgaged Property and other fixtures;
- (e) all chattel paper, including, without limitation, all tangible and electronic chattel paper;
- (f) all instruments, including, without limitation, all promissory notes;
- (g) all documents;
- (h) all deposit accounts, including, without limitation, any deposit account holding Cash Collateral;
- (i) all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;
- (j) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of Receivables and other Collateral, including (i) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (ii) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (iii) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables or other Collateral, including returned, repossessed and reclaimed goods, and (iv) deposits by and property of account debtors or other persons securing the obligations of account debtors;
- (k) all (i) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts); provided, that the Capital Stock of the Domestic Subsidiaries of the Borrower (and 65% of the Voting Stock (and all other Capital Stock) of Newark Paperboards Products, Ltd.) is being pledged pursuant to the Pledge Agreement and 65% of the Voting Stock (and all other Capital Stock) of Newark B.V. is being pledged pursuant to the Dutch Deed of Pledge and in the event of any conflict between the terms of this Agreement and the terms of the Pledge Agreement and/or the Dutch Deed of Pledge with respect to such pledge, the terms of the Pledge Agreement or the Dutch Deed of Pledge, as applicable, shall control and (ii) monies, credit balances, deposits and other property of any Credit Party now or hereafter held or received by or in transit to Administrative Agent, Collateral Agent any Lender or its Affiliates or at any other depository or other institution from or for the account of any Credit Party, whether for safekeeping, pledge, custody, transmission, collection or otherwise;
- (l) all commercial tort claims, including, without limitation, those identified in the Information Certificate;

(m) to the extent not otherwise described above, all Receivables; all present and future claims, rights, interests, assets and properties recovered by or on behalf of Borrower or any Guarantor, or any successor or assignor of Borrower or such Guarantor, including, without limitation, any trustee of Borrower or any Guarantor (whether in a Case or any subsequent case to which any Case is converted), including, without limitation (i) all such property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to the Bankruptcy Code, applicable law, or otherwise, including without limitation Sections 542, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code and (ii) all claims by or on behalf of Borrower or any Guarantor against any officer, director or other person or party for acts of negligence, misconduct or malfeasance, including, without limitation, breach of fiduciary duty, breach of the duty of loyalty, waste, mismanagement or misconduct of any kind, nature or description, including, a breach of the terms and conditions of any of the Financing Agreements;

(n) all Records; and

(o) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

To secure payment and performance of all Obligations, each Credit Party hereby grants to each Control Agent, for itself and the benefit of Lenders, Collateral Agent and Administrative Agent, a continuing security interest in, a lien upon, and a right of set off against, and hereby assigns to each Control Agent, for itself and the benefit of Lenders, Collateral Agent and Administrative Agent, as security, all Control Collateral of each Credit Party, whether now owned or hereafter acquired or existing, and wherever located.

Notwithstanding anything in this Section 5.1 to the contrary, in no event shall the Collateral include or the security interest granted under this Section 5.1 attach to (a) any lease, license, contract, property rights or agreement to which any Credit Party is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of such Credit Party therein or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Code) or principles of equity); or (b) any of the outstanding capital stock of a controlled foreign corporation as defined in Section 957(a) of the Code in excess of 65% (or such other amount as would result in adverse tax consequences for any Credit Party) of the voting power of all classes of capital stock of such controlled foreign corporation entitled to vote.

## **Section 5.2            Perfection of Security Interests.**

(a) Each Credit Party irrevocably and unconditionally authorizes Administrative Agent and Collateral Agent (or their respective agents) to file at any time and from time to time such financing statements with respect to the Collateral naming Collateral Agent or its designee as the secured party and such Credit Party as debtor, as Administrative Agent or Collateral Agent may require, and including any other information with respect to such Credit Party or otherwise required by part 5 of Article 9 of the Uniform Commercial Code of such jurisdiction as Administrative Agent or Collateral Agent may determine (and, solely with respect to the Newark Paperboards Capital Stock, as required under the PPSA), together with any amendment and continuations with respect thereto, which authorization shall apply to all financing statements filed on, prior to or after the date hereof. Each Credit Party hereby ratifies and approves all financing statements naming Collateral Agent or its designee as secured party and such Credit Party, as the case may be, as debtor with respect to the Collateral (and any

amendments with respect to such financing statements) filed by or on behalf of Collateral Agent prior to the date hereof and ratifies and confirms the authorization of Collateral Agent and Administrative Agent to file such financing statements (and amendments, if any). Each Credit Party hereby authorizes Collateral Agent and Administrative Agent to adopt on behalf of such Credit Party any symbol required for authenticating any electronic filing. In the event that the description of the collateral in any financing statement naming Collateral Agent, Administrative Agent or its designee as the secured party and any Credit Party as debtor includes assets and properties of such Credit Party that do not at any time constitute Collateral, whether hereunder, under any of the other Financing Agreements or otherwise, the filing of such financing statement shall nonetheless be deemed authorized by such Credit Party to the extent of the Collateral included in such description and it shall not render the financing statement ineffective as to any of the Collateral or otherwise affect the financing statement as it applies to any of the Collateral. In no event shall any Credit Party at any time file, or permit or cause to be filed, any correction statement or termination statement with respect to any financing statement (or amendment or continuation with respect thereto) naming Collateral Agent, Administrative Agent or its designee as secured party and such Credit Party or any other Credit Party as debtor.

(b) No Credit Party has any chattel paper (whether tangible or electronic) or instruments as of the date hereof, except as set forth in the Information Certificate. In the event that any Credit Party shall be entitled to or shall receive any chattel paper or instrument with an individual value of more than \$300,000 or an aggregate value of more than \$5,000,000 after the date hereof, the Credit Parties shall promptly notify Administrative Agent thereof in writing. Promptly upon the receipt thereof by or on behalf of any Credit Party (including by any agent or representative), such Credit Party shall deliver, or cause to be delivered to Collateral Agent, all tangible chattel paper and instruments with an individual value of more than \$300,000 or an aggregate value of more than \$5,000,000 that such Credit Party has or may at any time acquire, accompanied by such instruments of transfer or assignment duly executed in blank as Collateral Agent or Administrative Agent may from time to time specify, in each case except as Administrative Agent may otherwise agree. At Administrative Agent's option, each Credit Party shall, or Administrative Agent may at any time on behalf of any Credit Party, cause the original of any such instrument or chattel paper to be conspicuously marked in a form and manner acceptable to Administrative Agent with the following legend referring to chattel paper or instruments as applicable: "This [chattel paper][instrument] is subject to the security interest of ORIX Finance Corp. and any sale, transfer, assignment or encumbrance of this [chattel paper][instrument] violates the rights of such secured party."

(c) In the event that any Credit Party shall at any time hold or acquire an interest in any electronic chattel paper or any "transferable record" (as such term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction) with an individual value of more than \$300,000 or an aggregate value of more than \$5,000,000, such Credit Party shall promptly notify Administrative Agent thereof in writing. Promptly upon Administrative Agent's request, such Credit Party shall take, or cause to be taken, such actions as Administrative Agent may request to give Collateral Agent or the applicable Control Agent control of such electronic chattel paper under Section 9-105 of the UCC and control of such transferable record under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as in effect in such jurisdiction.

(d) Each Credit Party does not have any deposit accounts as of the date hereof, except as set forth in the Information Certificate. The Credit Parties shall not, directly or indirectly, after the date hereof open, establish or maintain any deposit account unless each of the following conditions is satisfied: (i) Administrative Agent shall have received not less than five (5) Business Days prior written notice of the intention of any Credit Party to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Administrative Agent the name of the account, the owner of the account, the name and address of the bank at which such account is to be opened or established, the

individual at such bank with whom such Credit Party is dealing and the purpose of the account, (ii) the bank where such account is opened or maintained shall be acceptable to Administrative Agent, and (iii) on or before the opening of such deposit account, such Credit Party shall as Administrative Agent may specify either (A) deliver to Administrative Agent an Account Control Agreement with respect to such deposit account duly authorized, executed and delivered by such Credit Party, the bank at which such deposit account is opened and maintained and either the applicable Control Agent or the ABL Administrative Agent and Collateral Agent or (B) arrange for Administrative Agent, the applicable Control Agent or Collateral Agent to become the customer of the bank with respect to the deposit account on terms and conditions acceptable to Administrative Agent. The terms and representations of subsection (d)(iii) above shall not apply to (i) deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Credit Party's employees, (ii) other zero balance accounts, and (iii) other deposit accounts so long as at any time the balance in any such account does not exceed \$250,000 and the aggregate balance in all such accounts does not exceed \$1,000,000 at any time (the deposit accounts described in clauses (i), (ii) and (iii) being referred to collectively as the "Excluded Deposit Accounts").

(e) No Credit Party owns or holds, directly or indirectly, beneficially or as record owner or both, any investment property, as of the date hereof, or have any investment account, securities account, commodity account or other similar account with any bank or other financial institution or other securities intermediary or commodity intermediary as of the date hereof, in each case except as set forth in the Information Certificate.

(i) In the event that any Credit Party shall be entitled to or shall at any time after the date hereof hold or acquire any certificated securities, such Credit Party shall promptly endorse, assign and deliver the same to Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as Administrative Agent or Collateral Agent may from time to time specify. If any securities, now or hereafter acquired by any Credit Party are uncertificated and are issued to such Credit Party or its nominee directly by the issuer thereof, such Credit Party shall immediately notify Administrative Agent thereof and shall as Administrative Agent may specify, either (A) cause the issuer to agree to comply with instructions from either the applicable Control Agent or the ABL Administrative Agent and Collateral Agent as to such securities, without further consent of any Credit Party or such nominee, or (B) arrange for Administrative Agent, the applicable Control Agent or Collateral Agent to become the registered owner of the securities.

(ii) The Credit Parties shall not, directly or indirectly, after the date hereof open, establish or maintain any investment account, securities account, commodity account or any other similar account (other than a deposit account) with any securities intermediary or commodity intermediary unless each of the following conditions is satisfied: (A) Administrative Agent shall have received not less than five (5) Business Days prior written notice of the intention of such Credit Party to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Administrative Agent the name of the account, the owner of the account, the name and address of the securities intermediary or commodity intermediary at which such account is to be opened or established, the individual at such intermediary with whom such Credit Party is dealing and the purpose of the account, (B) the securities intermediary or commodity intermediary (as the case may be) where such account is opened or maintained shall be acceptable to Administrative Agent, and (C) on or before the opening of such investment account, securities account or other similar account with a securities intermediary or commodity intermediary, such Credit Party shall as Administrative Agent may specify either (i) execute and deliver, and cause to be executed and delivered to Administrative Agent, an Investment Property Control Agreement with respect thereto duly authorized, executed and delivered by such Credit Party, such securities intermediary or commodity intermediary, and either the applicable Control Agent or the ABL Administrative Agent, and Collateral Agent or (ii) arrange for Administrative Agent, Collateral Agent, or the applicable Control Agent to become the entitlement holder with respect to such investment property on terms and conditions acceptable to Administrative Agent.

(f) The Credit Parties are not the beneficiary or otherwise entitled to any right to payment under any letter of credit, banker's acceptance or similar instrument as of the date hereof with an individual value of more than \$250,000 or an aggregate value of more than \$1,000,000, except as set forth in the Information Certificate. In the event that any Credit Party shall be entitled to or shall receive any right to payment under any letter of credit, banker's acceptance or any similar instrument with an individual value of more than \$250,000 or an aggregate value of more than \$1,000,000, whether as beneficiary thereof or otherwise after the date hereof, such Credit Party shall promptly notify Administrative Agent thereof in writing. Such Credit Party shall immediately, as Administrative Agent may specify, either (i) deliver, or cause to be delivered to Administrative Agent, with respect to any such letter of credit, banker's acceptance or similar instrument, the written agreement of the issuer and any other nominated person obligated to make any payment in respect thereof (including any confirming or negotiating bank), in form and substance satisfactory to Administrative Agent, consenting to the assignment of the proceeds of the letter of credit to Collateral Agent by such Credit Party and agreeing to make all payments thereon directly to Collateral Agent or as Administrative Agent may otherwise direct or (ii) cause Administrative Agent or Collateral Agent to become, at Borrower's expense, the transferee beneficiary of the letter of credit, banker's acceptance or similar instrument (as the case may be).

(g) The Credit Parties do not have any commercial tort claims as of the date hereof, except as set forth in the Information Certificate. In the event that any Credit Party shall at any time after the date hereof have any commercial tort claims with an amount in controversy in excess of \$500,000, such Credit Party shall promptly notify Administrative Agent thereof in writing, which notice shall (i) set forth in reasonable detail the basis for and nature of such commercial tort claim and (ii) include the express grant by such Credit Party to Administrative Agent and Collateral Agent, for the benefit of themselves and the Lenders, of a security interest in such commercial tort claim (and the proceeds thereof). In the event that such notice does not include such grant of a security interest, the sending thereof by such Credit Party to Administrative Agent and/or Collateral Agent shall be deemed to constitute such grant to Administrative Agent and Collateral Agent. Upon the sending of such notice, any commercial tort claim described therein shall constitute part of the Collateral and shall be deemed included therein. Without limiting the authorization of Administrative Agent or Collateral Agent provided in Section 5.2(a) hereof or otherwise arising by the execution by such Credit Party of this Agreement or any of the other Financing Agreements, Administrative Agent and Collateral Agent are hereby irrevocably authorized from time to time and at any time to file such financing statements naming Collateral Agent or its designee as secured party and such Credit Party as debtor, or any amendments to any financing statements, covering any such commercial tort claim as Collateral. In addition, each Credit Party shall promptly upon Administrative Agent's request, execute and deliver, or cause to be executed and delivered, to Administrative Agent such other agreements, documents and instruments as Administrative Agent may require in connection with such commercial tort claim.

(h) The Credit Parties do not have any goods, documents of title or other Collateral in the custody, control or possession of a third party as of the date hereof, except as set forth in the Information Certificate and except for goods located in the United States in transit to a location of a Credit Party permitted herein in the ordinary course of business of such Credit Party in the possession of the carrier transporting such goods. In the event that any goods, documents of title or other Collateral with a value in the aggregate in excess of \$250,000 are at any time after the date hereof in the custody, control or possession of any other person not referred to in the Information Certificate or such carriers, the Credit Parties shall promptly notify Administrative Agent thereof in writing. Promptly upon Administrative Agent's request, the Credit Parties shall deliver to Administrative Agent a Collateral Access Agreement duly authorized, executed and delivered by such person and Credit Party that is the owner of such Collateral.

(i) The Credit Parties shall take any other actions reasonably requested by Administrative Agent or Collateral Agent from time to time to cause the attachment, perfection (solely with respect to perfection, subject to the provisions of Article 5 hereof which limit the requirement that

the Credit Parties' perfect the Agent's liens on all of the Collateral) and, with respect to the Term Loan Priority Collateral, first priority (subject to Permitted Liens) and, with respect to the ABL Priority Collateral, second priority (behind only the liens in favor of the ABL Administrative Agent permitted by Section 9.8(k) and other Permitted Liens) of, and the ability of Collateral Agent to enforce, the security interest of Collateral Agent in any and all of the Collateral, including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC or other applicable law, to the extent, if any, that any Credit Party's signature thereon is required therefor, (ii) causing the Collateral Agent to receive (A) fully executed copies of Account Control Agreements (in accordance with Section 5.2(d) hereof), Investment Account Control Agreements, intellectual property security agreements, pledge agreements and other types of security agreements and (B) to the extent permitted under the Intercreditor Agreement, original stock certificates, tangible chattel paper and instruments, (iii) causing Collateral Agent's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of Collateral Agent to enforce, the security interest of Collateral Agent in such Collateral (it being agreed that as of the Closing Date, the Administrative Agent does not intend to require the title to any vehicles or aircraft owned by any Credit Party to be marked with Collateral Agent's name), (iv) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Collateral Agent to enforce, the security interest of Collateral Agent in such Collateral, and (v) obtaining the consents and approvals of any Governmental Authority or third party, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, and taking all actions required by any earlier versions of the UCC or by other law, as applicable in any relevant jurisdiction.

(j) The Credit Parties do not own any right, title or interest in any real property other than as specified in Schedule 8.2 of the Information Certificate.

(k) Notwithstanding any other provisions set forth herein or in any other Financing Agreement, the liens and security interests granted under Financing Agreements governed by foreign law shall be subject to the exceptions and limitations set forth in such Financing Agreements and, to the extent appropriate in the applicable jurisdiction, as agreed between the Collateral Agent and the Borrower.

(l) Promptly upon Borrower receiving Agent's written request therefor, and in any case, within twenty (20) days after receiving such written request from Agent, Credit Parties shall have (i) filed all applicable financing statements in all applicable jurisdictions to perfect their security interest in any goods that such Credit Parties have consigned to consignees, (ii) notified, in writing, all secured parties of such consignees of Credit Parties' security interest therein and (iii) upon payment in full of the ABL Obligations, assigned such financing statements to Agent, provided, however, that (A) the Agent shall not send such written request to the Borrower until Credit Parties have goods on consignment in excess of \$4,000,000 at such time and (B) such written request shall only apply to consigned goods in excess of \$1,500,000.

### **Section 5.3                      Control Collateral Held by a Control Agent.**

Notwithstanding any provision to the contrary herein, any Collateral that constitutes Control Collateral that is held by a Collateral Agent or Administrative Agent hereunder shall be deemed to be held by such Control Agent in accordance with the Intercreditor Agreement.

### **Section 5.4                      Intercreditor Provisions.**

Notwithstanding anything herein to the contrary, the lien and security interest granted to Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by Collateral Agent or Administrative Agent hereunder are subject to the provisions of the Intercreditor Agreement, as the

same may be amended, supplemented, modified or replaced from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern.

**Section 5.5                      Effect of Financing Order.**

(a) The liens and security interests referred to in this Agreement and the other Financing Agreements with respect to Borrower and Guarantors shall be deemed valid, enforceable in accordance with their terms and perfected by entry of the Financing Order.

(b) The liens, security interests, lien priorities, administrative priorities and other rights and remedies granted to Collateral Agent pursuant to this Agreement, the Financing Agreements and the Financing Order (specifically including but not limited to the existence, perfection and priority of the liens and security interests 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 debt by Borrower or Guarantors (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Case(s), or by any other act or omission whatever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(i) except (A) for the amounts included in the Carve-Out, including amounts payable to professional persons and costs of administration which have been or may be incurred in the Case(s) or any conversion of the same or in any other proceedings related thereto to the extent of the Carve-Out, (B) the liens of ABL Administrative Agent under the ABL Credit Agreement to secure the ABL Obligations and that are subject to the Intercreditor Agreement, and (C) liens of record as of the date of the commencement of the Case(s) that are set forth in Schedule 8.4 to the Information Certificate **[subject to verification that liens on Schedule 8.4 are valid and enforceable liens that have priority over existing term loan liens]**, no priority claims, are or will be prior to or on a parity with any claim in respect of any of the Obligations;

(ii) the liens and security interests in favor of Collateral Agent set forth herein, and in the other Financing Agreements, shall constitute valid and perfected first priority liens and security interests and shall be prior to all other liens and interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatever (other than liens, security interests and encumbrances permitted hereunder to the extent that such liens, security interests and encumbrances have priority under applicable law and other than the liens, security interests and encumbrances in favor of ABL Administrative Agent with respect to the ABL Priority Collateral to secure the ABL Obligations and the Carve-Out), and

(iii) subject to the Intercreditor Agreement, the security interests and liens upon the Collateral in favor of Collateral Agent as set forth in this Agreement and in the other Financing Agreements shall constitute valid and perfected first priority security interests in all of Priority Collateral and valid perfected second priority security interests in all of the ABL Priority Collateral, without the necessity that Collateral Agent file financing statements or otherwise perfect its liens and security interests under applicable non-bankruptcy law.

(c) The security interests of Collateral Agent hereunder and under the other Financing Agreements shall be subordinate to the payment of the following (such amounts being the "Carve-Out"): (i) fees pursuant to Section 1930 of Title 28 of the United States Code and to the Clerk of the Bankruptcy Court, and (ii) allowed and unpaid claims of professionals whose retention is approved by the Bankruptcy Court during the Case(s) pursuant to Sections 327 and 1103 of the Bankruptcy Code for unpaid fees and expenses that are approved by order of the Bankruptcy Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code; provided, that, (A) such allowed fees and expenses incurred, in

accordance with the Budget, after an Event of Default shall not exceed \$2,000,000 (plus any retainers remitted by Borrower or any Guarantor prior to the Closing Date that have not been exhausted, in accordance with the terms of the Financing Order) in the aggregate, for purposes of constituting a part of the Carve-Out, (B) the Carve-Out shall not include, apply to, or be available for any fees or expenses incurred by any party, including Borrower or any Guarantor, any committee or any professional, in connection with (1) the investigation, initiation or prosecution of any claims or defenses against Administrative Agent, Collateral Agent or any Lender, or preventing, hindering, or delaying the assertion of enforcement of any lien, claim, right or security interest or realization upon any Collateral by Administrative Agent, Collateral Agent or any Lender, (2) a request to use cash collateral (as such term is defined in Section 363 of the Bankruptcy Code) without the prior written consent of Administrative Agent, (3) a request, without the prior written consent of Administrative Agent, for authorization to obtain Debtor-in-possession financing or other financial accommodations pursuant to Section 364(c) or (d) of the Bankruptcy Code that does not indefeasibly repay in full in cash the Obligations on terms and conditions acceptable to Administrative Agent, or (4) any act which has the effect of materially or adversely modifying or compromising the rights and remedies of Administrative Agent, Collateral Agent or any Lender as set forth herein and in the other Financing Agreements, or which results in the occurrence of an Event of Default and (C) in the event of any inconsistency in the definition of Carve-Out between the provisions of this Agreement and the Financing Order, the Financing Order shall govern. The foregoing shall not be construed as consent to the allowance of any fees and expenses referred to above and shall not affect the right of Administrative Agent to object to the allowance and payment of such amounts.

## **SECTION 6 COLLECTION AND ADMINISTRATION**

### **Section 6.1            Borrower's Loan Accounts.**

Administrative Agent shall maintain one or more loan account(s) on its books in which shall be recorded (a) all Loans and other Obligations and the Collateral, (b) all payments made by or on behalf of the Borrower or any Guarantor and (c) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest. All entries in the loan account(s) shall be made in accordance with Administrative Agent's customary practices as in effect from time to time.

### **Section 6.2            Statements.**

Administrative Agent shall render to Borrower each month a statement setting forth the balance in Borrower's loan account(s) maintained by Administrative Agent for Borrower pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall be subject to subsequent adjustment by Administrative Agent but shall, absent manifest errors or omissions, be considered correct and deemed accepted by the Borrower and Guarantors and conclusively binding upon the Borrower and the Guarantors as an account stated except to the extent that Administrative Agent receives a written notice from Borrower of any specific exceptions of Borrower thereto within thirty (30) days after the date such statement has been received by the Borrower. Until such time as Administrative Agent shall have rendered to Borrower a written statement as provided above, the balance in Borrower's loan account(s) shall be presumptive evidence of the amounts due and owing to Administrative Agent and Lenders by the Borrower and Guarantors.

### **Section 6.3            Reserved.**

### **Section 6.4            Payments.**

(a) All payments (including prepayments) to be made by Borrower on account of principal, interest, fees and other amounts required hereunder shall be made without set-off, recoupment,

counterclaim or deduction of any kind, shall except as otherwise expressly provided herein, be made to Administrative Agent (for the ratable account of the Lenders in accordance with subsection 6.4(b)) at the address for payment specified in the signature page hereof in relation to Administrative Agent (or such other address as Administrative Agent may from time to time specify in accordance with Section 13.3), and shall be made in Dollars and in immediately available funds, no later than 10:30 a.m. (Dallas, Texas time) on the date due. Any payment which is received by Administrative Agent later than 10:30 a.m. (Dallas, Texas time) shall be deemed to have been received on the immediately succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Except for payments collected or received prior to the occurrence of an Event of Default in respect of a specific Obligation, all amounts collected or received by Administrative Agent shall be applied as follows: first, to pay any fees, indemnities or expense reimbursements then due to Administrative Agent and Collateral Agent from Borrower or any Guarantor pursuant to the terms of the Financing Agreements, second, to pay any fees, indemnities or expense reimbursements then due to Lenders from the Borrower or any Guarantor pursuant to the terms of the Financing Agreements; third, to pay interest due in respect of any Loans; fourth, to pay principal due in respect of the Loans; and fifth, to pay or prepay any other Obligations whether or not then due, in such order and manner as Administrative Agent determines. Notwithstanding anything to the contrary contained in this Agreement, (i) unless so directed by Borrower, required by law or unless so directed by Administrative Agent or Required Lenders during the continuance of a Default or an Event of Default, Administrative Agent shall not apply any payments which it receives to any Eurodollar Rate Loans, except (A) on the expiration date of the Interest Period applicable to any such Eurodollar Rate Loans or (B) in the event that there are no outstanding Prime Rate Loans and (ii) to the extent Borrower uses any proceeds of the Loans to acquire rights in or the use of any Collateral or to repay any Indebtedness used to acquire rights in or the use of any Collateral, principal payments in respect of the Loans shall be deemed applied first to principal arising from Loans that were not used for such purposes and second to the principal from Loans the proceeds of which were used to acquire rights in or the use of any Collateral in the chronological order in which Borrower acquired such rights in or the use of such Collateral.

(c) Without limiting the Borrower's obligation to timely pay all principal, interest, fees, costs, expenses and other charges provided for in this Agreement and the other Financing Agreements, and without limiting or waiving any payment Defaults or any corresponding Events of Default, at Administrative Agent's option, all principal, interest, fees, costs, expenses and other charges provided for in this Agreement or the other Financing Agreements may be charged directly to the loan account(s) of Borrower maintained by Administrative Agent. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, Administrative Agent or any Lender is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by Administrative Agent or such Lender. The Borrower and the Guarantors shall be liable to pay to Administrative Agent, and do hereby indemnify and hold Administrative Agent and Lenders harmless for the amount of any payments or proceeds surrendered or returned. This Section 6.4(b) shall remain effective notwithstanding any contrary action which may be taken by Administrative Agent or any Lender in reliance upon such payment or proceeds. This Section 6.4 shall survive the payment of the Obligations and the termination of this Agreement.

(d) Provided that such Lender has made all payments required to be made by it under this Agreement, Administrative Agent will pay to such Lender, by wire transfer to such Lender's account (as specified by such Lender on such Lender's respective signature page to this Agreement or the applicable Assignment and Assumption) such Lender's Pro Rata Share of principal and interest, in each instance, received by Administrative Agent, promptly after Administrative Agent's receipt thereof.

(e) Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to the Lenders hereunder that Borrower will not make such payment in full as and when required hereunder, Administrative Agent may assume that Borrower has made such payment in full to Administrative Agent on such date in immediately available funds and Administrative Agent may (but shall not be so required), in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If Administrative Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Administrative Agent from Borrower and such related payment is not received by Administrative Agent, Administrative Agent shall be entitled to recover such amount from such Lender, and such Lender shall repay to Administrative Agent on demand such amount, together with interest thereon for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to Administrative Agent, at the Federal Funds Rate, without setoff, recoupment, counterclaim or deduction of any kind. If Administrative Agent determines at any time that any amount received by Administrative Agent under this Agreement must be returned to Borrower or paid to any other Person pursuant to any solvency, fraudulent conveyance or similar law or otherwise, then, notwithstanding any other term or condition of this Agreement, Administrative Agent will not be required to distribute any portion of such payment to any Lender. In addition, each Lender will repay to Administrative Agent on demand any portion of such amount that Administrative Agent has distributed to such Lender, together with interest thereon at such rate, if any, as Administrative Agent is required to pay to Borrower or such other Person, without setoff, recoupment, counterclaim or deduction of any kind. This Section 6.4 shall survive the payment of the Obligations and the termination of this Agreement.

(f) Notwithstanding any provision in this Agreement or any other Financing Agreement to the contrary, if a court of competent jurisdictions determines that as a result of inequitable conduct on the part of a Lender the Obligations owing to such Lender are voided or subordinated to Indebtedness or other amounts that rank junior to the Obligations, then no payments shall be made to such Lender with respect to such Obligations until all other outstanding Obligations owing to the other Lenders have been paid in full (and all payments made with respect to such Obligations shall be applied to such other outstanding Obligations until paid in full). This Section 6.4 shall survive the payment of the Obligations and the termination of this Agreement.

## **Section 6.5      Taxes.**

(a) Except as provided in Section 6.5(g), any and all payments to any Lender or Administrative Agent by or on account of any of the Obligations shall be made free and clear of and without deduction or withholding for or on account of, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any Governmental Authority or by any political subdivision or taxing authority thereof or therein with respect to such payments, excluding (i) in the case of each Lender and Administrative Agent (A) taxes imposed on or measured by its net income, and franchise taxes imposed on it, by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender or Administrative Agent (as the case may be) is organized and (B) any United States federal withholding taxes payable with respect to payments under the Financing Agreements under laws (including any statute, treaty or regulation) in effect on the date hereof (or, in the case of an Eligible Transferee, the date of the Assignment and Acceptance) applicable to such Lender or Administrative Agent, as the case may be, but not excluding any United States withholding taxes payable as a result of any change in such laws occurring after the date hereof (or the date of such Assignment and Acceptance) and (ii) in the case of each Lender, taxes imposed on or measured by its net income, and franchise taxes imposed on it as a result of a present or former connection between such Lender and the jurisdiction of the Governmental Authority imposing such tax or any taxing authority thereof or therein (other than any such connection arising solely from such Lender having executed, delivered, or performed its obligations or received payment under, or enforced its rights and remedies

under, the Financing Agreements) (all such non-excluded taxes, levies, imposts, fees, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes").

(b) If any Taxes shall be required by law to be deducted from or in respect of any sum payable in respect of the Obligations to any Lender or Administrative Agent then (i) except as provided in Section 6.5(g), the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 6.5), such Lender or 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 Credit Party shall make such deductions, (iii) the relevant Credit Party shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law and (iv) the relevant Credit Party shall deliver to Administrative Agent evidence of such payment.

(c) In addition, each Credit Party agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies of the United States or any political subdivision thereof or any applicable foreign jurisdiction, and all liabilities with respect thereto, in each case arising from any payment made hereunder or under any of the other Financing Agreements or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any of the other Financing Agreements (collectively, "Other Taxes").

(d) Except as provided in Section 6.5(g), each Credit Party shall indemnify each Lender and Administrative Agent for the full amount of Taxes and Other Taxes (including any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 6.5) paid by such Lender or 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 Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days from the date such Lender or Administrative Agent (as the case may be) makes written demand therefor. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent) or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) As soon as practicable after any payment of Taxes or Other Taxes by any Credit Party, such Credit Party shall furnish to Administrative Agent, at its address referred to herein, the original or a certified copy of a receipt evidencing payment thereof.

(f) Without prejudice to the survival of any other agreements of any Credit Party hereunder or under any of the other Financing Agreements, the agreements and obligations of such Credit Party contained in this Section 6.5 shall survive the termination of this Agreement and the payment in full of the Obligations.

(g) 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 resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any of the other Financing Agreements shall deliver to each of Borrower and Administrative Agent, at the time or times prescribed by applicable law or reasonably requested by Borrower or Administrative Agent (in such number of copies as is reasonably requested by the recipient), whichever of the following is applicable (but only if such Foreign Lender is legally entitled to do so): (i) duly completed copies of Internal Revenue Service Form W-8BEN (or any successor form) claiming exemption from, or a reduction to, withholding tax under an income tax treaty; (ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any successor form) claiming exemption from withholding because the income is effectively connected with the conduct of a United States trade or business; (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Sections 871(h) or 881(c) of the Code, (A) a certificate of the Lender to the effect that such Lender is not a "bank" within the meaning of

Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the Code or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN (or any successor form) claiming exemption from withholding under the portfolio interest exemption; or (iv) any other applicable form, certificate or document prescribed by applicable law as a basis for claiming exemption from or a reduction in United States withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit Borrower to determine the withholding or deduction required to be made. In addition, each Foreign Lender agrees that it will deliver upon Borrower's request updated versions of the foregoing, as applicable, whenever the previous certification has become obsolete or inaccurate in any material respect, together with such other forms as may be required in order to confirm or establish the entitlement of such Foreign Lender to a continued exemption from or reduction in United States withholding tax with respect to payments under this Loan and Security Agreement and any Obligation. Notwithstanding the foregoing provisions of this Section 6.5, but subject to the immediately following sentence, (x) Borrower shall be entitled, to the extent it is required to do so by law, to deduct or withhold Taxes imposed by the United States (or any political subdivision or taxing authority thereof or therein) from interest, fees or other amounts payable hereunder for the account of any Foreign Lender to the extent that such Foreign Lender has not provided to Borrower U.S. Internal Revenue Service Forms that establish a complete exemption from such deduction or withholding and (y) Borrower shall not be obligated pursuant to this Section 6.5 to indemnify or otherwise pay such Foreign Lender in respect of Taxes imposed by the United States if such Foreign Lender has not provided to Borrower the U.S. Internal Revenue Service Forms required to be provided to Borrower pursuant to this Section 6.5 or to the extent that such Forms do not establish a complete exemption from withholding of such Taxes. Notwithstanding anything to the contrary contained in the preceding sentence or elsewhere in this Section 6.5, the Borrower agrees to pay additional amounts and to indemnify each Lender in the manner set forth in Sections 6.5(a) and 6.5(d) (without regard to the identity of the jurisdiction requiring the deduction or withholding) in respect of any amounts deducted or withheld by it as described in the immediately preceding sentence as a result of any changes after the Closing Date in any applicable law, treaty, governmental rule, regulation, guideline or order, or in the interpretation thereof.

(h) Any Lender that is not a Foreign Lender and is not an "exempt recipient" within the meaning of Treasury Regulation Section 1.6049-4(c) shall deliver to each of the Borrower and Administrative Agent a duly completed Internal Revenue Service Form W-9 on or before it becomes a party to this Agreement.

(i) Any Lender claiming any additional amounts payable pursuant to this Section 6.5 shall use its reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its applicable lending office and to take any other action if such change or other action would avoid the need for, or reduce the amount of, any such additional amounts that would be payable or may thereafter accrue pursuant to Section 6.5 and would not, in the sole determination of such Lender, be otherwise disadvantageous in any material respect to such Lender.

(j) So long as no Event of Default has occurred and is continuing, if Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by a Credit Party or with respect to which a Credit Party has paid additional amounts pursuant to this Section 6.5, it shall pay over such refund to the applicable Credit Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under this Section 6.5 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that each Credit Party, upon the request of Administrative Agent or such Lender, agrees to repay the amount paid over to such Credit Party (plus any penalties, interest or other charges imposed by the relevant governmental authority) to Administrative Agent or such Lender in the event Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 6.5 shall not

be construed to require Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to any Credit Party or any other Person.

**Section 6.6                    Reserved.**

**Section 6.7                    Use of Proceeds.**

The proceeds of the Loans made under this Agreement shall be used by the Borrower only: (a) to pay an amount equal to, and used to refinance, all amounts due and owing under the Existing CL Loan Agreement and to repay revolving loans under the ABL Credit Agreement, (b) to pay any costs, fees and expenses associated with this Agreement and the other Financing Agreements which have been approved by order of the Bankruptcy Court, including, but not limited to, adequate protection payments consistent with the Budget which shall be payable to the ABL Administrative Agent for the benefit of the pre-petition ABL Lenders, (c) professional costs, expenses and fees in connection with the Case(s), and (d) for working capital and other general corporate purposes of the Newark Group Parties (not otherwise prohibited under this Agreement) relating to post-petition operations of the Newark Group Parties. None of the proceeds of the Term Loans will be used, directly or indirectly, for the purpose of purchasing or carrying any margin security or for the purposes of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the Term Loans made on the Closing Date to be considered a "purpose credit" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended. No portion of the administrative expenses or priority claims in the Case(s), other than those directly attributable to the operation of the business of Borrower, including professional fees (subject to the terms of the Financing Order and this Agreement), as set forth in the Budget or to which Administrative Agent has specifically agreed, shall be funded with the Term Loans and the percentages and categories of permitted allocations of such claims and expenses shall be approved by Administrative Agent. Notwithstanding the foregoing, proceeds shall not be used by Borrower or Guarantors to affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of Administrative Agent's, Collateral Agent's and Lenders' pre-petition and/or post-petition liens, claims and rights.

**Section 6.8                    Reserved.**

**Section 6.9                    Pro Rata Treatment.**

Except to the extent otherwise provided in this Agreement or as otherwise agreed by Lenders: (a) the conversion of Loans shall be shared among the Lenders based on their respective Pro Rata Shares as to the Loans and (b) each payment on account of any Obligations to or for the account of one or more of Lenders in respect of any Obligations due on a particular day shall be allocated among the Lenders entitled to such payments based on their respective Pro Rata Shares and shall be distributed accordingly.

**Section 6.10                  Sharing of Payments, Etc.**

(a) Each Credit Party agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim Administrative Agent or any Lender may otherwise have, each Lender shall be entitled, at its option (but subject, as among Administrative Agent and Lenders, to the provisions of Section 12.3(b) hereof), to offset balances held by it for the account of such Credit Party at any of its offices, in dollars or in any other currency, against any principal of or interest on any Loans or other Obligations owed to such Lender or any other amount payable to such Lender hereunder, that is not paid when due (regardless of whether such balances are then due to such Credit Party), in which case it

shall promptly notify Borrower and Administrative Agent thereof; provided, that, such Lender's failure to give such notice shall not affect the validity thereof.

(b) If any Lender (including Administrative Agent) shall obtain from any Credit Party payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any of the other Financing Agreements through the exercise of any right of setoff, banker's lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received more than its Pro Rata Share of the principal of the Loans or more than its share of such other amounts then due hereunder or thereunder by any Credit Party to such Lender than the percentage thereof received by any other Lender, it shall promptly pay to Administrative Agent, for the benefit of Lenders, the amount of such excess and simultaneously purchase from such other Lenders a participation in the Loans or such other amounts, respectively, owing to such other Lenders (or such interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) in accordance with their respective Pro Rata Shares or as otherwise agreed by Lenders. To such end all Lenders shall make appropriate adjustments among themselves (by the resale of participation sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) Each Credit Party agrees that any Lender purchasing a participation (or direct interest) as provided in this Section may exercise, in a manner consistent with this Section, all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any right of setoff, banker's lien, counterclaims or similar rights or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other Indebtedness or obligation of any Credit Party. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, assign such rights to Administrative Agent for the benefit of Lenders and, in any event, exercise its rights in respect of such secured claim in a manner consistent with the rights of Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

**Section 6.11      Obligations Several; Independent Nature of Lenders' Rights.**

The obligation of each Lender hereunder is several, and no Lender shall be responsible for the obligation or commitment of any other Lender hereunder. Nothing contained in this Agreement or any of the other Financing Agreements and no action taken by the Lenders pursuant hereto or thereto shall be deemed to constitute the Lenders to be a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and subject to Section 12.3 hereof, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

**SECTION 7  
COLLATERAL REPORTING AND COVENANTS**

**Section 7.1      Equipment and Real Property Covenants.**

With respect to the Equipment and Real Property: (a) the Credit Parties shall keep the Equipment in good order, repair, running and marketable condition (ordinary wear and tear excepted); (b)

the Equipment is now and shall remain personal property and the Credit Parties shall not permit any material piece, or pieces, of the Equipment to be or become a part of or affixed to real property, other than Mortgaged Property; (c) each Credit Party assumes all responsibility and liability arising from the use of the Equipment; (d) the Credit Parties shall use the Equipment and Real Property with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with all applicable laws; (e) the Equipment is and shall be used in the business of the Credit Parties and not for personal, family, household or farming use; (f) the Credit Parties shall not remove any Equipment from the locations set forth or permitted herein, except to the extent necessary to have any Equipment repaired or maintained in the ordinary course of its business or to move Equipment directly from one location set forth or permitted herein to another such location and except for the movement of motor vehicles used by or for the benefit of such Credit Party in the ordinary course of business; and (g) each Credit Party assumes all responsibility and liability arising from the use of the Equipment and Real Property.

## **Section 7.2                      Power of Attorney.**

Each Credit Party hereby irrevocably designates and appoints Administrative Agent (and all persons designated by Administrative Agent) as such Credit Party's true and lawful attorney-in-fact, and authorizes Administrative Agent, in such Credit Party's or Administrative Agent's name, to, at any time an Event of Default exists or has occurred and is continuing and subject to the terms of the Intercreditor Agreement: (i) demand payment on Receivables or other Collateral, (ii) enforce payment of Receivables by legal proceedings or otherwise, (iii) exercise all of such Credit Party's rights and remedies to collect any Receivable or other Collateral, (iv) sell or assign any Receivable upon such terms, for such amount and at such time or times as Administrative Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Receivable, (vii) prepare, file and sign such Credit Party's name on any proof of claim in bankruptcy or other similar document against an account debtor or other obligor in respect of any Receivables or other Collateral, (viii) notify the post office authorities to change the address for delivery of remittances from account debtors or other obligors in respect of Receivables or other proceeds of Collateral to an address designated by Administrative Agent, and open and dispose of all mail addressed to such Credit Party and handle and store all mail relating to the Collateral and endorse such Credit Party's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Receivable or any goods pertaining thereto or any other Collateral, including any warehouse or other receipts, or bills of lading and other negotiable or non-negotiable documents, (ix) clear Inventory the purchase of which was financed with a Letter of Credit through U.S. Customs or foreign export control authorities in such Credit Party's name, Administrative Agent's name or the name of Administrative Agent's designee, and to sign and deliver to customs officials powers of attorney in such Credit Party's name for such purpose, and to complete in such Credit Party's or Administrative Agent's name, any order, sale or transaction, obtain the necessary documents in connection therewith and collect the proceeds thereof, (x) do all acts and things which are necessary, in Administrative Agent's reasonable determination, to fulfill such Credit Party's obligations under this Agreement and the other Financing Agreements, (xi) without limiting the provisions set forth in Sections 4.1(f) and 5.2(d) hereof, take control in any manner of any item of payment in respect of Receivables or constituting Collateral or otherwise received in or for deposit in a deposit account subject to an Account Control Agreement or otherwise received by Administrative Agent or any Lender, (xii) have access to any lockbox or postal box into which remittances from account debtors or other obligors in respect of Receivables or other proceeds of Collateral are sent or received, (xiii) endorse such Credit Party's name upon any items of payment in respect of Receivables or constituting Collateral or otherwise received by Administrative Agent and any Lender and deposit the same in Administrative Agent's account for application to the Obligations and (xiv) sign such Credit Party's name on any verification of Receivables and notices thereof to account debtors or any secondary obligors or other obligors in respect thereof. Each Credit Party hereby releases Administrative Agent and Lenders and their respective officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of

Administrative Agent's or any Lender's own gross negligence or willful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

**Section 7.3                    Right to Cure.**

Administrative Agent may, at its option, upon reasonable notice to Borrower, (a) cure any default by any Credit Party under any material agreement with a third party that affects the Collateral, its value or the ability of Administrative Agent to collect, sell or otherwise dispose of the Collateral or exercise the rights and remedies of Administrative Agent or any Lender therein or the ability of any Credit Party to perform its obligations hereunder or under any of the other Financing Agreements, (b) pay or bond on appeal any judgment entered against any Credit Party, (c) discharge taxes, liens, security interests or other encumbrances at any time levied on or existing with respect to the Collateral, other than Permitted Liens and (d) pay any amount, incur any expense or perform any act which, in Administrative Agent's reasonable judgment, is necessary or appropriate to preserve, protect, insure or maintain the Collateral and the rights of Collateral Agent, Administrative Agent and Lenders with respect thereto. Administrative Agent may add any amounts so expended to the Obligations and charge Borrower's account therefor, such amounts to be repayable by Borrower on demand. Administrative Agent and Lenders shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of any Credit Party. Any payment made or other action taken by Administrative Agent or any Lender under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.

**Section 7.4                    Access to Premises.**

From time to time as requested by Administrative Agent or ORIX, at the cost and expense of Borrower, (a) Administrative Agent, ORIX or their respective designees shall have complete access to all of each Credit Party's premises during normal business hours and after reasonable notice to Borrower, or at any time and without notice to Borrower if an Event of Default exists or has occurred and is continuing, for the purposes of inspecting, verifying and auditing the Collateral and all of each Credit Party's books and records, including the Records, and (b) each Credit Party shall, and shall cause Newark B.V. to, promptly furnish to Administrative Agent and/or ORIX, as applicable, such copies of such books and records or extracts therefrom as Administrative Agent and/or ORIX may request, and Administrative Agent or ORIX or their respective designees may use during normal business hours such of any Credit Party's personnel, equipment, supplies and premises as may be reasonably necessary for the foregoing and if an Event of Default exists or has occurred and is continuing for the collection of Receivables and realization of other Collateral. Administrative Agent reserves the right to conduct, in its sole discretion or at the direction of the Required Lenders, (i) up to two (2) field exams and one inventory appraisal in any twelve (12) month period at the Borrower's expense; provided that additional field exams and inventory appraisals will be permitted at the Borrower's expense at any time or times as Administrative Agent may request (A) on or after the occurrence of an Event of Default or (B) after Excess Availability falls below \$10,000,000, and (ii) additional field exams and inventory appraisals at Administrative Agent's expense.

**SECTION 8  
REPRESENTATIONS AND WARRANTIES**

Each Credit Party hereby represents and warrants to Administrative Agent and Lenders the following (which shall survive the execution and delivery of this Agreement), in each case, as of the Closing Date:

**Section 8.1                    Corporate Existence, Power and Authority.**

Each Credit Party is duly organized and in good standing under the laws of its jurisdiction of organization and is duly qualified as a foreign corporation and in good standing in all states

or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary, except for those jurisdictions in which the failure to so qualify would not have a Material Adverse Effect. The execution, delivery and performance of this Agreement, the other Financing Agreements and the transactions contemplated hereunder and thereunder (a) are all within each Credit Party's powers, (b) have been duly authorized, (c) are not in contravention of law or the terms of any Credit Party's organizational documentation, (d) are not in contravention of any enforceable provision of any material indenture, agreement or undertaking to which any Credit Party is a party or by which any Credit Party or its property are bound and (e) will not result in the creation or imposition of, or require or give rise to any obligation to grant, any lien, security interest, charge or other encumbrance upon any property of any Credit Party (other than a Permitted Lien). This Agreement and the other Financing Agreements to which any Credit Party is a party constitute legal, valid and binding obligations of such Credit Party enforceable in accordance with their respective terms, except as enforceability may be limited by applicable Debtor Relief Laws, bankruptcy, insolvency, reorganization or similar law and by general equitable principles. Newark B.V. has taken all action required to comply with the Works Councils Act of the Netherlands (*Wet op de ondernemingsraden*), and if required under Netherlands law, obtained an unconditional advice (*advies*) from the competent works council(s).

## **Section 8.2**

### **Name; State of Organization; Chief Executive Office; Collateral**

#### **Locations.**

(a) The exact legal name of each Credit Party is as set forth on the signature page of this Agreement and in the Information Certificate. No Credit Party has, during the five years prior to the date of this Agreement, been known by or used any other corporate name, been known in any material respect by any fictitious name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any material portion of its property or assets out of the ordinary course of business, except as set forth in the Information Certificate.

(b) Each Credit Party is an organization of the type and organized in the jurisdiction set forth in the Information Certificate. The Information Certificate accurately sets forth the organizational identification number of each Credit Party or accurately states that such Credit Party has none and accurately sets forth the federal employer identification number of each Credit Party.

(c) The chief executive office and mailing address of each Credit Party and each Credit Party's Records concerning Accounts are located only at the addresses identified as such in Schedule 8.2 to the Information Certificate and its only other places of business and the only other locations of Collateral, if any, are the addresses set forth in Schedule 8.2 to the Information Certificate, subject to the rights of any Credit Party to establish new locations in accordance with Section 9.2 below. The Information Certificate correctly identifies any of such locations which are not owned by a Credit Party and, to each Newark Group Party's knowledge, sets forth the owners and/or operators thereof.

## **Section 8.3**

### **Financial Statements; No Material Adverse Change.**

All quarterly and annual financial statements relating to any Newark Group Party or any Subsidiary thereof which have been or may hereafter be delivered by any Newark Group Party to Administrative Agent and Lenders have been prepared in accordance with GAAP (except as to any interim financial statements, to the extent such statements are subject to normal year-end adjustments and do not include any notes) and fairly present in all material respects the financial condition and the results of operation of such Newark Group Party and such Subsidiary as at the dates and for the periods set forth therein. There has been no act, condition or event which has had or is reasonably likely to have a Material Adverse Effect since January 31, 2010 except for the commencement of the Case(s). The projections for the fiscal years ending 2010 through 2014 that have been delivered to Administrative Agent or any projections hereafter delivered to Administrative Agent have been prepared in light of the past operations of the businesses of the Newark Group Parties and their Subsidiaries and are based upon

estimates and assumptions stated therein, all of which the Newark Group Parties have determined to be reasonable and fair in light of the then current conditions and current facts and reflect the good faith and reasonable estimates of the Newark Group Parties of the future financial performance of Borrower and its Subsidiaries and of the other information projected therein for the periods set forth therein.

**Section 8.4                      Priority of Liens; Title to Properties.**

The security interests and liens granted to Collateral Agent or the Administrative Agent under this Agreement and the other Financing Agreements constitute valid and perfected (solely with respect to perfection, subject to the provisions of Article 5 hereof which limit the requirement that the Credit Parties perfect the Agent's liens on all of the Collateral) (a) first priority liens and security interests in and upon the Term Loan Priority Collateral and (b) second priority liens and security interest in and upon the ABL Priority Collateral, in each case, subject only to the liens indicated on Schedule 8.4 to the Information Certificate and the other liens permitted under Section 9.8 hereof. Each Credit Party has good and marketable fee simple title to or valid leasehold interests in all of its Real Property and good, valid and merchantable title to all of its other properties and assets subject to no liens, mortgages, pledges, security interests, encumbrances or charges of any kind, except those granted to Collateral Agent and such others as are specifically listed on Schedule 8.4 to the Information Certificate or permitted under Section 9.8 hereof.

**Section 8.5                      Tax Returns.**

Each Newark Group Party has filed, or caused to be filed, all tax returns (federal, state, local and foreign) required to be filed and paid (a) all amounts of taxes shown thereon to be due (including interest and penalties) and (b) all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes (i) that are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP. No Newark Group Party is aware as of the Closing Date of any proposed tax assessments against any of them which, individually or in the aggregate, could reasonably be expected to have Material Adverse Effect.

**Section 8.6                      Litigation.**

(a) There is no investigation by any Governmental Authority pending, or to the best of any Newark Group Party's knowledge threatened, against or affecting any Newark Group Party, its or their assets or business; and

(b) There is no action, suit, proceeding or claim by any Person pending, or to the best of any Newark Group Party's knowledge threatened, against any Newark Group Party or its or their assets or goodwill, or against or affecting any transactions contemplated by this Agreement, in each case, which if adversely determined against such Newark Group Party has or could reasonably be expected to have a Material Adverse Effect. The only litigation pending by or against any Newark Group Party or any of their Subsidiaries is identified on Schedule 8.6 to the Information Certificate.

**Section 8.7                      Compliance with Other Agreements and Applicable Laws.**

(a) The Newark Group Parties are not in default in any respect under, or in violation in any respect of the terms of, any Material Contract. The Newark Group Parties are in compliance with the requirements of all material applicable laws, rules, regulations and orders of any Governmental Authority relating to their respective businesses, including, without limitation, those set forth in or promulgated pursuant to the Occupational Safety and Health Act of 1970, as amended, the Fair Labor Standards Act of 1938, as amended, ERISA, the Code, as amended, and the rules and regulations

thereunder, and all Environmental Laws, other than as set forth on Schedule 8.8 to the Information Certificate.

(b) The Newark Group Parties and their Subsidiaries have obtained all permits, licenses, approvals, consents, certificates, orders or authorizations of any Governmental Authority required for the lawful conduct of its business, the absence of which could reasonably be expected to cause a Material Adverse Effect (the "Permits"), provided, that Borrower is aware of certain environmental permitting issues disclosed on Schedule 8.8 to the Information Certificate, none of which Borrower believes could reasonably be expected to cause a Material Adverse Effect. All of the Permits are valid and subsisting and in full force and effect. There are no actions, claims or proceedings pending or to the best of any Newark Group Party's knowledge, threatened that seek the revocation, cancellation, suspension or modification of any of the Permits.

#### **Section 8.8            Environmental Compliance.**

(a) Except as set forth on Schedule 8.8 to the Information Certificate, the Newark Group Parties and any Subsidiary of any Newark Group Party have not generated, used, stored, treated, transported, manufactured, handled, produced, released or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which violates in any material respect any applicable Environmental Law or Permit, and the operations of the Newark Group Parties and any Subsidiary of any Newark Group Party complies in all material respects with all Environmental Laws and all Permits.

(b) Except as set forth on Schedule 8.8 to the Information Certificate, there has been no investigation by any Governmental Authority to the best of any Newark Group Party's knowledge or any proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other person nor is any pending or to the best of any Newark Group Party's knowledge threatened, with respect to any non compliance with or violation of the requirements of any Environmental Law by any Newark Group Party and any Subsidiary of any Newark Group Party or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which, in each case, adversely affects or could reasonably be expected to adversely affect in any material respect any Newark Group Party or its or their business, operations or assets or any properties at which such Newark Group Party has transported, stored or disposed of any Hazardous Materials. All Hazardous Materials used and/or stored at locations owned and/or leased by Newark Group Parties are used and/or stored (i) in the ordinary course of their business and (ii) by Newark Group Parties in compliance with all applicable Environmental Laws.

(c) Except as set forth on Schedule 8.8 to the Information Certificate, the Newark Group Parties and their Subsidiaries have no material liability (contingent or otherwise) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials.

(d) The Newark Group Parties and their Subsidiaries have all Permits required to be obtained or filed in connection with the operations of the Newark Group Parties under any Environmental Law and all of such licenses, certificates, approvals or similar authorizations and other Permits the absence of which could reasonably be expected to cause a Material Adverse Effect are valid and in full force and effect; provided, that Borrower is aware of certain environmental permitting issues disclosed on Schedule 8.8 to the Information Certificate, none of which Borrower believes could reasonably be expected to cause a Material Adverse Effect.

**Section 8.9            Employee Benefits.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or State law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service and to the best of any Newark Group Party's knowledge, nothing has occurred which could reasonably be expected to cause the loss of such qualification. Each Newark Group Party and its ERISA Affiliates have made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending, or to the best of any Newark Group Party's knowledge, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan (excluding routine audits). To the best of any Newark Group Party's knowledge, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which could reasonably be expected to have a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) based on the latest valuation of each Pension Plan and on the actuarial methods and assumptions employed for such valuation (determined in accordance with the assumptions used for funding such Pension Plan pursuant to Section 412 of the Code), the aggregate current value of accumulated benefit liabilities of such Pension Plan under Section 4001(a)(16) of ERISA does not exceed the aggregate current value of the assets of such Pension Plan by an amount which could reasonably be expected to have a Material Adverse Effect; (iii) each Newark Group Party, and their ERISA Affiliates, have not incurred and do not reasonably expect to incur, any liability to the PBGC under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) each Newark Group Party, and their ERISA Affiliates, have not incurred and do not reasonably expect to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) each Newark Group Party, and their ERISA Affiliates, have not engaged in a transaction that would be subject to 4212(c) of ERISA.

**Section 8.10            Bank Accounts.**

All of the deposit accounts, investment accounts or other accounts in the name of or used by any Credit Party maintained at any bank or other financial institution are set forth on Schedule 8.10 to the Information Certificate, subject to the right of each Credit Party to establish new accounts in accordance with Section 5.2.

**Section 8.11            Intellectual Property.**

Each Newark Group Party owns or licenses or otherwise has the right to use all Intellectual Property necessary for the operation of its business as presently conducted or proposed to be conducted. As of the date hereof, the Newark Group Parties do not have any Intellectual Property registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those described in Schedule 8.11 to the Information Certificate and has not granted any licenses with respect thereto other than as set forth in Schedule 8.11 to the Information Certificate. No event has occurred which permits or would permit after notice or passage of time or both, the revocation, suspension or termination of the right to use all Intellectual Property necessary for the operation of its business as presently conducted or proposed to be conducted. To the best of any Newark Group Party's knowledge, no slogan or other advertising device, product, process, method, substance or other Intellectual Property or goods bearing or using any material Intellectual Property presently

contemplated to be sold by or employed by any Newark Group Party infringes any patent, trademark, servicemark, tradename, copyright, license or other Intellectual Property owned by any other Person presently and no claim or litigation is pending or threatened against or affecting any Newark Group Party contesting its right to sell or use any such Intellectual Property. Schedule 8.11 to the Information Certificate sets forth all of the agreements or other arrangements of each Newark Group Party pursuant to which such Newark Group Party has a license or other right to use any trademarks, logos, designs, representations or other Intellectual Property owned by another person as in effect on the date hereof and the dates of the expiration of such agreements or other arrangements of such Newark Group Party as in effect on the date hereof (collectively, together with such agreements or other such arrangements as may be entered into by any Newark Group Party after the date hereof, collectively, the "License Agreements" and individually, a "License Agreement"). No trademark, servicemark, copyright or other Intellectual Property at any time used by any Newark Group Party which is owned by another person, or owned by such Newark Group Party is subject to any security interest, lien, collateral assignment, pledge or other encumbrance in favor of any person other than Collateral Agent, or is affixed to any Inventory, except (a) if such security interest, lien, collateral assignment, pledge or other encumbrance constitutes a Permitted Lien, (b) to the extent permitted under the term of the license agreements listed on Schedule 8.11 to the Information Certificate and (c) to the extent the sale of Inventory to which such Intellectual Property is affixed is permitted to be sold by such Newark Group Party under applicable law (including the United States Copyright Act of 1976).

**Section 8.12            Subsidiaries; Affiliates; Capitalization; Solvency.**

(a) Each Newark Group Party does not have any direct or indirect Subsidiaries or Affiliates (excluding Affiliates of any shareholders of the Borrower) and is not engaged in any joint venture or partnership except as set forth in Schedule 8.12 to the Information Certificate.

(b) Each Newark Group Party is the record and beneficial owner of all of the issued and outstanding shares of Capital Stock of each of the Subsidiaries listed on Schedule 8.12 to the Information Certificate as being owned by such Newark Group Party and there are no proxies, irrevocable or otherwise, with respect to such shares and no equity securities of any of the Subsidiaries are or may become required to be issued by reason of any options, warrants, rights to subscribe to, calls or commitments of any kind or nature and there are no contracts, commitments, understandings or arrangements by which any Subsidiary is or may become bound to issue additional shares of its Capital Stock or securities convertible into or exchangeable for such shares.

(c) The issued and outstanding shares of Capital Stock of each Newark Group Party are directly and beneficially owned and held by the persons indicated in the Information Certificate, and in each case all of such shares have been duly authorized and are fully paid and non-assessable, free and clear of all claims, liens, pledges and encumbrances of any kind, except as disclosed in writing to Administrative Agent prior to the date hereof.

**Section 8.13            Labor Disputes.**

(a) Set forth on Schedule 8.13 to the Information Certificate is a list (including dates of termination) of all collective bargaining or similar agreements between or applicable to each Newark Group Party and any union, labor organization or other bargaining agent in respect of the employees of any Newark Group Party on the date hereof.

(b) There is (i) no significant unfair labor practice complaint pending against any Newark Group Party or, to the best of any Newark Group Party's knowledge, threatened against it, before the National Labor Relations Board, and no significant grievance or significant arbitration proceeding arising out of or under any collective bargaining agreement is pending on the date hereof against any Newark Group Party or, to best of any Newark Group Party's knowledge, threatened against it, and (ii) no

significant strike, labor dispute, slowdown or stoppage is pending against any Newark Group Party or, to the best of any Newark Group Party's knowledge, threatened against any Newark Group Party.

**Section 8.14      Restrictions on Subsidiaries.**

Except for restrictions contained in this Agreement or any other agreement with respect to Indebtedness of any Newark Group Party permitted hereunder as in effect on the date hereof, there are no contractual or consensual restrictions on any Newark Group Party or any of its Subsidiaries which prohibit or otherwise restrict (a) the transfer of cash or other assets (i) between any Newark Group Party and any of its or their Subsidiaries or (ii) between any Subsidiaries of any Newark Group Party or (b) the ability of any Newark Group Party or any of its or their Subsidiaries to incur Indebtedness or grant security interests to Collateral Agent or any Lender in the Collateral. There are no contractual or consensual restrictions on Newark B.V.'s ability to make any payments on account of any of the Indebtedness evidenced by the B.V. Intercompany Notes (other than as set forth in the B.V. Intercompany Notes, as in effect on the date hereof).

**Section 8.15      Material Contracts.**

Schedule 8.15 to the Information Certificate sets forth all Material Contracts to which any Newark Group Party is a party or is bound as of the date hereof. The Newark Group Parties have delivered true, correct and complete copies of such Material Contracts to Administrative Agent on or before the date hereof. Other than with respect to the Senior Subordinated Note Indenture, the Newark Group Parties are not in breach or in default (other than a breach or default caused solely as the result on the commencement of the Case(s) and which is stayed) in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

**Section 8.16      Payable Practices.**

Each Newark Group Party has not made any material change in the historical accounts payable practices from those in effect immediately prior to the date hereof.

**Section 8.17      Accuracy and Completeness of Information.**

All information furnished by or on behalf of any Newark Group Party in writing to Administrative Agent, any Lender or the Bankruptcy Court in connection with this Agreement or any of the other Financing Agreements, or any transaction contemplated hereby or thereby or the Case(s), including all information on the Information Certificate is true and correct in all material respects on the date as of which such information is dated or certified and does not omit any material fact necessary in order to make such information not misleading. No event or circumstance has occurred which has had or could reasonably be expected to have a Material Adverse Effect, which has not been fully and accurately disclosed to Administrative Agent in writing prior to the date hereof.

**Section 8.18      Survival of Warranties; Cumulative.**

All representations and warranties contained in this Agreement or any of the other Financing Agreements shall survive the execution and delivery of this Agreement and shall be conclusively presumed to have been relied on by Administrative Agent and Lenders regardless of any investigation made or information possessed by Administrative Agent or any Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which any Newark Group Party shall now or hereafter give, or cause to be given, to Administrative Agent or any Lender.

**Section 8.19      Investment Company Act.**

No Newark Group Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. No Newark Group Party is a subject to regulation under the Federal Power Act, the Interstate Commerce Act, or any federal or state statute or regulation limiting its ability to incur the Obligations.

**Section 8.20      Indebtedness.**

Except as otherwise permitted under Section 9.9, the Newark Group Parties and their Subsidiaries have no Indebtedness.

**Section 8.21      Investments.**

All investments of each of the Newark Group Parties and its Subsidiaries are Permitted Investments.

**Section 8.22      No Burdensome Restrictions.**

None of the Newark Group Parties or their Subsidiaries is a party to any agreement or instrument or subject to any other obligation or any charter or corporate restriction or any provision of any applicable law, rule or regulation which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**Section 8.23      Brokers' Fees.**

None of the Newark Group Parties or their Subsidiaries has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with any of the transactions contemplated under the Financing Agreements, other than any fees payable to Jeffries & Co. pursuant to and in accordance with that certain Second Amended and Restated Engagement Letter dated as of April 23, 2010 by and between the Borrower and Jefferies & Co.

**Section 8.24      Security Documents.**

This Agreement and the Security Documents create valid security interests in, and liens on, the Collateral purported to be covered thereby. Except as set forth herein and in the Security Documents, such security interests and liens are currently (or will be, upon (a) the filing of appropriate financing statements with the Secretary of State of the state of incorporation or organization for each Newark Group Party and the filing of appropriate assignments or notices with the United States Patent and Trademark Office and the United States Copyright Office, in each case in favor of Collateral Agent, on behalf of itself, Administrative Agent and Lenders, (b) Collateral Agent (or the applicable Control Agent) obtaining Control or possession over those items of Collateral in which a security interest is perfected through Control or possession and (c) in the case of Financing Agreements and/or Collateral governed by foreign laws, subject to the making of all appropriate filings, recordings, endorsements, notarizations, stamping, registrations and/or notifications required under applicable Law) perfected security interests and liens, prior to all other liens other than certain of the Permitted Liens.

**Section 8.25      Classification of Senior Indebtedness.**

The Obligations constitute "Senior Debt", "Senior Indebtedness", "Designated Senior Indebtedness" or any similar designation under and as defined in any agreement governing any Subordinated Debt and the subordination provisions set forth in each such agreement are legally valid and enforceable against the parties thereto.

**Section 8.26      Anti-Terrorism Laws.**

No Newark Group Party or any of their Subsidiaries is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 et seq.), as amended. No Newark Group Party or any of their Subsidiaries is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. No Newark Group Party or any of their Subsidiaries (i) is a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

**Section 8.27      Compliance with OFAC Rules and Regulations.**

None of the Newark Group Parties or their Subsidiaries or their respective officers, directors or other Affiliates (a) is a Sanctioned Person, (b) has more than 15% of its assets in Sanctioned Countries, or (c) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries. No part of the proceeds of any Loan hereunder has been or will be used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country.

**Section 8.28      Compliance with FCPA.**

Each of the Newark Group Parties and their Subsidiaries is in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., and any foreign counterpart thereto. None of the Newark Group Parties or their Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Newark Group Party or its Subsidiary or to any other Person, in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq.

**Section 8.29      Assets Owned by Certain Subsidiaries.**

The only material asset owned by NP Cogen on the date hereof is a natural gas reciprocating engine and generator with a fair market value less than \$2,000,000. The only material asset owned by JD Corp. on the date hereof is the Real Property located at 20 Jackson Drive, Cranford, New Jersey 07016 ("Jackson Drive Real Property"), which Borrower believes to have a fair market value of less than \$3,000,000 on the date hereof, which is encumbered by a first mortgage securing approximately **[\$2,160,000 of loans (outstanding as of November 30, 2009)][Borrower: please provide an update for this amount]** from Liberty Commercial Mortgage Corporation to JD Corp. Borrower represents and warrants that such mortgage encumbering the Jackson Drive Real Property prohibits JD Corp. from further encumbering the Jackson Drive Real Property with an additional mortgage.

**Section 8.30      Reserved.**

**Section 8.31      Ridge.**

Ridge Finance Corp. was merged into Borrower, with Borrower continuing as the surviving entity, as of October 22, 2009, and pursuant to such merger, Borrower became successor in interest to and owner of substantially all of Ridge Finance Corp.'s property and assets.

**Section 8.32      Budget.**

(a) Borrower has prepared and delivered to Administrative Agent and Lenders an updated thirteen (13) week Budget covering the information set forth in this subsection (a) (including any updates to such Budget as set forth in Section 8.32(b) below), which has been thoroughly reviewed by Borrower, its management and the Financial Advisor. The Budget will set forth, among other things: (i) projected weekly operating cash receipts in the United States for each week commencing with the week ending as of June 12, 2010, (ii) projected weekly disbursements in the United States for each week commencing with the week ending as of June 12, 2010, (iii) projected net weekly cash flow in the United States for each week commencing with the week ending as of June 12, 2010, (iv) projected weekly net sales in the United States for each week commencing with the week ending as of June 12, 2010, (v) projected Eligible Accounts (as defined in the ABL Credit Agreement) availability for each week commencing with the week ending as of June 12, 2010, (vi) projected Eligible Inventory (as defined in the ABL Credit Agreement) availability for each week commencing with the week ending as of June 12, 2010, (vii) projected weekly Value of Eligible Inventory (as defined in the ABL Credit Agreement) commencing with the week ending as of June 12, 2010, (viii) projected aggregate principal amount of outstanding Loans, Letters of Credit and other Obligations (including Bank Product Debt) (each capitalized term in this clause (vii) as defined in the ABL Credit Agreement) for each week commencing with the week ending as of June 12, 2010, (ix) projected outstanding principal amount of all intercompany loans from the Borrower to Newark B.V. for each week commencing with the week ending as of June 12, 2010 and (x) projected Excess Availability for each week commencing with the week ending as of June 12, 2010 (collectively, the "Projected Information").

(b) Borrower hereby covenants and agrees to deliver an updated thirteen (13) week Budget to Administrative Agent on the Tuesday of each week which sets forth, among other things, the Projected Information for the week immediately following the last week reflected in the immediately prior Budget.

(c) Borrower shall deliver to Administrative Agent, in form and substance reasonably satisfactory to Administrative Agent, a weekly Budget variance report/reconciliation on Tuesday of each week for the prior week and the prior trailing four (4) week period (i) showing actual results for the following items: (A) net cash flow, (B) Excess Availability and (C) outstanding Loans, Letters of Credit and other Obligations (including Bank Product Debt) (each capitalized term in this clause (i) as defined in the ABL Credit Agreement), noting therein variances from values set forth for such periods in the Budget and (ii) an explanation for all material variances, certified by the chief financial officer of the Borrower. Such report/reconciliation shall also note any variances with values set forth in the Budget as of the day of such report/reconciliation.

(d) Each Budget shall have been thoroughly reviewed by Borrower, its management and the Financial Advisor and sets forth a good faith estimate of each of the items set forth therein for the period covered thereby. Administrative Agent, Collateral Agent and Lenders are relying upon the Borrower's delivery of the Budgets in accordance with this Section 8.32 in determining to enter into the post-petition financing arrangements provided for herein.

**Section 8.33      Engagement of Financial Advisor.**

(a) The Borrower, as of the date hereof, has retained (and continues to retain) the financial advisor engaged by the Borrower just prior to the effectiveness of this Agreement (the "Financial Advisor") with authority and duties consistent with those previously performed by the Financial Advisor at all times during which the Obligations remain outstanding, at the sole cost and expense of Borrower, pursuant to a retention agreement reasonably acceptable to Administrative Agent (a true, correct and complete copy of which has been delivered to Administrative Agent), and subject to approval of the Bankruptcy Court. The Financial Advisor shall, among other things, assist Borrower in

the preparation of and compliance with, on an ongoing basis, the Budget and compliance with the terms and conditions set forth in the Financing Agreements. The Financial Advisor shall report directly to the Chief Executive Officer and the Board of Directors of the Borrower.

(b) The Borrower hereby irrevocably authorizes and directs the Financial Advisor to consult with Administrative Agent and to share with Administrative Agent, Collateral Agent and Lenders all budgets, records, projections, financial information, reports and other information prepared by or in the possession of the Financial Advisor relating to the Collateral or the financial condition or operations of the businesses of Borrower; provided, that, in no event shall the foregoing require the Financial Advisor to disclose the contents of any privileged discussions with the Borrower and/or Borrower's legal counsel. Borrower agrees to provide the Financial Advisor with complete access to all of the books and records of Borrower and Guarantors, all of premises of Borrower and Guarantors and to all management and employees of Borrower and Guarantors as and when deemed necessary by the Financial Advisor.

(c) Borrower shall not amend, modify or terminate the retention agreement with the Financial Advisor without the prior written consent of Administrative Agent. Borrower and Guarantors acknowledge and agree that Borrower shall cause the Financial Advisor to keep Administrative Agent, Collateral Agent and Lenders (i) fully informed of the progress of the business and operations of Borrower and Guarantors and respond fully to any inquiries of Administrative Agent, Collateral Agent and Lenders regarding the business and operations of Borrower and Guarantors and (ii) communicate and fully cooperate with Administrative Agent, Collateral Agent and Lenders and share all information with Administrative Agent, Collateral Agent and Lenders regarding Borrower and Guarantors, and the business and operations of Borrower and Guarantors; provided, that, in no event shall the foregoing require the Financial Advisor to disclose the contents of any privileged discussions with the Borrower and/or Borrower's legal counsel.

(d) If the Financial Advisor resigns, Borrower shall immediately notify Administrative Agent in writing and provide Administrative Agent with a copy of any notice of resignation immediately upon the sending of such notice by such Financial Advisor. Any replacement or successor Financial Advisor shall be acceptable to Administrative Agent and shall be retained pursuant to a new retention agreement on terms and conditions acceptable to Administrative Agent within ten (10) Business Days immediately following the notice of resignation of the resigning Financial Advisor. Failure to comply with the terms and conditions of this Section 8.33 shall constitute an Event of Default.

#### **Section 8.34    Retention of Investment Banker.**

(a) The Borrower, as of the date hereof, has retained (and continues to retain) the investment banker engaged by the Borrower just prior to the effectiveness of this Agreement (the "Investment Banker") with authority and duties consistent with those previously performed by the Investment Banker at all times during which the Obligations remain outstanding, at the sole cost and expense of Borrower, pursuant to a retention agreement reasonably acceptable to Administrative Agent (a true, correct and complete copy of which has been delivered to Administrative Agent), and subject to approval of the Bankruptcy Court.

(b) Borrower shall assist and cooperate with Investment Banker in connection with the due diligence of Investment Banker and other work contemplated by the retention agreement. Borrower shall cause the Investment Banker to communicate and fully cooperate with Administrative Agent, Collateral Agent and Lenders and share all information with respect to Borrower and Guarantors; provided, that, in no event shall the foregoing require the Investment Banker to disclose the contents of any privileged discussions with the Borrower and/or Borrower's legal counsel.

#### **Section 8.35    Financing Order.**

The Financing Order has been duly entered, is valid, subsisting and continuing and except as otherwise expressly consented to by Administrative Agent, has not been vacated, modified, reversed on appeal, or vacated or modified by any Bankruptcy Judge or District Court Judge and is not subject to any pending stay and on and after the date any other Financing Order is entered by the Bankruptcy Court, such other Financing Order shall have been duly entered, valid, subsisting and continuing and shall not have been vacated, modified, reversed on appeal, or vacated or modified by any Bankruptcy Judge or District Court Judge and shall not be subject to any pending stay.

**Section 8.36 Super-Priority Administrative Expense.**

All Obligations incurred during the pendency of the Case(s) or thereafter shall, in addition to being secured by the Collateral, constitute claims entitled to super-priority under Section 364(c)(1) of the Bankruptcy Code, as more fully set forth in the Financing Order, with the priority of such super-priority subject to the Carve-Out to the extent set forth in the Financing Order.

**SECTION 9  
AFFIRMATIVE AND NEGATIVE COVENANTS**

**Section 9.1 Maintenance of Existence.**

(a) Each Credit Party shall, and shall cause Newark B.V. to, at all times preserve, renew and keep in full force and effect its corporate existence and rights and franchises with respect thereto and maintain in full force and effect all licenses, trademarks, tradenames, approvals, authorizations, leases, contracts and Permits the absence of which could reasonably be expected to have a Material Adverse Effect, except as to any Guarantor as permitted in Section 9.7 hereto. Notwithstanding the foregoing, Borrower shall not be required to have obtained the Amended Environmental Permit for so long as it is complying with the requirements of the Settlement Agreement.

(b) No Credit Party shall change its name unless each of the following conditions is satisfied: (i) Administrative Agent shall have received not less than thirty (30) days prior written notice from Borrower of such proposed change in corporate name, which notice shall accurately set forth the new name; and (ii) Administrative Agent shall have received a copy of the amendment to the certificate of incorporation or formation of such Credit Party providing for the name change certified by the Secretary of State of the jurisdiction of incorporation or organization of such Credit Party as soon as it is available.

(c) No Credit Party shall change its chief executive office or its mailing address or organizational identification number (or if it does not have one, shall not acquire one) unless Administrative Agent shall have received not less than thirty (30) days' prior written notice from Borrower of such proposed change, which notice shall set forth such information with respect thereto as Administrative Agent may require and Administrative Agent shall have received such agreements as Administrative Agent may reasonably require in connection therewith. No Credit Party shall change its type of organization, jurisdiction of organization or other legal structure.

(d) No Credit Party shall acquire or otherwise obtain any Intellectual Property registered, or subject to pending applications, in the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, that are not described in Schedule 8.11 to the Information Certificate unless Administrative Agent shall have received prior written notice from Borrower of such event, which notice shall set forth such information with respect thereto as Administrative Agent may require and Administrative Agent shall have received such agreements as Administrative Agent may reasonably require in connection therewith. **[Clause (d) to be removed, pending review of satisfactory IP Security Agreements.]**

**Section 9.2                      New Collateral Locations.**

Credit Parties may only open new location(s) (or change its chief executive office) within the continental United States provided that the applicable Credit Party or Credit Parties (a) give Administrative Agent thirty (30) days prior written notice of the intended opening of any such new location at which Inventory will be located having a value of more than \$100,000 and (b) execute and deliver, or cause to be executed and delivered, to Administrative Agent such agreements, documents, and instruments as Administrative Agent may deem reasonably necessary or desirable to protect its interests in the Collateral at such location(s).

**Section 9.3                      Compliance with Laws, Regulations, Etc.**

(a) Each Credit Party shall, and shall cause each of its Subsidiaries to, at all times, comply in all material respects with all laws, rules, regulations, licenses, approvals, orders and other Permits applicable to it and duly observe all requirements of any foreign, Federal, State or local Governmental Authority the violation of which could reasonably be expected to have a Material Adverse Effect; provided, that Borrower may be in noncompliance with certain environmental permits as disclosed on Schedule 8.8 to the Information Certificate so long as it is in compliance with the terms of the Settlement Agreement.

(b) the Credit Parties shall give written notice to Administrative Agent immediately upon any Newark Group Party's receipt of any notice of, or any Newark Group Party's otherwise obtaining knowledge of, (i) the occurrence of any event involving the material release, spill or discharge, threatened or actual, of any Hazardous Material or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice with respect to: (A) any non-compliance with or violation of any Environmental Law by any Newark Group Party or (B) the material release, spill or discharge, threatened or actual, of any Hazardous Material other than in the ordinary course of business and other than as permitted under any applicable Environmental Law. Copies of all environmental surveys, audits, assessments, feasibility studies and results of remedial investigations shall be promptly furnished, or caused to be furnished, by such Newark Group Party to Administrative Agent. Each Credit Party shall take prompt action to respond to any material non-compliance with any of the Environmental Laws and shall regularly report to Administrative Agent on such response.

(c) Without limiting the generality of the foregoing, whenever Administrative Agent reasonably determines that there is non-compliance, or any condition which requires any action by or on behalf of any Newark Group Party in order to avoid any non compliance, with any Environmental Law, Borrower shall, at Administrative Agent's request and Borrower's expense: (i) cause an independent environmental professional reasonably acceptable to Administrative Agent to conduct such tests of the site where non-compliance or alleged non compliance with such Environmental Laws has occurred as to such non-compliance and prepare and deliver to Administrative Agent a report as to such non-compliance setting forth the results of such tests, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof and (ii) provide to Administrative Agent a supplemental report of such engineer whenever the scope of such non-compliance, or such Newark Group Party's response thereto or the estimated costs thereof, shall change in any material respect.

(d) Each Credit Party shall indemnify and hold harmless Administrative Agent and Lenders and their respective directors, officers, employees, agents, invitees, representatives, successors and assigns, from and against any and all losses, claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and expenses) directly or indirectly arising out of or attributable to the use, generation, manufacture, storage, release, threatened release, spill, discharge, disposal or presence of a Hazardous Material, including the costs of any required or necessary repair, cleanup or other remedial work with respect to any property of any Newark Group Party or any of its Subsidiaries and the preparation and implementation of any closure, remedial or other required plans. All representations,

warranties, covenants and indemnifications in this Section 9.3 shall survive the payment of the Obligations and the termination of this Agreement.

**Section 9.4                      Payment of Taxes and Claims.**

Each Credit Party shall, and shall cause each of its Subsidiaries to, duly pay and discharge all taxes, assessments, contributions and governmental charges upon or against it or its properties or assets, except for taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Credit Party or Subsidiary, as the case may be, and with respect to which adequate reserves have been set aside on its books to the extent required by GAAP.

**Section 9.5                      Insurance.**

Each Credit Party shall, and shall cause each of its Subsidiaries to, at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by corporations of established reputation engaged in the same or similar businesses and similarly situated. Said policies of insurance shall be reasonably satisfactory to Administrative Agent as to form, amount and insurer (Administrative Agent hereby acknowledges that the insurance of the Borrower and its Subsidiaries as of the date hereof meets this standard). The Credit Parties shall furnish certificates, policies or endorsements to Administrative Agent or the applicable Control Agent as Administrative Agent shall reasonably require as proof of such insurance, and, if any Credit Party fails to do so after reasonable notice, Administrative Agent is authorized, but not required, to obtain such insurance at the expense of Borrower. All policies shall provide for at least thirty (30) days prior written notice to the applicable Control Agent of any cancellation or reduction of coverage and that Control Agent or Administrative Agent may act as attorney for each Credit Party in obtaining, and at any time an Event of Default exists or has occurred and is continuing, adjusting, settling, amending and canceling such insurance. The Credit Parties shall cause the applicable Control Agent to be named as a loss payee and an additional insured (but without any liability for any premiums) under such insurance policies and the Credit Parties shall obtain non-contributory lender's loss payable endorsements to all insurance policies in form and substance reasonably satisfactory to Administrative Agent. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to the applicable Control Agent as its interests may appear and further specify that the applicable Control Agent shall be paid regardless of any act or omission by any Newark Group Party or any of its or their officers, directors or other Affiliates. Without limiting any other rights of any Control Agent, Administrative Agent or Lenders (but subject to Section 2.5 hereof), any insurance proceeds related to Term Loan Priority Collateral received by Administrative Agent at any time may be applied to payment of the Obligations, whether or not then due, in any order and in such manner as Administrative Agent may determine. Without limiting the provisions set forth in the immediately preceding sentence, any proceeds of insurance and any awards for condemnation of any Collateral shall be paid to the applicable Control Agent for distribution in accordance with the terms of the Intercreditor Agreement and Section 2.5 hereof.

**Section 9.6                      Financial Statements and Other Information.**

(a) Each Credit Party shall, and shall cause each of its Subsidiaries to, keep proper books and records in which true and complete entries shall be made of all dealings or transactions of or in relation to the Collateral and the business of such Credit Party and its Subsidiaries. The Credit Parties shall promptly furnish to Administrative Agent and Lenders all such financial and other information as Administrative Agent shall reasonably request relating to the Collateral and the assets, business and operations of the Newark Group Parties, and Borrower shall notify the auditors and accountants of the Newark Group Parties that Administrative Agent is authorized to obtain such information directly from them. Without limiting the foregoing, Borrower shall furnish or cause to be furnished to Administrative Agent, the following:

(i) Within forty-five (45) days after the end of each fiscal quarter, quarterly unaudited consolidated financial statements and unaudited consolidating financial statements (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), all in reasonable detail, fairly presenting in all material respects the financial position and the results of the operations of Borrower and its consolidated Subsidiaries as of the end of and through such fiscal quarter (together with a summary comparison as of the end of and for the previous fiscal quarter and budgeted amounts, in form and substance reasonably acceptable to the Administrative Agent), certified to be correct by the chief financial officer of Borrower, subject to normal quarter- and year-end adjustments and accompanied by a compliance certificate substantially in the form of Exhibit C hereto (a "Compliance Certificate"), along with a schedule in form reasonably satisfactory to Administrative Agent of the calculations used in determining, as of the end of such quarter, whether the Newark Group Parties were in compliance with the covenants set forth in Section 9.17 of this Agreement for such quarter.

(ii) As soon as available and in any event within thirty (30) days after the end of each fiscal month (other than at the end of a fiscal quarter, in which case 45 days after the end thereof, or a fiscal year, in which case 90 days after the end thereof), monthly unaudited consolidated financial statements and unaudited consolidating financial statements (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), all in reasonable detail, fairly presenting in all material respects the financial position and the results of the operations of Borrower and its consolidated Subsidiaries as of the end of and through such fiscal month, together with a summary comparison as of the end of and for the previous fiscal month and budgeted amounts, in form and substance reasonably acceptable to Administrative Agent, certified to be correct by the chief financial officer of Borrower, subject to normal quarter and year-end adjustments and accompanied by a Compliance Certificate, along with a schedule in form reasonably satisfactory to Administrative Agent of the calculations used in determining, as of the end of such month, whether Borrower and Guarantors were in compliance with the covenants set forth in Section 9.17 of this Agreement for such month.

(iii) Within ninety (90) days after the end of each fiscal year, audited consolidated financial statements and unaudited consolidating financial statements of Borrower and its consolidated Subsidiaries (including in each case balance sheets, statements of income and loss, statements of cash flow and statements of shareholders' equity), and the accompanying notes thereto, all in reasonable detail, fairly presenting in all material respects the financial position and the results of the operations of Borrower and its Subsidiaries as of the end of and for such fiscal year, together with (A) a Compliance Certificate, along with a schedule in form reasonably satisfactory to the Administrative Agent of the calculations used in determining, as of the end of such fiscal year, whether the Newark Group Parties were in compliance with the covenants set forth in Section 9.17 of this Agreement for such fiscal year and (B) the unqualified opinion of independent certified public accountants with respect to the audited consolidated financial statements, which accountants shall be Deloitte & Touche or another independent accounting firm selected by Borrower and reasonably acceptable to the Administrative Agent, that such audited consolidated financial statements have been prepared in accordance with GAAP, and present fairly in all material respects the results of operations and financial condition of Borrower and its Subsidiaries as of the end of and for the fiscal year then ended.

(iv) At such time as available, but in no event later than ninety (90) days after the end of each fiscal year (commencing with the fiscal year of Borrower ending April 30, 2010), projected consolidated financial statements (including in each case, forecasted balance sheets and statements of income and loss, statements of cash flow, statements of shareholders' equity and borrowing base under the ABL Credit Agreement) of Borrower and its consolidated Subsidiaries for the next fiscal year, all in reasonable detail, and in a format consistent with the projections delivered by Borrower to Administrative Agent prior to the date hereof, together with such supporting information as Administrative Agent may reasonably request. Such projected financial statements shall be prepared on a

monthly basis for the next succeeding year. Such projections shall represent the reasonable best estimate by the Newark Group Parties of the future financial performance of Borrower and its Subsidiaries for the periods set forth therein and shall have been prepared on the basis of the assumptions set forth therein which the Newark Group Parties believe are fair and reasonable as of the date of preparation in light of current and reasonably foreseeable business conditions (it being understood that actual results may differ from those set forth in such projected financial statements).

(b) the Credit Parties shall promptly notify Administrative Agent in writing upon any executive officer of the Borrower becoming aware of, or having reason to be aware of, the details of (i) any loss, damage, investigation, action, suit, proceeding or claim relating to Collateral and having a value of more than \$1,000,000 with respect to Term Loan Priority Collateral or more than \$5,000,000 with respect to ABL Priority Collateral or which if adversely determined could reasonably be expected to have a Material Adverse Effect, (ii) any Material Contract being terminated or amended in a way adverse to the interests of the Newark Group Parties or any new Material Contract entered into (in which event the Credit Parties shall provide Administrative Agent with a copy of such Material Contract), (iii) any order, judgment or decree in excess of \$1,000,000 shall have been entered against any Newark Group Party any of its or their properties or assets, (iv) any notification of a material violation of laws or regulations received by any Newark Group Party or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect, (v) any ERISA Event, (vi) the occurrence of any Default or Event of Default of which any executive officer of any Newark Group Party is aware or has reason to be aware, and in any event within three Business Days, (vii) any default, event of default or material breach under (A) any contractual obligation of any Newark Group Party or any of their Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of \$1,000,000, and/or (B) the ABL Financing Agreements; (viii) any litigation, or any investigation or proceeding known to any executive officer of any Newark Group Party (A) affecting any Newark Group Party or any of their Subsidiaries which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of \$1,000,000 (unless covered by insurance, in which case in excess of \$2,500,000)), (B) affecting or with respect to this Agreement or any other Financing Agreement or (C) involving an environmental claim or potential liability under Environmental Laws in excess of \$1,000,000; (ix) any other development or event which could reasonably be expected to have a Material Adverse Effect; (x) the Credit Parties having in excess of \$4,000,000 of goods on consignment (with consignees), (xi) any Newark Group Party acquiring, forming or otherwise having any direct or indirect Subsidiaries or Affiliates (excluding Affiliates of any shareholders of the Borrower) or becoming engaged in any joint venture or partnership except as set forth in Schedule 8.12 to the Information Certificate, (xii) any (A) material unfair labor practice complaint is commenced against any Newark Group Party or, to the best of any Newark Group Party's knowledge, threatened against it, before the National Labor Relations Board, (B) material grievance or material arbitration proceeding arising out of or under any collective bargaining agreement is commenced against any Newark Group Party or, to best of any Newark Group Party's knowledge, threatened against it, or (C) material strike, labor dispute, slowdown or stoppage is commenced against any Newark Group Party or, to the best of any Newark Group Party's knowledge, threatened against any Newark Group Party, or (xiii) any Newark Group Party or any Subsidiary thereof becomes a party to any agreement or instrument or subject to any other obligation or any charter or corporate restriction or any provision of any applicable law, rule or regulation which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(c) Promptly after the sending or filing thereof, Borrower shall (i) send to Administrative Agent copies of all reports which Borrower or any of its Subsidiaries sends to its security holders generally, (ii) notify Administrative Agent of the filing of all reports and registration statements which Borrower or any of its Subsidiaries files with the Securities Exchange Commission, any national or foreign securities exchange or the National Association of Securities Dealers, Inc., and, if requested by the Administrative Agent, send to Administrative Agent electronic copies of any such filings, (iii) send to Administrative Agent copies of all press releases and (iv) send to Administrative Agent copies of all other

statements concerning material changes or developments in the business of a Newark Group Party made available by any Newark Group Party to the public.

(d) The Credit Parties shall furnish or cause to be furnished to Administrative Agent such budgets, forecasts, projections and other information respecting the Collateral and the business of the Newark Group Parties, as Administrative Agent may, from time to time, reasonably request. Administrative Agent is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of the Newark Group Parties to any court or other Governmental Authority or to any Lender or Participant or prospective Lender or Participant (excluding any Person known to Administrative Agent to be a competitor of any Newark Group Party) or any Affiliate of any Lender or Participant. Each Credit Party hereby irrevocably authorizes and directs all accountants or auditors to deliver to Administrative Agent, at Borrower's expense, copies of the financial statements of any Newark Group Party and any reports or management letters prepared by such accountants or auditors on behalf of any Newark Group Party and to disclose to Administrative Agent and Lenders such information as they may have regarding the business of any Newark Group Party. Any documents, schedules, invoices or other papers delivered to Administrative Agent or any Lender may be destroyed or otherwise disposed of by Administrative Agent or such Lender one (1) year after the same are delivered to Administrative Agent or such Lender, except as otherwise designated by Borrower to Administrative Agent or such Lender in writing.

(e) Borrower and each Guarantor shall also provide Administrative Agent with copies of all financial reports, schedules and other materials and information at any time furnished by or on behalf of Borrower or any Guarantor to the Bankruptcy Court, or the U.S. Trustee or to any creditors' committee, concurrently with the delivery thereof to the Bankruptcy Court, creditors' committee or U.S. Trustee, as the case may be.

(f) Borrower and each Guarantor shall also provide Administrative Agent with a monthly report setting forth the amount of professional fees that have been accrued and paid by Borrower and Guarantors and, to Borrower's knowledge, the official committee of unsecured creditors.

(g) Borrower shall provide to Administrative Agent, (i) on Tuesday of each week (or more frequently as Administrative Agent may request at any time that an Event of Default exists or has occurred and is continuing), a report certified by the Borrower's chief executive officer, chief financial officer or treasurer which specifies all material changes to or deviations from any of the Projected Information for the immediately preceding week set forth in any Budget previously delivered to Administrative Agent, compared to the actual results for such week and (A) on the 3rd day of each month (or more frequently as Administrative Agent may request at any time that an Event of Default exists or has occurred and is continuing), a copy of any management report prepared by the management of Borrower that has been delivered to the Board of Directors of Borrower during the immediately preceding month.

#### **Section 9.7                    Sale of Assets, Consolidation, Merger, Dissolution, Etc.**

Each Credit Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly,

(a) dissolve, liquidate or wind up its affairs, sell, transfer, lease or otherwise dispose of any of its property or assets (including, without limitation, assume, reject or assign any leasehold interest or enter into any agreement to return Inventory to vendor, whether pursuant to section 546 of the Bankruptcy Code or otherwise, without the prior written consent of Administrative Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by Administrative Agent or any Lender)) or agree to do so at a future time except the following, without duplication, shall be expressly permitted:

(i) Specified Sales;

(ii) the sale, transfer, lease or other disposition of property or assets (A) to an unrelated party not in the ordinary course of business (other than Specified Sales and Scheduled Asset Sales), where and to the extent that they are the result of a Recovery Event provided that such sales, transfers, leases and other dispositions shall reduce the amount of sales, leases, transfers and dispositions available under Section 9.7(a)(v) hereof or (B) the sale, lease, transfer or other disposition of machinery, parts and equipment no longer used or useful in the conduct of the business of the Newark Group Parties or any of their Subsidiaries, as appropriate, in its reasonable discretion, so long as, in the case of (A) or (B) of this Section 9.7(a)(ii), the net proceeds therefrom are used to repair or replace damaged property or to purchase or otherwise acquire new assets or property, provided that (x) such purchase or acquisition is committed to within 180 days of receipt of the net proceeds and such purchase or acquisition is consummated within 270 days of receipt of such proceeds, (y) such new assets constitute Collateral in which the Agent has a perfected security interest and (z) such new assets constitute Term Loan Priority Collateral to the extent that the assets sold, damaged and/or destroyed constituted Term Loan Priority Collateral;

(iii) Reserved;

(iv) Scheduled Asset Sales;

(v) the sale, lease or transfer of property or assets (including any Mortgaged Property but excluding Specified Sales, Scheduled Asset Sales and sales, leases and/or transfers permitted under Sections 9.7(a)(ii)(B), (a)(vi) and (vii) hereof) not to exceed \$2,000,000 in the aggregate during the term of this agreement;

(vi) the sale of Inventory by the Borrower to any of its Foreign Subsidiaries organized in Canada or Spain; provided, that, (a) the amount owing to the Borrower from such Foreign Subsidiary organized in Canada in connection with such sales shall not exceed the aggregate amount of \$600,000 outstanding at any time, (b) the amount owing to the Borrower from such Foreign Subsidiary organized in Spain in connection with such sales shall not exceed the aggregate amount of \$600,000 outstanding at any time, (c) each such sale shall be for fair market value, in the ordinary course of business and consistent with past practices, (d) the purchase price related to any such sale shall be paid in cash on terms that the Borrower provides to its customers in the ordinary course of business and (e) no Event of Default then exists or shall result from such sale;

(vii) the sale, lease or transfer, in the ordinary course of business, of gas by NP Cogen to the Borrower in an aggregate amount not to exceed \$1,000,000 during any calendar year in connection with the transactions permitted under Section 9.12(b)(v) hereof; and

(viii) without duplication of any other clauses set forth in this Section 9.7, sale, lease or transfer made by a Foreign Subsidiary not otherwise expressly permitted by clauses (i) through (vii) above that are made solely to another Foreign Subsidiary;

provided, that with respect to clauses (ii), (iv) and (v) above (unless the prior consent of the Administrative Agent and Required Lenders are received, which consent shall not be unreasonably withheld), in each case (A) at least 75% of the consideration received therefor by such Newark Group Party or any such Subsidiary is in the form of cash or Cash Equivalents, (B) the total consideration received by such Newark Group Party or any such Subsidiary is greater than or equal to the fair market value of the assets sold, transferred, leased or otherwise disposed of, (C) no Event of Default then exists or shall result from such asset disposition, (D) with respect to the sale of any Mortgaged Property, the Borrower shall provide an appraised value for such Mortgaged Property and the Loans shall be prepaid in accordance with Section 2.5(b)(iii)(A) in an amount equal to the greater of (I) such appraised value and

(II) the Net Cash Proceeds actually received from such sale, (E) with respect to the sale of any Equipment referenced in clause (ii) above, to the extent that such sale proceeds are not used to acquire replacement or other Equipment within 270 days after such sale occurs as provided in clause (x) of Section 9.7(a)(ii), the Loans shall be prepaid (from the proceeds of such sale) in accordance with Section 2.5(b)(iii)(A) and (F) with respect to the sale and/or other disposition of any other property and/or assets constituting Term Loan Priority Collateral, the Net Cash Proceeds from such sale and/or other disposition shall be applied to the outstanding Obligations as a prepayment in accordance with Section 2.5(b)(iii)(A); provided, further, that with respect to sales of assets permitted hereunder only, Collateral Agent shall be entitled, without the consent of the Required Lenders, to release its liens relating to the particular assets sold; or

(b) (i) purchase, lease or otherwise acquire (in a single transaction or a series of related transactions) the property or assets of any Person (including, without limitation, Capital Stock) other than purchases or other acquisitions of inventory, leases, materials, property and equipment in the ordinary course of business, except as otherwise limited or prohibited herein or (ii) enter into any transaction of merger or consolidation, except for investments or acquisitions permitted pursuant to Section 9.10.

#### **Section 9.8            Encumbrances.**

Each Credit Party shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any security interest, mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of its assets or properties, including the Collateral, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any security interest or lien with respect to any such assets or properties, except ("Permitted Liens"):

(a) the security interests and liens of Collateral Agent for itself and the benefit of the Secured Parties;

(b) liens securing the payment of taxes, assessments or other governmental charges or levies either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Credit Party or Subsidiary, as the case may be, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books or that arose prior to the commencement of the Case(s) so long as any action by any Governmental Authority or the person to whom such taxes are owed as to Borrower or Guarantors or any of their respective assets is at all times effectively stayed pursuant to Section 362 of the Bankruptcy Code;

(c) non-consensual statutory liens (other than liens securing the payment of taxes) arising in the ordinary course of such Credit Party's or Subsidiary's business to the extent: (i) such liens secure Indebtedness which is not overdue or (ii) such liens secure Indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued and available to such Credit Party or such Subsidiary, as the case may be, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books;

(d) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of Real Property which do not interfere in any material respect with the use of such Real Property or ordinary conduct of the business of such Credit Party or such Subsidiary as presently conducted thereon or materially impair the value of the Real Property which may be subject thereto;

(e) purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on Real Property (other than Mortgaged Property) to secure Indebtedness permitted under Section 9.9(d) hereof;

(f) pledges and deposits of cash by any Newark Group Party after the date hereof in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security benefits consistent with the current practices of such Newark Group Party as of the date hereof;

(g) pledges and deposits of cash by any Newark Group Party after the date hereof to secure the performance of tenders, bids, leases, trade contracts (other than for the repayment of Indebtedness), statutory obligations and other similar obligations in each case in the ordinary course of business consistent with the current practices of such Newark Group Party as of the date hereof; provided, that, in connection with any performance bonds issued by a surety or other person, the issuer of such bond shall have waived in writing any rights in or to, or other interest in, any of the Collateral in an agreement, in form and substance satisfactory to Administrative Agent;

(h) liens arising from (i) operating leases and the precautionary UCC financing statement filings in respect thereof and (ii) equipment or other materials which are not owned by any Newark Group Party located on the premises of such Newark Group Party (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with current practices of such Newark Group Party and the precautionary UCC financing statement filings in respect thereof;

(i) judgments and other similar liens arising in connection with court proceedings that do not constitute an Event of Default, provided, that, (i) such liens are being contested in good faith and by appropriate proceedings diligently pursued, (ii) adequate reserves or other appropriate provision, if any, as are required by GAAP have been made therefore and (iii) a stay of enforcement of any such liens is in effect;

(j) (i) the security interests and liens set forth on Schedule 8.4 to the Information Certificate and (ii) the mortgage granted by JD Corp. to Liberty Commercial Mortgage Corporation with respect to the Jackson Drive Real Property securing Indebtedness in the approximate outstanding principal amount of \$2,160,000 outstanding as of **[November 30, 2009]** **[Borrower, please provide an update of this amount]**;

(k) liens (including liens as provided for in the Financing Order) securing the ABL Obligations (and the liens securing the Parallel Debts, as defined in the ABL Credit Agreement), solely to the extent that (i) the Intercreditor Agreement or a replacement subordination and intercreditor agreement satisfactory to Administrative Agent and Required Lenders (for the avoidance of doubt, to the extent that such subordination and intercreditor agreement would have the effect of amending any provision hereof that would require all Lender consent under Section 11.3 hereof, the consent of all Lenders would be required with respect to such subordination and intercreditor agreement) is in effect and such obligations are in accordance with the ABL Financing Agreements, in effect on the date hereof (unless the amendment thereof is permitted hereunder), and (ii) the principal amount of such ABL Obligations does not exceed \$95,000,000;

(l) liens or rights of set-off arising from the operation of law on retainers remitted by Borrower and Guarantors to certain of its professionals;

(m) to the extent described in Section 5.5(c) hereof, the claim to assets and properties of the Borrower and Guarantors for (1) unpaid fees pursuant to Section 1930 of Title 28 of the United States Code and to the Clerk of the Bankruptcy Court, and (2) accrued and unpaid fees and disbursements

incurred by the Court-appointed professionals of the Borrower and Guarantors in the Case(s) and any committee appointed by the U.S. Trustee in the Case(s), in each case allowed by the Bankruptcy Court, in the aggregate amount not to exceed \$2,000,000; and

(n) without duplication of any other clauses set forth in this Section 9.8, liens solely on the assets of Foreign Subsidiaries not otherwise expressly permitted by clauses (a) through (m) above that are expressly permitted under, and are in full compliance with, the terms of Section 9.8 of the ABL Credit Agreement as is in effect on the date hereof.

### **Section 9.9            Indebtedness.**

Each Credit Party shall not, and shall not permit any of its Subsidiaries to, incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any Indebtedness, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly), the Indebtedness, performance, obligations or dividends of any other Person, except:

- (a) the Obligations and the Parallel Debts with respect thereto;
- (b) the ABL Obligations (and the Parallel Debts (as defined in the ABL Credit Agreement) with respect thereto) of the Borrower in an aggregate principal amount not to exceed \$95,000,000;
- (c) Indebtedness of the Newark Group Parties and their Subsidiaries existing as of the date hereof as referenced in the financial statements delivered to Administrative Agent and as set out more specifically in Schedule 9.9 to the Information Certificate;
- (d) purchase money Indebtedness (including Capital Leases) arising after the date hereof to the extent secured by purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on Real Property (other than Mortgaged Property) not to exceed **[\$amount currently outstanding]** in the aggregate at any time outstanding so long as such security interests and mortgages do not apply to any property of such Newark Group Party or Subsidiary other than the Equipment or Real Property so acquired, and the Indebtedness secured thereby does not exceed the cost of the Equipment or Real Property so acquired, as the case may be;
- (e) unsecured intercompany Indebtedness among the Credit Parties (in each case so long as such Credit Party is the Borrower or any Domestic Subsidiary thereof), provided that any such Indebtedness shall be (i) fully subordinated to the Obligations hereunder on terms reasonably satisfactory to the Administrative Agent and (ii) if requested by the Administrative Agent and, in any event, if in an amount greater than \$5,000,000, evidenced by promissory notes which shall be pledged and delivered to Administrative Agent as Collateral for the Obligations;
- (f) unsecured Indebtedness and obligations of Newark Group Parties and/or their Subsidiaries owing under hedging agreements entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes;
- (g) Guaranty Obligations in respect of Indebtedness of a Credit Party (in each case so long as such Credit Party is the Borrower or any Domestic Subsidiary thereof) to the extent such Indebtedness is permitted to exist or be incurred pursuant to this Section 9.9;

(h) Reserved;

(i) Reserved;

(j) other unsecured Indebtedness of the Credit Parties and/or their Domestic Subsidiaries in an aggregate amount not to exceed \$25,000,000 at any time outstanding;

(k) unsecured Indebtedness owing under the Senior Subordinated Notes;

(l) other Indebtedness of Credit Parties and their Domestic Subsidiaries which does not exceed \$250,000 in the aggregate at any time outstanding; and

(m) without duplication of any other clauses set forth in this Section 9.9, Indebtedness of the Newark B.V. or other Foreign Subsidiaries not otherwise expressly permitted by clauses (a) through (l) above that is expressly permitted under, and is in full compliance with, the terms of Section 9.9 of the ABL Credit Agreement as is in effect on the date hereof.

Notwithstanding any other provisions set forth in this Section 9.9 or any other provisions set forth herein, the Credit Parties shall not, and shall not permit any of their Domestic Subsidiaries to, incur, create, assume, or become or be liable in any manner with respect to, any Indebtedness, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly) any Indebtedness incurred by the Borrower's Foreign Subsidiaries (other than (x) under the ABL Credit Agreement and (y) unsecured guaranties of Indebtedness not to exceed in the aggregate at any time \$3,000,000 of the Borrower's Foreign Subsidiaries).

#### **Section 9.10      Loans, Investments, Etc.**

Each Credit Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make any loans or advance money or property to any person, or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the Capital Stock or Indebtedness or all or a substantial part of the assets or property of any Person, or form or acquire any Subsidiaries, or agree to do any of the foregoing, except (the "Permitted Investments"):

(a) cash and Cash Equivalents;

(b) receivables owing to the Borrower or any of its Subsidiaries and advances to suppliers, including, without limitation, notes receivable owing from customers, in each case if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(c) investments in and loans to a Credit Party (in each case so long as such Credit Party is the Borrower or any Domestic Subsidiary thereof); provided, however, that investments in and loans to NP Cogen shall be limited to those in existence on the date hereof;

(d) loans and advances to employees of Newark Group Parties in an aggregate amount not to exceed \$1,500,000 at any time outstanding; provided that (i) the proceeds of such loan(s) and/or advance(s) are used for relocation purposes, (ii) such loan(s) and/or advance(s) are not made in violation of any law and (iii) such loan(s) and/or advance(s), each, has a maturity date of no more than 5 years;

(e) investments received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(f) only to the extent made, invested in or purchased prior to the date hereof, investments, acquisitions or transactions permitted under Section 9.7;

(g) hedging agreements to the extent permitted pursuant to Section 9.9;

(h) Reserved.

(i) the investments in and loans to Newark B.V. by the Borrower existing as of the date hereof and evidenced by the B.V. Intercompany Notes in an aggregate principal amount outstanding as of the date hereof of approximately €20,597,793.35, as such notes are in effect on the date hereof and as such amount may be reduced from time to time by the application of principal payments thereto;

(j) Reserved;

(k) Reserved;

(l) loans and advances made by the Credit Parties to Credit Parties' Foreign Subsidiaries after the Closing Date, in an aggregate amount outstanding at any time not to exceed \$5,000,000 less the aggregate amount of investments made by the Credit Parties to Credit Parties' Foreign Subsidiaries after the Closing Date pursuant to clause (n) below, provided, that, (i) as of the date of any such loan(s) or advance(s) and after giving effect thereto, Excess Availability shall not be less than \$20,000,000, (ii) as of the date of any such loan(s) or advance(s) and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, (iii) all of such loans and/or advances are evidenced by promissory note(s), the original executed copy of which is pledged and delivered to Collateral Agent to serve as Collateral for the Obligations and (iv) the proceeds of such loan(s) and advance(s) are used solely to replace existing loans to the applicable Foreign Subsidiary or Foreign Subsidiaries;

(m) loans and advances by the Borrower to its Foreign Subsidiaries outstanding on the date hereof provided that any amounts repaid on account of such loans and/or advances shall not be available to be reborrowed (for the avoidance of doubt, no loans may be made after the date hereof by any Credit Party or any of its Domestic Subsidiaries to any of Newark Group Parties' Foreign Subsidiaries on account of such Indebtedness whether or not the commitment to make such loans or the credit facility with respect thereto was in place prior to the date hereof);

(n) Reserved; and

(o) without duplication of any other clauses set forth in this Section 9.10, investments in and loans to the Newark B.V. and other Foreign Subsidiaries by and from the Newark B.V. and other Foreign Subsidiaries that are expressly permitted under, and are in full compliance with, the terms of Section 9.10 of the ABL Credit Agreement as is in effect on the date hereof.

#### **Section 9.11      Restricted Payments.**

The Credit Parties will not, nor will they permit any of their Subsidiaries to, directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment, except as (a) permitted by order of the Bankruptcy Court in connection with the Case(s), (b) as otherwise approved in writing by Administrative Agent, (c) as contemplated in the Budget or (d) otherwise permitted under the terms of this Agreement.

#### **Section 9.12      Transactions with Affiliates.**

(a) Each Credit Party shall not, nor shall they permit any of their Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of

any service) with, or for the benefit of, any of its officers, directors or other Affiliates (each, an "Affiliate Transaction"), other than:

(i) Affiliate Transactions permitted by paragraph (b) below; and

(ii) Affiliate Transactions on terms that are no less favorable than those that might reasonably have been obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an officer, director or Affiliate of the Newark Group Party.

All Affiliate Transactions (and each series of related Affiliate Transactions which are similar or part of a common plan) involving aggregate payments or other property with a fair market value in excess of \$5,000,000 will be approved by the Board of Directors (or comparable governing body) of the applicable Newark Group Party, such approval to be evidenced by resolutions stating that the Board of Directors (or comparable governing body) has determined that such transaction complies with the foregoing provisions. If any Newark Group Party enters into an Affiliate Transaction (or a series of related Affiliate Transactions related to a common plan) that involves an aggregate fair market value of more than \$10,000,000, the Borrower will, prior to the consummation thereof, obtain an opinion from an Independent Financial Advisor stating that such transaction or series of related transactions are fair to the applicable Newark Group Party, as the case may be, from a financial point of view.

(b) The restrictions set forth in Section 9.12(a) shall not apply to:

(i) reasonable fees and compensation paid to and indemnity provisions on behalf of the officers, directors, employees or consultants of any Newark Group Party as determined in good faith by the applicable Newark Group Party's Board of Directors (or comparable governing body);

(ii) transactions exclusively between or among the Credit Parties (in each case so long as such Credit Party is the Borrower or any Domestic Subsidiary thereof); provided, that (A) such transactions are not otherwise prohibited by this Agreement and (B) the aggregate market value of all such transactions (other than transactions contemplated in clause (iii) below) shall not exceed \$1,000,000 in the aggregate during the term of this Agreement;

(iii) any agreement or instrument in effect as of the date hereof or any amendment or replacement thereof or any transaction contemplated thereby (including pursuant to any amendment or replacement thereof) so long as (i) any such amendment or replacement agreement or instrument is, in the good faith judgment of the Board of Directors (or comparable governing body) of the applicable Newark Group Party, not more disadvantageous to the Lenders in any material respect than the original agreement or instrument as in effect on the date hereof and (ii) each such agreement, instrument (or amendment or replacement thereof) or any such transaction contemplated thereby is set forth in Schedule 9.12(b)(iii);

(iv) Restricted Payments and Permitted Investments permitted by this Agreement and the Indebtedness permitted to be incurred pursuant to Section 9.9(b) above;

(v) the purchase of gas by NP Cogen, Inc. on behalf of the Borrower in an aggregate amount not to exceed \$1,000,000 during the term of this Agreement;

(vi) transactions exclusively between or among the Foreign Subsidiaries which are not otherwise prohibited by this Agreement; and

(vii) the purchase or transfer of wastepaper by Integrated Paper Recyclers (a joint venture in which the Borrower maintains a 50% interest) to Borrower in an aggregate amount (or the aggregate value of which shall) not to exceed \$6,000,000 during the term of this Agreement.

**Section 9.13 Compliance with ERISA.**

Each Credit Party shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal and State law; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; (c) not terminate any Pension Plan so as to incur any material liability to the Pension Benefit Guaranty Corporation; (d) not knowingly allow or suffer to exist any prohibited transaction involving any Plan or any trust created thereunder which would subject such Newark Group Party or such ERISA Affiliate to a material tax or other liability on prohibited transactions imposed under Section 4975 of the Code or ERISA; (e) make all required contributions to any Plan which it is obligated to pay under Section 302 of ERISA, Section 412 of the Code or the terms of such Plan; (f) not allow or suffer to exist any accumulated funding deficiency, whether or not waived, with respect to any such Pension Plan; (g) not engage in a transaction with respect to a Pension Plan that could be subject to Section 4069 or 4212(c) of ERISA; or (h) not allow or suffer to exist any occurrence of a Reportable Event or any other event or condition which presents a material risk of termination by the Pension Benefit Guaranty Corporation of any Plan that is a single employer plan within the meaning of Section 4001(a)(15) of ERISA, which termination could result in any material liability to the Pension Benefit Guaranty Corporation.

**Section 9.14 End of Fiscal Years.**

No Credit Party will, nor will they permit any of their Subsidiaries to, change their fiscal year.

**Section 9.15 Change in Business.**

No Credit Party will, nor will they permit any of their Subsidiaries to, engage in any business other than the business of such Newark Group Party on the date hereof and any business reasonably related, ancillary or complimentary to the business in which such Newark Group Party is engaged on the date hereof.

**Section 9.16 Limitation of Restrictions Affecting Subsidiaries.**

None of the Credit Parties shall, directly, or indirectly, create or otherwise cause or suffer to exist any encumbrance or restriction which prohibits or limits the ability of any Subsidiary of such Credit Party to (a) pay dividends or make other distributions or pay any Indebtedness owed to such Credit Party or any Subsidiary of such Credit Party; (b) make loans or advances to such Credit Party or any Subsidiary of such Credit Party; (c) transfer any of its properties or assets to such Credit Party or any Subsidiary of such Credit Party; (d) create, incur, assume or suffer to exist any lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or (e) act as a Guarantor and pledge its assets pursuant to the Financing Agreements or any renewals, refinancings, exchanges, refundings or extensions thereof, other than encumbrances and restrictions arising under (i) applicable law, (ii) this Agreement, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of such Credit Party or any Subsidiary of such Credit Party, (iv) customary restrictions on dispositions of real property interests found in reciprocal easement agreements of such Credit Party or any Subsidiary of such Credit Party, (v) any agreement relating to permitted Indebtedness incurred by a Subsidiary of such Credit Party prior to the date on which such Subsidiary was acquired by such Credit Party and outstanding on such acquisition date, (vi) the extension or continuation of contractual obligations in existence on the date hereof; provided, that, any such encumbrances or restrictions contained in such extension or continuation are no less favorable to Administrative Agent and Lenders than those encumbrances and restrictions under or pursuant to the contractual obligations so extended or continued, (vii) any document or instrument governing Indebtedness incurred pursuant to Section 9.9(d), provided that any such restriction contained therein relates only to the asset or assets

constructed or acquired in connection therewith or (viii) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien. None of the Credit Parties shall, directly, or indirectly, create or otherwise cause or suffer to exist any encumbrance or restriction which prohibits or limits the ability of Newark B.V. to pay any Indebtedness owed by Newark B.V. to any Credit Party. The Credit Parties shall not permit Newark B.V. to make any principal payments or any other payments (other than interest payments) on account of any Indebtedness owed by Newark B.V. to any Subsidiary or other Affiliates of Borrower (in each case, other than a Credit Party) until all Indebtedness owed by Newark B.V. to the Credit Parties (including without limitation, all Indebtedness evidenced by the B.V. Intercompany Notes) has been paid in full in immediately available funds provided that this sentence shall not be construed to limit Newark B.V.'s ability to transfer funds in the ordinary course of its business to its Subsidiaries to the extent that such funds are used by such Subsidiaries solely for working capital purposes.

**Section 9.17      Financial Covenants.**

(a)      Consolidated EBITDA

The Consolidated EBITDA of Borrower, for the twelve-month period ending as of each fiscal month end set forth below, shall be greater than or equal to the corresponding amount set forth below:

<b>Fiscal Month Ending</b>	<b>Consolidated EBITDA</b>
July 31, 2010	\$36,300,000
August 31, 2010	\$37,900,000
September 30, 2010	\$37,800,000
October 31, 2010	\$37,700,000
November 30, 2010	\$38,800,000
December 31, 2010	\$41,900,000
January 31, 2011 and the last day of each month thereafter	\$44,000,000

(b)      Minimum Excess Availability

Excess Availability (after giving effect to, and subtracting an amount equal to, the Special Availability Reserve (as defined in the ABL Credit Agreement on the date hereof)) shall, at all times, be greater than or equal to \$7,000,000.

**Section 9.18      Classification of Senior Indebtedness.**

Each Credit Party shall cause the Obligations to constitute "Senior Debt", "Senior Indebtedness", "Designated Senior Indebtedness" or any similar designation under and as defined in any agreement governing any Subordinated Debt and the subordination provisions set forth in each such agreement to be legally valid and enforceable against the parties thereto.

**Section 9.19      License Agreements.**

(a)      Each Credit Party shall, and shall cause Newark B.V. to, (i) promptly and faithfully observe and perform all of the material terms, covenants, conditions and provisions of the

material License Agreements to which it is a party to be observed and performed by it, at the times set forth therein, if any, (ii) not do, permit, suffer or refrain from doing anything that could reasonably be expected to result in a default under or breach of any of the terms of any material License Agreement, (iii) not cancel, surrender, modify, amend, waive or release any material License Agreement in any material respect or any term, provision or right of the licensee thereunder in any material respect, or consent to or permit to occur any of the foregoing; except, that, subject to Section 9.19(b) below, such Newark Group Party may cancel, surrender or release any material License Agreement in the ordinary course of the business of such Newark Group Party; provided, that, such Newark Group Party (as the case may be) shall give Administrative Agent not less than thirty (30) days prior written notice of its intention to so cancel, surrender and release any such material License Agreement, (iv) give Administrative Agent prompt written notice of any material License Agreement entered into by such Newark Group Party after the date hereof, together with a true, correct and complete copy thereof and such other information with respect thereto as Administrative Agent may request, (v) give Administrative Agent prompt written notice of any material breach of any obligation, or any default, by any party under any material License Agreement, and deliver to Administrative Agent (promptly upon the receipt thereof by such Newark Group Party in the case of a notice to such Newark Group Party and concurrently with the sending thereof in the case of a notice from such Newark Group Party) a copy of each notice of default and every other notice and other communication received or delivered by such Newark Group Party in connection with any material License Agreement which relates to the right of such Newark Group Party to continue to use the property subject to such License Agreement, and (vi) furnish to Administrative Agent, promptly upon the request of Administrative Agent, such information and evidence as Administrative Agent may reasonably require from time to time concerning the observance, performance and compliance by such Newark Group Party or the other party or parties thereto with the material terms, covenants or provisions of any material License Agreement.

(b) Each Newark Group Party will either exercise any option to renew or extend the term of each material License Agreement to which it is a party in such manner as will cause the term of such material License Agreement to be effectively renewed or extended for the period provided by such option and give prompt written notice thereof to Administrative Agent or give Administrative Agent prior written notice that such Newark Group Party does not intend to renew or extend the term of any such material License Agreement or that the term thereof shall otherwise be expiring, not less than sixty (60) days prior to the date of any such non-renewal or expiration. In the event of the failure of such Newark Group Party to extend or renew any material License Agreement to which it is a party, Administrative Agent shall have, and is hereby granted, the irrevocable right and authority, at its option, to renew or extend the term of such material License Agreement, whether in its own name and behalf, or in the name and behalf of a designee or nominee of Administrative Agent or in the name and behalf of such Newark Group Party, as Administrative Agent shall determine at any time that an Event of Default shall exist or have occurred and be continuing. Administrative Agent may, but shall not be required to, perform any or all of such obligations of such Newark Group Party under any of the License Agreements, including, but not limited to, the payment of any or all sums due from such Newark Group Party thereunder. Any sums so paid by Administrative Agent shall constitute part of the Obligations.

#### **Section 9.20      Foreign Assets Control Regulations, Etc.**

Neither the requesting or borrowing of the Loans nor the use of the proceeds thereof has or will violate the Trading With the Enemy Act (50 USC §1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (including, but not limited to (a) Executive order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56). None of Borrower or any of its Subsidiaries or any

of their respective officers, directors or Affiliates is or will become a "blocked person" as described in the Executive Order, the Trading with the Enemy Act or the Foreign Assets Control Regulations or engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person".

**Section 9.21            Costs and Expenses.**

The Credit Parties shall pay to Agent and Lenders on demand all reasonable costs, fees, expenses, filing fees and taxes paid or payable in connection with the preparation, negotiation, execution, delivery, recording, syndication, administration, collection, liquidation, enforcement and defense of the Obligations, Administrative Agent's, Collateral Agent's, and the applicable Control Agent's rights in the Collateral, this Agreement, the other Financing Agreements and all other documents related hereto or thereto, including any amendments, supplements or consents which may hereafter be requested by Borrower or required by the Agent (whether or not executed) or entered into in respect hereof and thereof, and in connection with any matter related to the Case(s), including without limitation: (a) all costs and expenses of filing or recording (including Uniform Commercial Code financing statement filing taxes and fees, documentary taxes, intangibles taxes and mortgage recording taxes and fees, if applicable) and all title insurance costs and expenses; (b) to the extent Administrative Agent is authorized in any Financing Agreement to conduct such activities at a Credit Party's expense, costs and expenses and fees for insurance premiums, environmental audits, title insurance premiums, surveys, assessments, engineering reports and inspections, appraisal fees and search fees, background checks, (c) costs and expenses of collecting checks and other items of payment, and establishing and maintaining the Control Accounts, together with Administrative Agent's customary charges and fees with respect thereto; (d) costs and expenses of preserving and protecting the Collateral; (e) reasonable costs and expenses paid or incurred in connection with obtaining payment of the Obligations, enforcing the security interests and liens of Collateral Agent (and/or Control Agent), selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of this Agreement and the other Financing Agreements or defending any claims made or threatened against Administrative Agent, Collateral Agent or any Lender arising out of the transactions contemplated hereby and thereby (including preparations for and consultations concerning any such matters other than claims arising solely out of their gross negligence or willful misconduct, as determined by a court of competent jurisdiction); (f) all out-of-pocket expenses and costs heretofore and from time to time hereafter incurred by Administrative Agent during the course of periodic field examinations of the Collateral and a Credit Party's operations, plus a per diem charge at Administrative Agent's then standard rate for Administrative Agent's examiners in the field and office (which rate as of the date hereof is \$1,000 per person per day); (g) the reasonable fees and disbursements of counsel (including legal assistants), and any local counsel in Agent's discretion to Agent and Lenders in connection with any of the foregoing and (h) the reasonable fees, costs and expenses of Agent's and Lenders' advisors in connection with the Case(s) and all other matters referenced in this Section 9.21. Notwithstanding the foregoing or any other provisions set forth herein, the Credit Parties shall only be required to reimburse Agent and Lenders for the reasonable fees and disbursements of one counsel for Agent and one counsel for the Lenders (and any local counsel in Agent's and Lenders' discretion) in connection with the matters referenced in this Section.

**Section 9.22            Additional Credit Parties.**

Upon any Person becoming a direct or indirect Domestic Subsidiary (or Foreign Subsidiary, to the extent that such Person joins as a guarantor under the ABL Credit Agreement, or any other loan documents to which any Credit Party is a borrower) of the Borrower, the Borrower will provide Administrative Agent with written notice thereof setting forth information in reasonable detail describing all of the assets of such Person and shall (a) promptly cause such Person to execute and deliver to Administrative Agent a Guarantor Joinder Agreement in substantially the form of Exhibit D causing such Subsidiary to become a party to this Agreement, as a joint and several "Guarantor" and "Credit Party" for all purposes hereunder, including without limitation, to grant liens in substantially all of its assets to

Collateral Agent (and Control Agent, as applicable) to secure the Obligations pursuant to Section 5.1 hereof, and (b) deliver such other documentation as Administrative Agent may reasonably request in connection with the foregoing, including, without limitation, authorization to file appropriate UCC-1 financing statements, security agreements, other agreements, documents or instruments contemplated under Section 5.2 hereof, certified resolutions and other organizational and authorizing documents of such Person and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above), all in form, content and scope reasonably satisfactory to Administrative Agent and Required Lenders, provided that Borrower shall not be required to cause JD Corp. to become a Guarantor under this Agreement in accordance with this Section 9.22 or to otherwise comply with this Section 9.22 with respect to JD Corp., in each case, unless (A) JD Corp acquires or otherwise owns, in addition to the Jackson Drive Real Property, property and assets with a fair market value of at least \$1,000,000 or (B) the mortgage encumbering the Jackson Drive Real Property on the date hereof is released (and not replaced with a mortgage with the same such restriction) or otherwise no longer prohibits the incurrence of any other liens on such Real Property.

**Section 9.23      Pledged Assets.**

Subject to the provisions of Article 5 hereof which limit the requirement that the Credit Parties' perfect the Agent's liens on all of the Collateral, each of the Credit Parties will cause, subject to Permitted Liens, (i) the Term Loan Priority Collateral, to be subject at all times to a first priority, perfected lien in favor of the applicable Control Agent, Collateral Agent or Administrative Agent, in each case for the benefit of the Lenders, pursuant to the terms and conditions of the Security Documents or such other security documents as the applicable Control Agent, Collateral Agent or Administrative Agent shall reasonably request, and (ii) the ABL Priority Collateral, to be subject at all times to a second priority, perfected lien in favor of the applicable Control Agent, Collateral Agent or Administrative Agent, in each case for the benefit of the Lenders (junior only to the liens of the ABL Lenders), pursuant to the terms and conditions of the Security Documents or such other security documents as the applicable Control Agent, Collateral Agent or Administrative Agent shall reasonably request.

**Section 9.24      Amendment of Subordinated Debt; ABL Financing Agreements.**

(a) The Credit Parties will not, nor will they permit any of their Subsidiaries to, amend, replace, refinance, refund, restructure, supplement, modify, waive or extend or permit the amendment, replacement, refinancing, refunding, restructuring, supplementing, modification, waiver or extension of any term of any document governing or relating to any Subordinated Debt.

(b) The Credit Parties will not, nor will they permit any of their Subsidiaries to, amend, replace, refinance, refund, restructure, supplement, extend or otherwise modify the ABL Credit Agreement or any other ABL Financing Agreement (i) to violate the provisions of the Intercreditor Agreement, (ii) to increase the then outstanding aggregate principal amount of the loans or reimbursement obligations with respect to letters of credit and similar obligations available under the ABL Credit Agreement to an amount that would exceed \$95,000,000, (iii) to amend and/or modify clause (g) of the defined term "Restricted Payments" set forth in the ABL Credit Agreement and/or Sections 2.6, and/or 9.9(b) of the ABL Credit Agreement (including, without limitation, any definition of any defined term contained within clause (g) of the defined term "Restricted Payments" set forth in the ABL Credit Agreement and/or Sections 2.6, and/or 9.9(b) of the ABL Credit Agreement) or (iv) in a manner that would restrict any Newark Group Party's ability to make regularly scheduled payments, mandatory prepayments and/or optional prepayments or any other payments, in each case, hereunder (or any payments on account of the Guaranty set forth in Section 14 hereof).

(c) The Credit Parties will not, nor will they permit any of their Subsidiaries to, without the prior written consent of the Required Lenders, amend, modify, waive or extend or permit the

amendment, modification, waiver or extension of any term (including, without limitation, any scheduled or other payment or prepayment of any kind) of any document governing or relating to any of the B.V. Intercompany Notes in a manner that is adverse to the interests of the Lenders.

**Section 9.25            Limitations on Activities of NP Cogen and JD Corp.**

Neither NP Cogen nor JD Corp. shall engage in any activities or incur any Indebtedness other than (i) owning and operating the assets owned and operated by it in the ordinary course of business as of the date hereof and (ii) owing the Indebtedness owed by it as of the date hereof.

**Section 9.26            Sale Leasebacks.**

The Credit Parties will not, nor will they permit any of their Subsidiaries to, directly or indirectly, become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a Capital Lease, of any property (whether real, personal or mixed) whether now owned or hereafter acquired, (a) which any Credit Parties or any Subsidiary has sold or transferred or is to sell or transfer to a Person which is not a Credit Party or a Subsidiary or (b) which any Credit Party or any Subsidiary intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by a Newark Group Party or a Subsidiary to another Person which is not a Newark Group Party or a Subsidiary in connection with such lease.

**Section 9.27            No Further Negative Pledges.**

The Credit Parties will not, nor will they permit any of their Subsidiaries to, enter into, assume or become subject to any agreement prohibiting or otherwise restricting the creation or assumption of any lien upon any of their properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation, except (a) pursuant to this Agreement and the other Financing Agreements, or pursuant to the ABL Credit Agreement and the other ABL Financing Agreements, (b) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 9.9(d); provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, and (c) in connection with any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien.

**Section 9.28            Limitation on Excluded Subsidiaries.**

The Credit Parties will not permit the Excluded Subsidiaries to (i) own any other assets or to conduct any other business other than such assets owned and such business conducted, in each case as of the date hereof or (ii) to account for, individually or in the aggregate for all such Excluded Subsidiaries, more than 5% of the net income or assets (determined on a consolidated basis) of the Borrower and its Subsidiaries.

**Section 9.29            After Acquired Real Property.**

If any Credit Party hereafter acquires any real property, fixtures or any other property with cash or Cash Equivalents on hand or with the proceeds of Indebtedness incurred under this Agreement that is of the kind or nature described in the Mortgaged Property and such real property, fixtures or other property is adjacent to, contiguous with or necessary or related to or used in connection with any Mortgaged Property, or if such real property is not adjacent to, contiguous with or related to or used in connection with Mortgaged Property, then if such real property, fixtures or other property at any location (or series of adjacent, contiguous or related locations, and regardless of the number of parcels) has a fair market value in an amount equal to or greater than \$500,000 net of prior liens or such lesser

amount as required by the Agent in its sole discretion, without limiting any other rights of Agent or any Lender, or duties or obligations of any Credit Party, promptly upon Agent's request, such Credit Party shall execute and deliver to Agent a mortgage, deed of trust or deed to secure debt, as Agent may determine, in form and substance substantially similar to the Mortgages and as to any provisions relating to specific state laws satisfactory to Agent and in form appropriate for recording in the real estate records of the jurisdiction in which such real property or other property is located granting to Agent a first lien and mortgage on and security interest in such real property, fixtures or other property (except as such Credit Party would otherwise be permitted to incur hereunder or under the Mortgages or as otherwise consented to in writing by Agent) and such other agreements, documents and instruments as Agent may require in connection therewith. Each Credit Party shall not, and shall not permit any of its Domestic Subsidiaries to, create, incur, assume or suffer to exist any security interest, mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of its real property to the extent that it is not encumbered by a Mortgage for the benefit of Agent and Lenders (other than the Permitted Liens referenced in Section 9.8(d) hereof and Section 9.8(j)(ii) hereof).

**Section 9.30      Operating Leases.**

Each of the Credit Parties will not, nor will it permit any of its Subsidiaries to, enter into, assume or permit to exist any obligations for the payment of rent under Operating Leases which in the aggregate for all such Persons would exceed \$12,000,000 in any fiscal year of the Borrower.

**Section 9.31      Further Assurances.**

At the reasonable request of Agent at any time and from time to time, the Credit Parties shall, at their expense, duly execute and deliver, or cause to be duly executed and delivered, such further agreements, documents and instruments, and do or cause to be done such further acts as may be necessary or proper to evidence, perfect (solely with respect to perfection, subject to the provisions of Article 5 hereof which limit the requirement that the Credit Parties perfect the Agent's liens on all of the Collateral), maintain and enforce the security interests and the priority thereof in the Collateral and to otherwise effectuate the provisions or purposes of this Agreement or any of the other Financing Agreements.

**Section 9.32      Reserved.**

**Section 9.33      Information**

Each Credit Party shall cause all quarterly and annual financial statements relating to any Newark Group Party or any of their Subsidiaries which have been or may hereafter be delivered by any Newark Group Party to Administrative Agent and Lenders to be prepared in accordance with GAAP (except as to any interim financial statements, to the extent such statements are subject to normal year-end adjustments and do not include any notes) and to fairly present in all material respects the financial condition and the results of operation of such Newark Group Party and such Subsidiaries as at the dates and for the periods set forth therein. The projections for the fiscal years ending 2010 through 2014 that have been delivered to Administrative Agent or any projections hereafter delivered to Administrative Agent shall have been prepared in light of the past operations of the businesses of the Newark Group Parties and their Subsidiaries and shall be based upon estimates and assumptions stated therein, all of which the Newark Group Parties have determined to be reasonable and fair in light of the then current conditions and current facts and reflect the good faith and reasonable estimates of the Newark Group Parties of the future financial performance of Borrower and its Subsidiaries and of the other information projected therein for the periods set forth therein. Each Credit Party shall cause all information furnished by or on behalf of any Newark Group Party or any Subsidiary thereof in writing to Administrative Agent, any Lender or the Bankruptcy Court in connection with this Agreement or any of the other Financing Agreements, or any transaction contemplated hereby or thereby or the Case(s), including all information

on the Information Certificate to be true and correct in all material respects on the date as of which such information is dated or certified and to not omit any material fact necessary in order to make such information not misleading.

**Section 9.34      Reserved.**

**Section 9.35      Foreign Subsidiary Covenant.**

(a) Encumbrances. Without limiting Section 9.8, each of the Credit Parties agrees that each of its Foreign Subsidiaries shall not, and shall not permit any of its Foreign Subsidiaries to, create, incur, assume or suffer to exist any security interest, mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of its assets or properties, or file or permit the filing of, or permit to remain in effect, any financing statement, charge or other similar notice of any security interest or lien with respect to any such assets or properties, except to secure Indebtedness incurred by such Foreign Subsidiary to fund its working capital and capital expenditure requirements and acquisitions (in accordance with Section 9.35(b) hereof) (and any guarantees thereof).

(b) Indebtedness. Without limiting Section 9.9, each of the Credit Parties agrees that each of its Foreign Subsidiaries shall not, and shall not permit any of its Foreign Subsidiaries to, incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any Indebtedness, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly), the Indebtedness, performance, obligations or dividends of any other Person, except, Indebtedness (i) of up to €30,000,000 incurred by Credit Parties' Foreign Subsidiaries to fund (A) their working capital and capital expenditure requirements (and any guarantees thereof) and (B) up to €6,000,000 of acquisitions, (ii) of Newark B.V. under the ABL Credit Agreement, (iii) permitted under Section 9.10(l) hereof and (iv) owing by one Foreign Subsidiary of the Credit Parties solely to another Foreign Subsidiary of the Credit Parties.

**Section 9.36      Bankruptcy Covenants.**

Borrower and Guarantors shall not seek or consent to, any of the following:

(a) without the prior written consent of Administrative Agent, any modification, stay, vacation or amendment to the Financing Order;

(b) the use of cash collateral of Administrative Agent and Lenders under Section 363 of the Bankruptcy Code;

(c) to obtain post-petition loans or other financial accommodations, other than from Administrative Agent and Lenders and from Indebtedness permitted under [Section 9.9] of this Agreement, pursuant to Sections 364(c) or (d) of the Bankruptcy Code without the prior written consent of Administrative Agent;

(d) to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of Administrative Agent's pre-petition and post-petition liens and claims;

(e) to challenge the application of any payments or collections received by Administrative Agent, Collateral Agent or Lenders to the Obligations as provided for herein;

(f) any plan of reorganization that does not provide for the indefeasible payment in full in cash or other immediately available funds and satisfaction of all Obligations on the effective date of such plan unless Administrative Agent and Lenders shall have agreed to such other treatment in writing;

(g) to surcharge Lenders or the Collateral pursuant to Sections 105, 506(c), 552 or any other section of the Bankruptcy Code;

(h) to seek relief under the Bankruptcy Code, including without limitation, under Sections 105 or 362, to the extent any such relief would in any way restrict or impair the rights and remedies of Administrative Agent, Collateral Agent or any Lender as provided herein, in the Financing Agreements or in the Financing Order;

(i) a priority claim or administrative expense or unsecured claim against Borrower or Guarantors (now existing or hereafter arising of any kind or nature, including any administrative expense of the kind specified in Section 105, 326, 330, 331, 503(a), 503(b), 506(c), 507(b), 546(c), 546(d) or 1114 of the Bankruptcy Code) equal or superior to the priority claim of Administrative Agent, Collateral Agent and Lenders in respect of the Obligations, except to the extent of the Carve-Out or the liens of the ABL Administrative Agent as to the ABL Priority Collateral to secure the Indebtedness under the ABL Credit Agreement, to the extent such liens and Indebtedness are permitted hereunder; and

(j) any order seeking authority to take any action prior to the effectiveness of a plan of reorganization that is prohibited by the terms of this Agreement or the other Financing Agreements or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Financing Agreements.

#### **Section 9.37      Prepetition Payables.**

Borrower and each Guarantor shall be permitted to pay any prepetition claim arising under Section 503(b)(9) of the Bankruptcy Code or otherwise without the prior written consent of Administrative Agent and Lenders so long as such payments are consistent with the Budget and are approved by an order of the Bankruptcy Court in form and substance satisfactory to Administrative Agent.

### **SECTION 10 EVENTS OF DEFAULT AND REMEDIES**

#### **Section 10.1      Events of Default.**

The occurrence or existence of any one or more of the following events are referred to herein individually as an "Event of Default", and collectively as "Events of Default":

(a) (i) (A) Borrower fails to pay any principal on any Loan when due in accordance with the terms hereof; or (B) Borrower fails to pay any interest on any Loan or other Obligation or any fee or other amount payable hereunder when due in accordance with the terms hereof and such failure shall continue unremedied for three (3) days (or any Guarantor shall fail to timely pay on the Guaranty in respect of any of the foregoing or in respect of any other Guaranty Obligations thereunder);

(ii) any Credit Party shall fail to perform, comply with or observe any term, covenant or agreement applicable to it contained in any of Sections 8.32 (and with respect to Sections 8.32(b) and (d), such failure is not cured within one (1) Business Day of its occurrence), 8.33(d) 9.1, 9.5, 9.6 through 9.12, 9.15 through 9.18, 9.20, 9.24 through 9.30, or 9.35 through 9.37;

(iii) any Credit Party shall fail to comply with any other covenant, contained in this Agreement or the other Financing Agreements (other than as described in Sections 10.1(a)(i) or (ii) above and 10.1(a)(iv) below), and in the event such breach or failure to comply is capable of cure, is not cured within thirty (30) days after its occurrence; provided, that, such thirty (30) day period shall not

apply in the case of: (A) any failure to observe any such covenant which is not capable of being cured at all or within such thirty (30) day period or which has been the subject of a prior failure within the prior six (6) month period or (B) an intentional breach by any Credit Party of any such covenant; or

(iv) Reserved;

(b) any representation, warranty or statement of fact made by any Credit Party to Agent or any Lender in this Agreement, the other Financing Agreements or any other written agreement, schedule, confirmatory assignment or otherwise shall when made or deemed made be false or misleading in any material respect on or as of the date made or deemed to be made;

(c) any Guarantor revokes or terminates or purports to revoke or terminate or fails to perform any of the terms, covenants, conditions or provisions of any guarantee (including, without limitation, the Guarantees), endorsement or other agreement of such party in favor of Administrative Agent or any Lender or any of the Guarantees or any material provisions thereof is invalid or unenforceable;

(d) any judgment for the payment of money is rendered against any Newark Group Party in excess of \$250,000 in any one case or in excess of \$250,000 in the aggregate (to the extent not covered by insurance where the insurer has assumed responsibility in writing for such judgment) and shall remain undischarged or unvacated for a period in excess of thirty (30) days or execution shall at any time not be effectively stayed, or any judgment other than for the payment of money, or injunction, attachment, garnishment or execution is rendered against any Newark Group Party or any of the Collateral having a value in excess of \$250,000;

(e) any Newark Group Party dissolves or discontinues doing business (provided that any Guarantor may dissolve or discontinue doing business if its assets are transferred to a Newark Group Party prior to such dissolution or discontinuation); any Newark Group Party (other than NP Cogen) suspends doing business other than for temporary shutdowns for routine maintenance or otherwise in accordance with past practices and in any event not more than five days in any fiscal quarter;

(f) any Newark Group Party makes an assignment for the benefit of creditors, makes or sends notice of a bulk transfer or calls a meeting of its creditors or principal creditors in connection with a moratorium or adjustment of the Indebtedness due to them;

(g) other than with respect to the Borrower and Guarantors subject to the Case(s), a case or proceeding under Debtor Relief Laws, the bankruptcy laws of the United States of America or other applicable jurisdiction now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed against any Newark Group Party or all or any part of their respective properties and such petition or application is not dismissed within sixty (60) days after the date of its filing or any Newark Group Party shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of, any such action or proceeding or the relief requested is granted sooner;

(h) other than with respect to the Borrower and Guarantors subject to the Case(s), a case or proceeding under the bankruptcy laws of the United States of America or comparable proceeding under the Debtor Relief Laws or any other laws of any other applicable jurisdiction now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at a law or equity) is filed by any Newark Group Party or for all or any part of their respective property;

(i) any default in respect of any Indebtedness of any Newark Group Party (other than Indebtedness owing to Agent and Lenders hereunder), that is not stayed by the Bankruptcy Court in connection with the Case(s), in any case in an amount in excess of \$2,500,000, which default continues for more than the applicable cure period, if any, with respect thereto or any default by any Newark Group Party under any Material Contract that is not stayed by the Bankruptcy Court in connection with the Case(s), which default continues for more than the applicable cure period, if any, with respect thereto and/or is not waived in writing by the other parties thereto;

(j) any material provision hereof or of any of the other Financing Agreements shall for any reason cease to be valid, binding and enforceable with respect to any party hereto or thereto (other than with respect to Agent and Lenders) in accordance with its terms, or any such party shall challenge the enforceability hereof or thereof, or shall assert in writing, or take any action or fail to take any action based on the assertion that any provision hereof or of any of the other Financing Agreements has ceased to be or is otherwise not valid, binding or enforceable in accordance with its terms, or any security interest or mortgage provided for herein or in any of the other Financing Agreements shall cease to be a valid and perfected first priority and/or second priority (as applicable) security interest or mortgage, as applicable, in any of the Collateral purported to be subject thereto (except as otherwise permitted herein or therein);

(k) an ERISA Event shall occur which results in or could reasonably be expected to result in a Material Adverse Effect;

(l) any Change of Control;

(m) the indictment by any Governmental Authority of any Newark Group Party 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 or threatened commencement of criminal or civil proceedings against such Newark Group 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 \$2,500,000 or (ii) any other property of any Newark Group Party which is necessary or material to the conduct of its business;

(n) there shall be an event of default (after any applicable cure period thereunder has expired) under any of the other material Financing Agreements;

(o) (i) any default (which is not cured within the applicable period of grace or waived) or event of default shall occur under any Subordinated Debt or the subordination provisions related thereto shall cease to be in full force and effect or to give the Agent and/or Lenders the rights, powers and privileges purported to be created thereby, or (ii) any default (which is not cured within the applicable period of grace or waived) or event of default shall occur under any of the ABL Financing Agreements or the Intercreditor Agreement shall cease to be in full force and effect or to give the Agent and/or Lenders the rights, powers and privileges purported to be created thereby;

(p) any uninsured damage to or loss, theft or destruction of any assets of Borrower or Guarantors or any of their Subsidiaries shall occur that, with respect to any assets of Borrower or any Guarantor, is in excess of \$2,500,000 (except that with respect to assets of the Borrower and Guarantors, other than inventory, at plants that have ceased to operate for a period of not less than ninety (90) days from the date of receipt by Agent of notice from Borrower of such closure, is in excess of \$5,000,000) and, with respect to any assets of any Subsidiary of Borrower or Guarantors, is in excess of \$5,000,000;

(q) an order shall be entered in the Case(s) granting any Person relief from the automatic stay so as to permit such Person to proceed against any Collateral of any Credit Party having a value, individually or in the aggregate, in excess of \$250,000;

(r) notice shall be given of a sale of all or any portion of the Collateral pursuant to Section 363 of the Bankruptcy Code, which sale is not permitted hereunder or to which the appropriate number of Lenders hereunder have not consented;

(s) the Borrower and its Subsidiaries fail to comply with the terms of the Settlement Agreement or the Final Judgment and any cure right or period prior to which the Commonwealth of Massachusetts or other applicable Governmental Authority shall have the right to (i) enjoin or materially limit the Borrower's business operations or (ii) levy or issue a fine or penalty that could reasonably be expected to have a Material Adverse Effect shall have expired;

(t) the occurrence of any condition or event which permits Administrative Agent, Collateral Agent and Lenders to exercise any of the remedies set forth in the Financing Order, including, without limitation, any "Event of Default" (as defined in the Financing Order);

(u) the termination or non-renewal of the Financing Agreements as provided for in the Financing Order; and

(v) any act, condition or event occurring after the date of the commencement of the Case(s) that has or would reasonably expect to have a Material Adverse Effect upon the assets, business or prospects of Borrower and Guarantors (taken as a whole) (other than pursuant to a reduction in payment terms by suppliers or reclamation claims), or the Collateral or the rights and remedies of Agent and Lenders under the Loan Agreement or any other Financing Agreements or the Financing Order;

(w) conversion of any Case to a Chapter 7 case under the Bankruptcy Code;

(x) dismissal of any Case or any subsequent Chapter 7 case either voluntarily or involuntarily;

(y) the grant of a lien on or other interest in any property of Borrower or any Guarantor other than a lien or encumbrance permitted by Section 9.8 hereof or by the Financing Order or an administrative expense claim other than such administrative expense claim permitted by the Financing Order or this Agreement by the grant of or allowance by the Bankruptcy Court which is superior to or ranks in parity with Collateral Agent's and Lenders' security interest in or lien upon the Collateral or their Superpriority Claim (as defined in the Financing Order);

(z) the Financing Order shall be modified, reversed, revoked, remanded, stayed, rescinded, vacated or amended on appeal or by the Bankruptcy Court without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld or delayed (and no such consent shall be implied from any other authorization or acquiescence by Administrative Agent, Collateral Agent or any Lender);

(aa) the appointment of a trustee pursuant to Sections 1104(a)(1) or 1104(a)(2) of the Bankruptcy Code;

(bb) the appointment of an examiner with special powers pursuant to Section 1104(a) of the Bankruptcy Code;

(cc) the filing of a plan of reorganization or liquidation by or on behalf of Borrower or any Guarantor, to which Administrative Agent has not consented in writing, which does not provide for the payment in full of all Obligations on the effective date thereof in accordance with the terms and conditions contained herein;

(dd) the termination of the Plan Support Agreement, the ABL Support Letter, the ESOP Settlement Agreement or the von Zuben Settlement Agreement;

(ee) the confirmation of any plan of reorganization or liquidation in the Case(s) of Borrower or any Guarantor, to which Administrative Agent has not consented to in writing, which does not provide for payment in full of all Obligations on the effective date thereof in accordance with the terms and conditions contained herein; or

(ff) any material provision of the Plan Support Agreement shall for any reason cease to be valid, binding and enforceable with respect to any party thereto in accordance with its terms, or any such party shall challenge the enforceability thereof, or shall assert in writing, or take any action or fail to take any action based on the assertion that any provision thereof has ceased to be or is otherwise not valid, binding or enforceable in accordance with its terms;

For the purposes of this Section 10.1, in relation to any procedure or step taken in the Netherlands, (i) bankruptcy (*faillissement*), suspension of payments (*surseance van betaling*), emergency procedure (*noodregeling*) or any other procedure having the effect that the entity to which it applies loses the free management or ability to dispose of its property (irrespective of whether that procedure is provisional or final); and (ii) dissolution (*ontbinding*) or any other procedure having the effect that the entity to which it applies ceases to exist, shall qualify as events specified in Sections 10.1(g) and (h) above.

## **Section 10.2        Remedies.**

(a) At any time an Event of Default exists or has occurred and is continuing, Agent and Lenders shall have all rights and remedies provided in this Agreement (including, without limitation, imposing the Default Rate), the other Financing Agreements, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by any Credit Party, except as such notice or consent is expressly provided for hereunder or required by applicable law or the Financing Order. All rights, remedies and powers granted to Agent and Lenders hereunder, under any of the other Financing Agreements, the Financing Order, the UCC or other applicable law, are cumulative, not exclusive and enforceable, exercisable in Agent's discretion (or at the direction of the Required Lenders), alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Credit Party of this Agreement or any of the other Financing Agreements. Subject to Section 12 hereof, Administrative Agent may, and at the direction of the Required Lenders shall, at any time or times, proceed directly against any Credit Party to collect the Obligations without prior recourse to the Collateral.

(b) Without limiting the generality of the foregoing, at any time an Event of Default exists or has occurred and is continuing, Administrative Agent may, at its option and shall upon the direction of the Required Lenders, upon notice to Borrower, accelerate the payment of all Obligations and demand immediate payment thereof to Administrative Agent for itself and the benefit of Lenders (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), all Obligations shall automatically become immediately due and payable.

(c) Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, subject to the terms of the Intercreditor Agreement, Agent may, at its option and shall upon the direction of the Required Lenders, (i) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral, (ii) require any Credit Party, at Borrower's expense, to assemble and make available to Agent any part or all of the Collateral at any place and time designated by Agent, (iii) collect, foreclose, receive,

appropriate, setoff and realize upon any and all Collateral, (iv) remove any or all of the Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, and/or (v) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Administrative Agent or elsewhere) at such prices or terms as Agent may deem reasonable, for cash, upon credit or for future delivery, with Agent having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of any Credit Party, which right or equity of redemption is hereby expressly waived and released by the Credit Parties. If any of the Collateral is sold or leased by Agent upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Agent. If notice of disposition of Collateral is required by law, ten (10) days prior notice by Agent to Borrower designating the time and place of any public sale or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and the Credit Parties waive any other notice. In the event Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, each Credit Party waives the posting of any bond which might otherwise be required. The rights of the Administrative Agent and/or Collateral Agent set forth in this subsection (c) with respect to the Capital Stock of Newark B.V. shall be subject to the terms of the Dutch Deed of Pledge.

(d) At any time or times that an Event of Default exists or has occurred and is continuing and subject to the terms of the Intercreditor Agreement, Administrative Agent and Collateral Agent may, in their discretion, enforce the rights of any Credit Party against any account debtor, secondary obligor or other obligor in respect of any of the Accounts or other Receivables. Without limiting the generality of the foregoing, Administrative Agent and/or Collateral Agent may, in its discretion, at such time or times, subject to the Intercreditor Agreement, (i) notify any or all account debtors, secondary obligors or other obligors in respect thereof that the Receivables have been assigned to Collateral Agent and that Collateral Agent has a security interest therein and Administrative Agent and/or Collateral Agent may direct any or all account debtors, secondary obligors and other obligors to make payment of Receivables directly to Collateral Agent or Administrative Agent, (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Receivables or other obligations included in the Collateral and thereby discharge or release the account debtor or any secondary obligors or other obligors in respect thereof without affecting any of the Obligations, (iii) demand, collect or enforce payment of any Receivables or such other obligations, but without any duty to do so, and Administrative Agent, Collateral Agent and Lenders shall not be liable for any failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto and (iv) take whatever other action Administrative Agent or Collateral Agent may deem necessary or desirable for the protection of its interests and the interests of Lenders. At any time that an Event of Default exists or has occurred and is continuing, subject to the Intercreditor Agreement, at Administrative Agent's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other obligations have been assigned to Collateral Agent and are payable directly and only to Collateral Agent and the Credit Parties shall deliver to Administrative Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Administrative Agent may require. In the event any account debtor returns Inventory when an Event of Default exists or has occurred and is continuing, Borrower shall, upon Administrative Agent's request, hold the returned Inventory in trust for Collateral Agent, segregate all returned Inventory from all of its other property, dispose of the returned Inventory solely according to Administrative Agent's and Collateral Agent's instructions, and not issue any credits, discounts or allowances with respect thereto without Administrative Agent's prior written consent.

(e) To the extent that applicable law imposes duties on Administrative Agent or Collateral Agent or any Lender to exercise remedies in a commercially reasonable manner (which duties

cannot be waived under such law), each Credit Party acknowledges and agrees that it is not commercially unreasonable for Administrative Agent, Collateral Agent or any Lender (i) to fail to incur expenses reasonably deemed significant by Administrative Agent, Collateral Agent or any Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain consents of any Governmental Authority or other third party for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against account debtors, secondary obligors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (iv) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other persons, whether or not in the same business as any Newark Group Party, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, (xi) to purchase insurance or credit enhancements to insure Administrative Agent, Collateral Agent or Lenders against risks of loss, collection or disposition of Collateral or to provide to Administrative Agent, Collateral Agent or Lenders a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by Administrative Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Administrative Agent and Collateral Agent in the collection or disposition of any of the Collateral. Each Credit Party acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Administrative Agent, Collateral Agent or any Lender would not be commercially unreasonable in the exercise by Administrative Agent, Collateral Agent or any Lender of remedies against the Collateral and that other actions or omissions by Administrative Agent, Collateral Agent or any Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section. Without limitation of the foregoing, nothing contained in this Section shall be construed to grant any rights to any Credit Party or to impose any duties on Administrative Agent, Collateral Agent or Lenders that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

(f) For the purpose of enabling Administrative Agent and Collateral Agent to exercise the rights and remedies hereunder, each Credit Party hereby grants to Administrative Agent and Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable at any time an Event of Default shall exist or have occurred and for so long as the same is continuing) without payment of royalty or other compensation to any Credit Party, to use, assign, license or sublicense any of the trademarks, service-marks, trade names, business names, trade styles, designs, logos and other source of business identifiers and other Intellectual Property and general intangibles now owned or hereafter acquired by any Credit Party, wherever the same maybe located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

(g) At any time an Event of Default exists or has occurred and is continuing, Administrative Agent may apply the cash proceeds of Collateral actually received by Administrative Agent or Collateral Agent from any sale, lease, foreclosure or other disposition of the Collateral to payment of the Obligations, in whole or in part and in accordance with the terms hereof, whether or not then due or may hold such proceeds as cash collateral for the Obligations. The Credit Parties shall remain liable to Administrative Agent, Collateral Agent and Lenders for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including attorneys' fees and expenses.

(h) Notwithstanding any provision to the contrary in any Financing Agreement, foreclosure on any security governed by Canadian law, including the right of pledge over the Newark Paperboards Capital Stock (including allocation of the proceeds) shall take place in accordance with Canadian law and any relevant Security Document. Section 10.2(c) hereof shall not apply to any security governed by Canadian law to the extent not permissible under the applicable Canadian law.

(i) Notwithstanding any provision to the contrary in any Financing Agreement, foreclosure on any security governed by Dutch law, including the right of pledge over the Capital Stock of Newark B.V. (including allocation of the proceeds) shall take place in accordance with Dutch law and any relevant Security Document (including the Dutch Deed of Pledge).

## **SECTION 11**

### **JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW**

#### **Section 11.1      Governing Law; Choice of Forum; Service of Process; Jury Trial**

##### **Waiver.**

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements (except as otherwise provided therein) and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York, but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than New York and the Bankruptcy Code; provided that the Dutch Deed of Pledge shall be governed by the laws of the Netherlands.

(b) The Credit Parties, Agent and Lenders irrevocably consent and submit to the non-exclusive jurisdiction of the United States Bankruptcy Court of the District of New Jersey (and in the event such Bankruptcy Court does not have jurisdiction over any matter or if it has jurisdiction but does not exercise such jurisdiction for any reason, then the courts of the State of New York sitting in New York County, New York and the United States District Court of the Southern District of New York, whichever Administrative Agent may elect), and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Agent and Lenders shall have the right to bring any action or proceeding against any Credit Party or its or their property in the courts of any other jurisdiction which Agent deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against any Credit Party or its or their property).

(c) Each Credit Party hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Administrative Agent's option, by service upon any Credit Party in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, such Credit Party shall appear in answer to such process, failing which such Credit Party shall be deemed in default and judgment may be entered by Administrative Agent against such Credit Party for the amount of the claim and other relief requested; provided, however, that enforcement in a Dutch court of this Agreement and the Dutch Deed of Pledge will be subject to Dutch rules of civil procedure.

(d) THE CREDIT PARTIES, AGENT AND LENDERS EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. THE CREDIT PARTIES, AGENT AND LENDERS EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY Credit Party, AGENT OR ANY LENDER MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Agent and Lenders shall not have any liability to any Credit Party (whether in tort, contract, equity or otherwise) for losses suffered by such Credit Party in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, any other Financing Agreement or any act, omission or event occurring in connection herewith or therewith, unless it is determined by a final and non-appealable judgment or court order binding on Agent and such Lender, that the losses were the result of acts or omissions of Agent or Lenders, as applicable, constituting gross negligence or willful misconduct. In any such litigation, Agent and Lenders shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement. Each Credit Party: (i) certifies that neither Agent, any Lender, nor any representative, agent or attorney acting for or on behalf of Agent or any Lender has represented, expressly or otherwise, that Agent and Lenders would not, in the event of litigation, seek to enforce any of the waivers provided for in this Agreement or any of the other Financing Agreements and (ii) acknowledges that in entering into this Agreement and the other Financing Agreements, Agent and Lenders are relying upon, among other things, the waivers and certifications set forth in this Section 11.1 and elsewhere herein and therein.

#### **Section 11.2      Waiver of Notices.**

Each Credit Party hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonor with respect to any and all instruments and chattel paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on any Credit Party which Agent or any Lender may elect to give shall entitle such Credit Party to any other or further notice or demand in the same, similar or other circumstances.

#### **Section 11.3      Amendments and Waivers.**

(a) Neither this Agreement nor any other Financing Agreement nor any terms hereof or thereof may be amended, waived, discharged or terminated unless such amendment, waiver, discharge or termination is in writing signed by Administrative Agent or Collateral Agent, as applicable, and the Required Lenders or at Administrative Agent's option, by Administrative Agent or Collateral Agent, as applicable, with the authorization or consent of the Required Lenders, and as to amendments to any of the Financing Agreements (other than with respect to any provision of Section 12 hereof), by Borrower (and such amendment, waiver, discharge or termination shall be binding on all Credit Parties) and such amendment, waiver, discharge or termination shall be effective and binding as to all Lenders only in the specific instance and for the specific purpose for which given; except, that, no such amendment, waiver, discharge or termination shall:

(i) reduce, or extend the time of payment of, principal, interest or any fees or any other Obligations, in each case without the consent of each Lender directly affected thereby;

(ii) increase the commitment of any Lender to lend over the amount then in effect or provided hereunder for such Lender, without the consent of each such Lender;

(iii) release or subordinate Collateral Agent's Liens with respect to any, Collateral with a fair market value in excess of \$10,000,000 (except as expressly required hereunder or under any of the other Financing Agreements or applicable law and except as permitted under Section 12.11(b) hereof), without the consent of Administrative Agent and all of Lenders,

(iv) release Borrower or any Guarantor from obligations hereunder, without the consent of Administrative Agent and all of the Lenders,

(v) reduce any percentage specified in the definition of Required Lenders (or reduce the number of Lenders specified in the proviso in such definition), without the consent of Administrative Agent and all of Lenders,

(vi) consent to the assignment or transfer by any Credit Party of any of their rights and obligations under this Agreement, without the consent of Administrative Agent and all of Lenders,

(vii) amend, modify or waive any terms of this Section 11.3 hereof, without the consent of Administrative Agent and all of Lenders,

(viii) amend Section 6.4(b), Section 6.9 or Section 6.10(b) without the consent of Administrative Agent and each Lender,

(ix) amend Sections 9.24(b)(ii), 9.24(b)(iii) and/or 9.24(b)(iv) hereof without the consent of the Administrative Agent and each Lender, or

(x) amend, modify or waive Section 13.7(g) without the consent of each Granting Lender all or part of whose Loans are being funded by an SPC at the time of such amendment, modification or waiver.

(b) Agent and Lenders shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its or their rights, powers and/or remedies unless such waiver shall be in writing and signed as provided herein. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Agent or any Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Agent or any Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

(c) Notwithstanding anything to the contrary contained in Section 11.3(a) above, if any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Financing Agreement that requires the consent of each Lender and that has been approved by the Required Lenders (such Lender being referred to herein as a "Non-Consenting Lender"), then Borrower or Agent shall have the right, but not the obligation, to replace such Non-Consenting Lender in connection with such proposed amendment, waiver, consent or release. Upon the exercise by Borrower or Agent of such right, such Non-Consenting Lender shall have the obligation, to sell, assign and transfer to an Eligible Transferee, all rights and interests of such Non-Consenting Lender pursuant thereto. Borrower or Agent, as applicable, shall provide the Non-Consenting Lender with prior written notice of its intent to exercise its right under this Section, which notice shall specify a date on which such purchase

and sale shall occur. Such purchase and sale shall be pursuant to the terms of an Assignment and Acceptance (whether or not executed by the Non-Consenting Lender), except that on the date of such purchase and sale, such Eligible Transferee, shall pay to the Non-Consenting Lender (except as such Non-Consenting Lender may otherwise agree) the amount equal to, without duplication: (i) the principal balance of the Loans and all of the other Obligations held by the Non-Consenting Lender outstanding as of the close of business on the business day immediately preceding the effective date of such purchase and sale, plus (ii) amounts accrued and unpaid in respect of interest and fees and other amounts payable to the Non-Consenting Lender to the effective date of the purchase (but in no event shall the Non-Consenting Lender be deemed entitled to any early termination fee). Such purchase and sale shall be effective on the date of the payment of such amount to the Non-Consenting Lender.

(d) The consent of Administrative Agent or Collateral Agent, as applicable, shall be required for any amendment, waiver or consent affecting the rights, obligations, liabilities or duties of Administrative Agent or Collateral Agent, as applicable, hereunder or under any of the other Financing Agreements, in addition to the consent of the Lenders otherwise required by this Section. Notwithstanding anything to the contrary contained in Section 11.3(a) above, (i) in the event that Administrative Agent and Required Lenders shall agree that any conditions set forth in Section 4.1 hereof may be satisfied after the date hereof, Administrative Agent may, in its discretion, agree to extend the date for satisfaction of such condition(s) or take such other action as Administrative Agent may deem appropriate as a result of the failure of Borrower and/or any other Credit Party to satisfy such conditions as Administrative Agent may determine or may waive any Event of Default as a result of the failure to timely satisfy such conditions, in each case without the consent of any Lender and (ii) Administrative Agent may consent to any change in the type of organization, jurisdiction of organization or other legal structure of any Credit Party or any of their Subsidiaries and amend the terms hereof or of any of the other Financing Agreements as may be necessary or desirable to reflect any such change, in each case without the approval of any Lender.

#### **Section 11.4      Waiver of Counterclaims.**

Each Credit Party waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the other Financing Agreements, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.

#### **Section 11.5      Indemnification; Limitation of Liability.**

Each Credit Party shall, jointly and severally, indemnify and hold Agent and each Lender, and their respective officers, directors, agents, employees, advisors and counsel and their respective Affiliates (each such person being an "Indemnatee"), harmless from and against any and all losses, claims, damages, liabilities, costs or expenses (including attorneys' fees and expenses) imposed on, incurred by or asserted against any of them in connection with (i) the Case(s), (ii) any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, or any other Financing Agreements, (iii) any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel and (iv) the Indemnatee's payments to or indemnification of any bank, financial institution or other Person at which any of the Credit Parties maintain deposit accounts and/or investment accounts (other than Excluded Deposit Accounts) or any other bank, financial institution or other Person involved in the transfer of funds to or from such deposit accounts or investment accounts, **AND INCLUDING WITHOUT LIMITATION WITH RESPECT TO ANY ACTION OR INACTION ARISING FROM ANY INDEMNITEE'S NEGLIGENCE OR STRICT LIABILITY** except that, in each case, the Credit Parties shall not have any obligation under this Section 11.5 to indemnify an Indemnatee with respect to a matter covered hereby resulting from the

gross negligence or willful misconduct of such Indemnatee as determined pursuant to a final, non-appealable order of a court of competent jurisdiction (but without limiting the obligations of the Credit Parties as to any other Indemnatee). To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, the Credit Parties shall pay the maximum portion which it is permitted to pay under applicable law to Administrative Agent and Lenders in satisfaction of indemnified matters under this Section. To the extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against any Indemnatee, on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Financing Agreements, or any undertaking or transaction contemplated hereby. No Indemnatee referred to above 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 any of the other Financing Agreements or the transaction contemplated hereby or thereby. All amounts due under this Section shall be payable upon demand. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

Each Credit Party further agree that no Indemnatee will have any liability (whether direct or indirect, in contract, tort, or otherwise) to any Credit Party or any of their security holders or creditors for or in connection with the transactions contemplated hereby, except for direct damages to such party (as opposed to special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings)) determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Indemnified Party's gross negligence, bad faith or willful misconduct.

## **SECTION 12 THE AGENT**

### **Section 12.1      Appointment, Powers and Immunities.**

Each Lender irrevocably designates, appoints and authorizes ORIX to act as Administrative Agent, Collateral Agent and a Control Agent hereunder and under the other Financing Agreements with such powers as are specifically delegated to Administrative Agent, Collateral Agent and such Control Agent, as applicable, by the terms of this Agreement and of the other Financing Agreements, together with such other powers as are reasonably incidental thereto. Administrative Agent, Collateral Agent and such Control Agent (a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Financing Agreements, and shall not by reason of this Agreement or any other Financing Agreement be a trustee or fiduciary for any Lender; (b) shall not be responsible to Lenders for any recitals, statements, representations or warranties contained in this Agreement or in any of the other Financing Agreements, or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or any other Financing Agreement, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Agreement or any other document referred to or provided for herein or therein or for any failure by any Credit Party or any other Person to perform any of its obligations hereunder or thereunder; and (c) shall not be responsible to Lenders for any action taken or omitted to be taken by it hereunder or under any other Financing Agreement or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except for its own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Administrative Agent, Collateral Agent and/or such Control Agent may employ agents and attorneys in fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys in fact selected by it in good faith. Subject to the provisions set forth in Section 13.7 hereof, Administrative Agent may deem and treat the payee of any note as the holder thereof for all purposes hereof unless and until the assignment thereof pursuant to an agreement (if and to the extent

permitted herein) in form and substance satisfactory to Administrative Agent shall have been delivered to and acknowledged by Administrative Agent.

**Section 12.2      Reliance by Agent.**

Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopy, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Agent. As to any matters not expressly provided for by this Agreement or any other Financing Agreement, Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders or all of Lenders as is required in such circumstance, and such instructions of such Agents and any action taken or failure to act pursuant thereto shall be binding on all Lenders.

**Section 12.3      Events of Default.**

(a) Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or an Event of Default, unless and until such Agent has received written notice from a Lender, or Borrower specifying such Event of Default has occurred and is continuing, and stating that such notice is a "Notice of Default". In the event that Administrative Agent receives such a Notice of Default, Administrative Agent shall give prompt notice thereof to the Lenders. Administrative Agent shall (subject to Section 12.7) take such action with respect to any such Event of Default as shall be directed by the Required Lenders to the extent provided for herein; provided, that, unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to or by reason of such Event of Default, as it shall deem advisable in the best interest of Lenders.

(b) Except with the prior written consent of Required Lenders (which Required Lenders may or may not grant in its sole and absolute discretion), no Lender may assert or exercise any enforcement right or remedy in respect of the Loans or other Obligations, as against any Credit Party or any of the Collateral or other property of any Credit Party.

**Section 12.4      ORIX in its Individual Capacity.**

With respect to the Loans made by it (if any) (and/or any successor acting as an Agent), to the extent that ORIX is a Lender hereunder, it shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as an Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include ORIX in its individual capacity as Lender hereunder. ORIX (and any successor acting as an Agent) and its Affiliates may (without having to account therefor to any Lender) generally engage in any kind of business with Borrower (and any of its Subsidiaries or Affiliates) as if it were not acting as an Agent, and ORIX and its Affiliates may accept fees and other consideration from any Credit Party and any of its Subsidiaries and Affiliates for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

**Section 12.5      Indemnification.**

Lenders agree (a) to reimburse Agent, on demand, ratably, in accordance with their Pro Rata Shares, for any reasonable expenses incurred by Agent for the benefit of the Lenders including reasonable counsel fees and compensation of agents paid for services rendered on behalf of Lenders, which shall not have been reimbursed by the Borrower and (b) to indemnify Agent (to the extent not reimbursed by Borrower hereunder and without limiting any obligations of Borrower hereunder) ratably, in accordance with their Pro Rata Shares, for any and all claims of any kind and nature whatsoever that

may be imposed on, incurred by or asserted against Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Financing Agreement or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including the costs and expenses that Agent is obligated to pay hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents, **AND INCLUDING WITHOUT LIMITATION WITH RESPECT TO ANY ACTION OR INACTION ARISING FROM AGENT'S NEGLIGENCE OR STRICT LIABILITY**, provided, that, no Lender shall be liable for any of the foregoing to the extent it arises from the gross negligence or willful misconduct of the party to be indemnified as determined by a final non-appealable judgment of a court of competent jurisdiction. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

**Section 12.6            Non-Reliance on Agent and Other Lenders.**

Each Lender agrees that it has, independently and without reliance on Agent or other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Credit Parties and has made its own decision to enter into this Agreement and that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any of the other Financing Agreements. Agent shall not be required to keep itself informed as to the performance or observance by any Newark Group Party of any term or provision of this Agreement or any of the other Financing Agreements or any other document referred to or provided for herein or therein or to inspect the properties or books of any Newark Group Party. Agent will use reasonable efforts to provide Lenders with any information received by Agent from any Credit Party which is required to be provided to Lenders or deemed to be requested by Lenders hereunder and with a copy of any Notice of Default received by Agent from Borrower or any Lender; provided, that, Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Agent's own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Except for notices, reports and other documents expressly required to be furnished to Lenders by Agent or deemed requested by Lenders hereunder, Agent shall not have any duty or responsibility to provide any Lender with any other credit or other information concerning the affairs, financial condition or business of any Newark Group Party that may come into the possession of Agent.

**Section 12.7            Failure to Act.**

Except for action expressly required of Agent hereunder and under the other Financing Agreements, Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from Lenders of their indemnification obligations under Section 12.5 hereof against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

**Section 12.8            Reserved.**

**Section 12.9            Concerning the Collateral and the Related Financing Agreements.**

Each Lender authorizes and directs Agent to enter into this Agreement, the other Financing Agreements and the Intercreditor Agreement. Each Lender agrees that any action taken by Agent (or, if applicable, the Required Lenders) in accordance with the terms of this Agreement or the other Financing Agreements and the exercise by Agent or Required Lenders of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

**Section 12.10      Field Audit, Examination Reports and other Information;**  
**Disclaimer by Lenders.**

By signing this Agreement, each Lender: is deemed to have requested that Administrative Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report prepared or received by Administrative Agent (each field audit or examination report being referred to herein as a "Report" and collectively, "Reports"), appraisals with respect to the Collateral and financial statements with respect to Borrower and its Subsidiaries received by Administrative Agent;

(a) expressly agrees and acknowledges that Administrative Agent (i) does not make any representation or warranty as to the accuracy of any Report, appraisal or financial statement or (ii) shall not be liable for any information contained in any Report, appraisal or financial statement;

(b) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Administrative Agent or any other party performing any audit or examination will inspect only specific information regarding the Newark Group Parties and will rely significantly upon the Newark Group Parties' books and records, as well as on representations of the Newark Group Parties' personnel; and

(c) agrees to keep all Reports confidential and strictly for its internal use in accordance with the terms of Section 13.5 hereof, and not to distribute or use any Report in any other manner.

**Section 12.11      Collateral Matters.**

(a) Reserved.

(b) Lenders hereby irrevocably authorize Administrative Agent or Collateral Agent (or the applicable Control Agent), at their option and in their discretion to release any security interest in or lien upon, any of the Collateral (i) payment and satisfaction of all of the Obligations and delivery of cash collateral to the extent required under Section 13.1 below, or (ii) constituting property being sold or disposed of if any Credit Party certifies to Administrative Agent or Collateral Agent that the sale or disposition is made in compliance with Section 9.7 hereof (and Administrative Agent and Collateral Agent may rely conclusively on any such certificate, without further inquiry), or (iii) constituting property in which any Credit Party did not own an interest at the time the security interest or lien was granted or at any time thereafter, or (iv) having a value in the aggregate in any twelve (12) month period of less than \$500,000, and to the extent Collateral Agent may release its security interest in and lien upon any such Collateral pursuant to the sale or other disposition thereof, such sale or other disposition shall be deemed consented to by Lenders, or (v) if required or permitted under the terms of any of the other Financing Agreements, including any intercreditor agreement, or (vi) approved, authorized or ratified in writing by all of Lenders. Except as provided above, Collateral Agent and Administrative Agent (or the applicable Control Agent) will not release any security interest in or lien upon, any of the Collateral without the prior written authorization of the requisite Lenders.

(c) Without in any manner limiting Administrative Agent's authority to act without any specific or further authorization or consent by the Required Lenders, each Lender agrees to confirm in writing, upon request by Collateral Agent or Administrative Agent, the authority to release Collateral conferred upon the applicable Agent under this Section. The applicable Agent shall (and is hereby irrevocably authorized by Lenders to) execute such documents as may be necessary to evidence the release of the security interest or liens granted to such Agent upon any Collateral to the extent set forth above; provided, that, (i) such Agent shall not be required to execute any such document on terms which, in such Agent's opinion, would expose such Agent to liability or create any obligations or entail any

consequence other than the release of such security interest or liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any security interest or lien upon (or obligations of any Credit Party in respect of) any of the Collateral retained by such Credit Party.

(d) No Agent shall have any obligation whatsoever to any Lender or any other Person to investigate, confirm or assure that the Collateral exists or is owned by any Credit Party or is cared for, protected or insured or has been encumbered, or that the liens and security interests granted to an Agent pursuant hereto or any of the Financing Agreements or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to continue exercising, any of the rights, authorities and powers granted or available to such Agent in this Agreement or in any of the other Financing Agreements unless directed otherwise by the requisite Lenders.

#### **Section 12.12      Agency for Perfection.**

Each Lender hereby appoints Administrative Agent, Collateral Agent, the applicable Control Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral of Administrative Agent, Collateral Agent or the Control Agent, as applicable, in assets which, in accordance with Article 9 of the UCC (or other applicable law) can be perfected only by possession (or where the security interest of a secured party with possession has priority over the security interest of another secured party) and Collateral Agent, Administrative Agent, the applicable Control Agent (either pursuant to this Agreement or the Intercreditor Agreement) and each Lender hereby acknowledges that it holds possession of any such Collateral for the benefit of such Agent as secured party. Should any Lender obtain possession of any such Collateral, such Lender shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefor shall deliver such Collateral to Collateral Agent or the applicable Control Agent or in accordance with Administrative Agent's instructions.

#### **Section 12.13      Successor Administrative Agent.**

Administrative Agent may resign as Administrative Agent upon thirty (30) days' notice to Lenders and Borrower; provided that if Administrative Agent resigns, it shall also resign as Collateral Agent and as a Control Agent. If Administrative Agent resigns under this Agreement, the Required Lenders shall appoint a successor Administrative Agent, Collateral Agent and Control Agent for Lenders, which shall all be the same Person. If no successor agent is appointed prior to the effective date of the resignation of Administrative Agent, Administrative Agent may appoint, after consulting with Lenders and Borrower, a successor agent but no Lender shall be required to accept such appointment. Upon the acceptance by a Person as successor agent hereunder, and, so long as no Default or Event of Default has occurred and is continuing hereunder, the prior written consent of the Borrower with respect to the identity of the successor agent (which consent shall not be unreasonably withheld or delayed), such successor agent shall succeed to all of the rights, powers and duties of the retiring Administrative Agent, Collateral Agent and Control Agent and the terms "Administrative Agent", "Collateral Agent" and "Control Agent" (if applicable) as used herein and in the other Financing Agreements shall mean such successor agent and the retiring Administrative Agent's, Collateral Agent's and Control Agent's appointment, powers and duties as Administrative Agent, a Collateral Agent and Control Agent shall be terminated. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, Collateral Agent's resignation hereunder as Collateral Agent and a Control Agent's resignation hereunder as a Control Agent, the provisions of this Section 12 shall inure to its benefit as to any actions taken or omitted by it while it was Administrative Agent, Collateral Agent or a Control Agent under this Agreement. If no successor agent has accepted appointment as Administrative Agent, Collateral Agent and a Control Agent by the date which is thirty (30) days after the date of a retiring Agent's notice of resignation, the retiring Agent's resignation shall nonetheless thereupon become effective and Lenders

shall perform all of the duties of Administrative Agent, Collateral Agent and a Control Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. The Administrative Agent, the Collateral Agent and the Collateral Agent hereunder each (but not individually), can be removed and a replacement Administrative Agent, Collateral Agent and Control Agent (all which Administrative Agent, Collateral Agent and Control Agent shall be the same Person) be designated, in each case, at the direction of the Required Lenders. Until the Required Lenders designate a replacement Administrative Agent, Collateral Agent and Control Agent, the Lenders shall perform all of the duties of Administrative Agent, Collateral Agent and Control Agent hereunder. Upon the acceptance by a Person as successor agent hereunder, such successor agent shall succeed to all of the rights, powers and duties of the Administrative Agent, Collateral Agent and Control Agent being replaced and the terms "Administrative Agent," "Collateral Agent" and "Control Agent" (as applicable) as used herein and in the other Financing Agreements shall mean such successor agent and the replaced Administrative Agent's, Collateral Agent's and Control Agent's appointment, powers and duties as Administrative Agent, Collateral Agent and a Control Agent shall be terminated. After any Person is replaced as Administrative Agent, Collateral Agent or Control Agent, the provisions of this Section 12 shall inure to its benefit as to any actions taken or omitted by it while it was Administrative Agent, Collateral Agent or Control Agent under this Agreement. The successor Administrative Agent, Collateral Agent and Control Agent shall (at the cost of the Borrower) execute all documents (which must be in form and substance reasonably satisfactory to all of the parties thereto) and take all other actions necessary in connection with the substitution, in accordance with applicable law, of the successor Administrative Agent, Collateral Agent and Control Agent as creditor of the Borrower's Parallel Debts and as holder of the security created pursuant to the Financing Agreements.

**Section 12.14      Other Agent Designations.**

Administrative Agent may at any time and from time to time determine that a Lender may, in addition, be a "Co-Administrative Agent", "Syndication Agent", "Documentation Agent" or similar designation hereunder and enter into an agreement with such Lender to have it so identified for purposes of this Agreement. Any such designation shall be effective upon written notice by Administrative Agent to Borrower of any such designation. Any Lender that is so designated as a Co-Administrative Agent, Syndication Agent, Documentation Agent or such similar designation by Administrative Agent shall have no right, power, obligation, liability, responsibility or duty under this Agreement or any of the other Financing Agreements other than those applicable to all Lenders as such. Without limiting the foregoing, the Lenders so identified shall not have or be deemed to have any fiduciary relationship with any Lender and no Lender shall be deemed to have relied, nor shall any Lender rely, on a Lender so identified as a Co-Administrative Agent, Syndication Agent, Documentation Agent, Lead Arranger, Co-Lead Arranger or such similar designation in deciding to enter into this Agreement or in taking or not taking action hereunder.

**Section 12.15      Intercreditor Agreement.**

Each of the Lenders hereby acknowledges that it has received and reviewed the Intercreditor Agreement and agrees to be bound by the terms thereof. Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 13.7) hereby authorizes and directs Agent to enter into the Intercreditor Agreement on behalf of such Lender and agrees that Agent, in its various capacities thereunder, may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement.

**Section 12.16      Parallel Debts and Collateral Agent.**

(a) Notwithstanding any provision to the contrary in any Financing Agreement, solely in relation to the Borrower's Parallel Debts and solely with respect to any security governed by Dutch law (i.e., the collateral governed by the Dutch Deed of Pledge) (i) Collateral Agent shall act for

itself and not as agent for any Lender (but always for the benefit of the Lenders in accordance with the provisions of the Financing Agreements); and (ii) the rights, powers and authorities vested in Collateral Agent pursuant to the Financing Agreements are subject to any restrictions imposed by mandatory Dutch law.

(b) If Collateral Agent resigns in accordance with Section 12.13, the Borrower shall execute such documents and take all such other action as necessary or (in the opinion of Collateral Agent) desirable in connection with the substitution, in accordance with applicable law, of the successor Collateral Agent as creditor of the Parallel Debts and as beneficiary of any security securing the Parallel Debts.

### **SECTION 13**

#### **TERM OF AGREEMENT; MISCELLANEOUS**

##### **Section 13.1      Term.**

(a) All Obligations shall be paid and satisfied in full in immediately available funds on the Termination Date. Upon the Termination Date, Borrower shall pay to Administrative Agent all outstanding and unpaid Obligations and shall furnish cash collateral to Administrative Agent (or at Administrative Agent's option, a letter of credit issued for the account of Borrower and at Borrower's expense, in form and substance satisfactory to Administrative Agent, by an issuer acceptable to Administrative Agent and payable to Administrative Agent as beneficiary) in such amounts as Administrative Agent determines are reasonably necessary to secure Agent, Lenders from loss, cost, damage or expense, including attorneys' fees and expenses, in connection with any contingent Obligations, including checks or other payments provisionally credited to the Obligations and/or as to which Administrative Agent or any Lender has not yet received final and indefeasible payment and any continuing obligations of Administrative Agent or any Lender pursuant to any Account Control Agreement. The amount of such cash collateral (or letter of credit, as Administrative Agent may determine) as to all contingent Obligations shall be in the amount equal to one hundred ten (110%) percent of the amount of such contingent Obligations. Such payments in respect of the Obligations and cash collateral shall be remitted by wire transfer in Federal funds to the bank account of Administrative Agent, as Administrative Agent may, in its discretion, designate in writing to Borrower for such purpose. Interest shall be due until and including the next Business Day, if the amounts so paid by Borrower to the bank account designated by Administrative Agent are received in such bank account later than 12:00 noon, New York City, New York time.

(b) No termination of this Agreement or any of the other Financing Agreements shall relieve or discharge any Credit Party of its respective duties, obligations and covenants under this Agreement or any of the other Financing Agreements until all Obligations (other than contingent indemnification and like Obligations which by the terms thereof are stated to survive termination of the Financing Agreements) have been fully and finally discharged and paid in cash, and Collateral Agent's continuing security interest in the Collateral and the rights and remedies of Administrative Agent, Collateral Agent and Lenders hereunder, under the other Financing Agreements and applicable law, shall remain in effect until all such Obligations have been fully and finally discharged and paid in cash. Accordingly, each Credit Party waives any rights it may have under the UCC to demand the filing of termination statements with respect to the Collateral and neither Collateral Agent nor Administrative Agent shall be required to send such termination statements to the Credit Parties, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms and all such Obligations paid and satisfied in full in immediately available funds.

**Section 13.2      Interpretative Provisions.**

All terms used herein which are defined in Article 1, Article 8 or Article 9 of the UCC shall have the meanings given therein unless otherwise defined in this Agreement (or, solely with respect to the Newark Paperboards Capital Stock, if the context so requires, as defined in the PPSA unless otherwise defined in this Agreement).

(a) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(b) All references to any Newark Group Party, Agent and Lenders pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns, including, without limitation, as to Borrower or any Guarantor, Borrower or such Guarantor, as Debtor and Debtor-in-Possession under the Bankruptcy Code, and any trustee or other fiduciary hereafter appointed as its legal representative or with respect to the property of the estate of Borrower or such Guarantor under Chapter 11 or Chapter 7 of the Bankruptcy Code and any successor upon the conclusion of the Case(s).

(c) The words "hereof", "herein", "hereunder", "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(d) The word "including" when used in this Agreement shall mean "including, without limitation" and the word "will" when used in this Agreement shall be construed to have the same meaning and effect as the word "shall".

(e) An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 1.3 or Section 11.3 hereof or is cured in a manner satisfactory to Administrative Agent, if such Event of Default is capable of being cured as determined by Administrative Agent.

(f) All references to the term "good faith" used herein when applicable to Agent or any Lender shall mean, notwithstanding anything to the contrary contained herein or in the UCC, honesty in fact in the conduct or transaction concerned. The Credit Parties shall have the burden of proving any lack of good faith on the part of Agent or any Lender alleged by any Credit Party at any time.

(g) Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the financial statements and reports of Borrower most recently received by Administrative Agent prior to the date hereof provided that notwithstanding any other provision set forth herein, all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election (or the effects of any such election) under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities and/or Indebtedness at the fair value thereof. Notwithstanding anything to the contrary contained in GAAP or any interpretations or other pronouncements by the Financial Accounting Standards Board or otherwise, the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is unqualified and also does not include any explanation, supplemental comment or other comment concerning the ability of the applicable person to continue as a going concern or the scope of the audit.

(h) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including".

(i) Unless otherwise expressly provided herein, (i) references herein to any agreement, document or instrument shall be deemed to include all subsequent amendments, modifications, supplements, extensions, renewals, restatements or replacements with respect thereto, but only to the extent not inconsistent with the provisions hereof and/or the same are not prohibited by the terms hereof or of any other Financing Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, recodifying, supplementing or interpreting the statute or regulation.

(j) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(k) This Agreement and other Financing Agreements may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(l) This Agreement and the other Financing Agreements are the result of negotiations among and have been reviewed by counsel to Administrative Agent and the other parties, and are the products of all parties. Accordingly, this Agreement and the other Financing Agreements shall not be construed against Agent or Lenders merely because of Agent's or any Lender's involvement in their preparation.

### **Section 13.3      Notices.**

(a) All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next Business Day, one (1) Business Day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. Notices delivered through electronic communications shall be effective to the extent set forth in Section 13.3(b) below. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

The Borrower and the other Credit Parties:	The Newark Group, Inc. 20 Jackson Drive Cranford, New Jersey 07016 Attention: Vice President and Chief Financial Officer Telecopier: (908) 276-2888 Telephone: (908) 276-4000 Email: _____
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With a copy to:

Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, New Jersey 07068  
Attention: Mr. Daniel J. Barkin  
Telecopier: (973) 597-2400  
Telephone: (973) 597-2500  
Email: [dbarkin@lowenstein.com](mailto:dbarkin@lowenstein.com)

The Administrative Agent: ORIX Finance Corp., as Administrative Agent  
1717 Main Street, Suite 1100  
Dallas, Texas 75201  
Attention: Portfolio Manager  
Telecopier: [TBD]  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

The Lenders: The address set forth on each Lender's Administrative Details Form.

(b) Notices and other communications to Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent or as otherwise determined by Administrative Agent, provided, that, the foregoing shall not apply to notices to any Lender pursuant to Section 2 hereof if such Lender has notified Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. Unless Administrative Agent otherwise requires, (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 given during the normal business hours of the recipient, such notice 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 communications is available and identifying the website address therefor.

#### **Section 13.4 Partial Invalidity.**

If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

#### **Section 13.5 Confidentiality.**

(a) Each Agent and each Lender shall use all reasonable efforts to keep confidential, in accordance with its customary procedures for handling confidential information and safe and sound lending practices, any non-public information supplied to it by any Credit Party pursuant to this Agreement which is clearly and conspicuously marked as confidential at the time such information is furnished by such Credit Party to Administrative Agent or such Lender, provided, that, nothing contained herein shall limit the disclosure of any such information: (i) to the extent required by statute, rule, regulation, subpoena or court order, (ii) to bank examiners and other regulators, auditors and/or accountants (including any self-regulatory authority, such as the National Association of Insurance Commissioners), and in connection with any litigation to which Administrative Agent, Collateral Agent or such Lender is a party, (iii) to any Lender or Participant (or prospective Lender or Participant) or to any

Affiliate of any Lender so long as such Lender, Participant (or prospective Lender or Participant) or Affiliate shall have been instructed to treat such information as confidential in accordance with this Section 13.5, or (iv) to counsel for Administrative Agent, any Lender or Participant (or prospective Lender or Participant).

(b) In the event that Administrative Agent or any Lender receives a request or demand to disclose any confidential information pursuant to any subpoena or court order, Administrative Agent or such Lender, as the case may be, agrees (i) to the extent permitted by applicable law or if permitted by applicable law, to the extent Administrative Agent or such Lender determines in good faith that it will not create any risk of liability to Administrative Agent or such Lender, Administrative Agent or such Lender will promptly notify Borrower of such request so that Borrower may seek a protective order or other appropriate relief or remedy and (ii) if disclosure of such information is required, disclose such information and, subject to reimbursement by Borrower of Administrative Agent's or such Lender's expenses, cooperate with Borrower in the reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed information which Borrower so designates, to the extent permitted by applicable law or if permitted by applicable law, to the extent Administrative Agent or such Lender determines in good faith that it will not create any risk of liability to Administrative Agent or such Lender.

In no event shall this Section 13.5 or any other provision of this Agreement, any of the other Financing Agreements or applicable law be deemed: (i) to apply to or restrict disclosure of information that has been or is made public by any Credit Party or any third party or otherwise becomes generally available to the public other than as a result of a disclosure in violation hereof, (ii) to apply to or restrict disclosure of information that was or becomes available to Administrative Agent or any Lender (or any Affiliate of any Lender) on a non-confidential basis from a person other than a Credit Party or (iii) to require Administrative Agent or any Lender to return any materials furnished by a Credit Party to Administrative Agent or a Lender or prevent Administrative Agent or a Lender from responding to routine informational requests in accordance with the Code of Ethics for the Exchange of Credit Information promulgated by The Robert Morris Associates or other applicable industry standards relating to the exchange of credit information. The obligations of Administrative Agent and Lenders under this Section 13.5 shall supersede and replace the obligations of Administrative Agent and Lenders under any confidentiality letter signed prior to the date hereof or any other arrangements concerning the confidentiality of information provided by any Newark Group Party to Administrative Agent or any Lender. In addition, Administrative Agent and Lenders may disclose information relating to the Credit Facility to Gold Sheets and other publications, with such information to consist of deal terms and other information customarily found in such publications and that ORIX may otherwise use the corporate name and logo of the Credit Parties or deal terms in "tombstones" or other advertisements, public statements or marketing materials.

#### **Section 13.6      Successors.**

This Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon and inure to the benefit of and be enforceable by Agent, Lenders, the Credit Parties and their respective successors and assigns, except that neither the Borrower nor any Guarantor shall assign its rights under this Agreement, the other Financing Agreements and any other document referred to herein or therein without the prior written consent of Administrative Agent and Lenders. Any such purported assignment without such express prior written consent shall be void. No Lender may assign its rights and obligations under this Agreement without the prior written consent of Administrative Agent, except as provided in Section 13.7 below. The terms and provisions of this Agreement and the other Financing Agreements are for the purpose of defining the relative rights and obligations of the Credit Parties, Agent and Lenders with respect to the transactions contemplated hereby and there shall be no third party beneficiaries of any of the terms and provisions of this Agreement or any of the other Financing Agreements.

**Section 13.7**      **Assignments; Participations.**

(a) Each Lender may, with the prior written consent of Administrative Agent (which such approval shall not be unreasonably withheld or delayed), assign all or, if less than all, a portion equal to at least \$5,000,000 (or such lesser amount approved by Administrative Agent in its sole and absolute discretion, and so long as no Event of Default is in existence, by the Borrower in its sole and absolute discretion; provided that such minimum assignment amount shall not apply with respect to assignments by (x) any Lender to an Affiliate or Related Fund of such Lender or (y) ORIX or any of its Affiliates contemplated by the last sentence of the definition of Eligible Transferee) in the aggregate for the assigning Lender, of such rights and obligations under this Agreement to one or more Eligible Transferees (but not including for this purpose any assignments in the form of a participation), each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and Acceptance; provided, that, (i) such transfer or assignment will not be effective until recorded by Administrative Agent on the Register and (ii) Administrative Agent shall have received for its sole account payment of a processing fee from the assigning Lender or the assignee in the amount of \$3,500 (provided that such fee shall not be required with respect to assignments by any Lender to an Affiliate or Related Fund of such Lender). Administrative Agent as a non-fiduciary agent of the Borrower, shall maintain at an office in the United States a register of the names and addresses of Lenders and the principal amount (an interest thereon) of their Loans (the "Register"). Administrative Agent shall also maintain a copy of each Assignment and Acceptance delivered to and accepted by it and shall modify the Register to give effect to each Assignment and Acceptance. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and any Credit Party, Administrative Agent and Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(b) Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and to the other Financing Agreements and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and thereunder and the assigning Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement.

(c) By execution and delivery of an Assignment and Acceptance, the assignor and assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any of the other Financing Agreements or the execution, legality, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Financing Agreements furnished pursuant hereto, (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Credit Party or any of their Subsidiaries or the performance or observance by any Credit Party of any of the Obligations; (iii) such assignee confirms that it has received a copy of this Agreement and the other Financing Agreements, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such assignee will, independently and without reliance upon the assigning Lender, Administrative Agent 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 the other Financing Agreements, (v) such assignee appoints and authorizes Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Financing Agreements as are delegated to Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such assignee agrees that it will perform in accordance with their terms all of

the obligations which by the terms of this Agreement and the other Financing Agreements are required to be performed by it as a Lender. Administrative Agent and Lenders may furnish any information concerning any Newark Group Party in the possession of Administrative Agent or any Lender from time to time to assignees and Participants.

(d) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Financing Agreements (including, without limitation, all or a portion of the Loans owing to it, without the consent of Administrative Agent or the other Lenders); provided, that, (i) such Lender's obligations under this Agreement and the other Financing Agreements shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Credit Parties, the other Lenders and Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Financing Agreements, and (iii) the Participant shall not have any rights under this Agreement or any of the other Financing Agreements (the Participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the Participant relating thereto) and all amounts payable by any Credit Party hereunder shall be determined as if such Lender had not sold such participation. Each Lender that grants a participation shall, as a non-fiduciary agent of the Borrower, maintain in an office in the United States a register (the "Participation Register") in which it records the name and address of each Participant and such Participant's beneficial interest in the principal amount (and interest thereon) of each Loan. No participation shall be transferrable except upon recordation in the Participation Register.

(e) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans hereunder to a Federal Reserve Bank in support of borrowings made by such Lenders from such Federal Reserve Bank; provided, that, no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee for such Lender as a party hereto.

(f) the Credit Parties shall assist Administrative Agent or any Lender permitted to sell assignments or participations under this Section 13.7 in whatever manner reasonably necessary in order to enable or effect any such assignment or participation, including (but not limited to) the execution and delivery of any and all agreements, notes and other documents and instruments as shall be requested and the delivery of informational materials, appraisals or other documents for, and the participation of relevant management in meetings and conference calls with, potential Lenders or Participants. Borrower shall certify the correctness, completeness and accuracy, in all material respects, of all descriptions of the Credit Parties and their affairs provided, prepared or reviewed by any Newark Group Party that are contained in any selling materials and all other information provided by it and included in such materials.

(g) Special Purpose Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to Administrative Agent and Borrower (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided, that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that (i) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, (ii) no SPC shall be entitled to the benefits of Sections 3.3 and 6.5 (or any other increased costs protection provision) and (iii) the Granting Lender shall for all purposes, including, without limitation, the approval of any amendment or waiver of any provision of any Financing Agreement, remain the Lender of record hereunder. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior Indebtedness of any SPC, it will

not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained in this Agreement, any SPC may (i) with notice to, but without prior consent of, Borrower and Administrative Agent and without payment of a processing fee therefor, assign all or any portion of its interest in any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or guarantee or credit or liquidity enhancement to such SPC. This subsection (g) may not be amended without the prior written consent of each Granting Lender, all or any part of whose Loans are being funded by the SPC at the time of such amendment.

**Section 13.8      Entire Agreement.**

This Agreement, the other Financing Agreements, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof and thereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

**Section 13.9      USA Patriot Act.**

Each Lender subject to the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "Act") hereby notifies the Credit Parties that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies each person or corporation who opens an account and/or enters into a business relationship with it, which information includes the name and address of the Credit Parties and other information that will allow such Lender to identify such person in accordance with the Act and any other applicable law. The Credit Parties are hereby advised that any Loans or Letters of Credit hereunder are subject to satisfactory results of such verification.

**Section 13.10      Counterparts, Etc.**

This Agreement or any of the other Financing Agreements may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement or any of the other Financing Agreements by telefacsimile or other electronic method of transmission shall have the same force and effect as the delivery of an original executed counterpart of this Agreement or any of such other Financing Agreements. Any party delivering an executed counterpart of any such agreement by telefacsimile or other electronic method of transmission shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

**Section 13.11      Parallel Debts.**

(a) Without prejudice to the other provisions of this Agreement and the other Financing Agreements and for the purpose of ensuring the validity and effect of any security right governed by Dutch law and granted or to be granted by the Borrower pursuant to the Financing Agreements, the Borrower undertakes, as a separate and independent obligation to Collateral Agent, to pay to Collateral Agent its Parallel Debts.

(b) (i) The Borrower may not pay its Parallel Debts other than at the instruction of, and in the manner determined by, Collateral Agent. All payments to be made by the Borrower under

the Financing Agreements shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

(ii) Without prejudice to paragraph (i) above, the Borrower shall be obliged to pay its Parallel Debts (or, if the Borrower's Underlying Debts are due at different times, amounts of its Parallel Debts corresponding to each such Underlying Debts) only when its Underlying Debts have fallen due.

(c) Any payment made, or amount recovered, in respect of the Borrower's Parallel Debts shall reduce the Borrower's Underlying Debts to any Lender by the amount which that Lender is entitled to receive out of that payment or recovery under the Financing Agreement.

(d) Each Parallel Debt is a separate and independent obligation and shall not constitute the Collateral Agent and any Lender as joint creditor of any Underlying Debt.

(e) If (notwithstanding Section 13.11(d)) any Parallel Debt constitutes the Collateral Agent as a joint creditor with any Lender, the Collateral Agent may determine (at its discretion) that that Parallel Debt and one or more other Parallel Debts shall be combined into one single Parallel Debt (a "Combined Parallel Debt"), whereupon those Parallel Debts shall be combined into a Combined Parallel Debt:

(i) the amount of which shall be equal to the aggregate of the amounts of the Underlying Debts combined into it;

(ii) which shall, if the Underlying Debts are expressed in different currencies, be expressed in such of those currencies or Euro as the Collateral Agent may determine (and, for this purpose, each Underlying Debt shall be converted into the currency of the Combined Parallel Debt at the rate of exchange reasonably selected by the Collateral Agent);

(iii) which shall, if the Underlying Debts combined into it fall due at different times, fall due in parts corresponding to those Underlying Debts; and

(iv) to which this Agreement shall otherwise apply as if the Combined Parallel Debt were a Parallel Debt.

(f) If any Underlying Debt is avoided or reduced other than (i) as a result of payment to, or recovery or discharge by, the Lender to which the Underlying Debt is owed, or (ii) otherwise with the consent of that Lender, then the amount of the Parallel Debt corresponding to that Underlying Debt shall be equal to the amount which the Underlying Debt would have had if the avoidance or reduction had not occurred.

## **SECTION 14**

### **GUARANTY OF OBLIGATIONS**

#### **Section 14.1      The Guaranty.**

In order to induce the Lenders to provide the Loans pursuant to the provisions hereof, and in recognition of the direct benefits to be received by Guarantors from the Loans evidenced hereby, each of the Guarantors hereby agrees with Agent and the Lenders as follows: each Guarantor hereby unconditionally and irrevocably jointly and severally guarantees as primary obligor and not merely as surety the full and prompt payment when due, whether upon maturity, by acceleration or otherwise, of any and all indebtedness of the Borrower to Agent and the Lenders. If any or all of the indebtedness of the Borrower to Agent and the Lenders becomes due and payable hereunder, each Guarantor

unconditionally promises to pay such indebtedness to Agent and the Lenders, as applicable, or order, on demand, together with any and all reasonable expenses which may be incurred by Agent or the Lenders in collecting any of the indebtedness. The word "indebtedness" is used in this Section 14 in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of the Borrower, including all Obligations, arising in connection with this Agreement, or the other Financing Agreements, in each case, heretofore, now existing or created, or hereafter made, incurred or created, whether voluntarily or involuntarily, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether or not such indebtedness is from time to time reduced, or extinguished and thereafter increased or incurred, whether the Borrower may be liable individually or jointly with others, whether or not recovery upon such indebtedness may be or hereafter become barred by any statute of limitations, and whether or not such indebtedness may be or hereafter become otherwise unenforceable. The Guaranty set forth in this Section 14 is a guaranty of timely payment and not of collection.

Notwithstanding any provision to the contrary contained herein or in any other of the Financing Agreements, to the extent the obligations of a Guarantor shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of each such Guarantor hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal or state and including, without limitation, the Bankruptcy Code).

#### **Section 14.2      Bankruptcy.**

Additionally, each of the Guarantors unconditionally and irrevocably guarantees jointly and severally the payment, when due, of any and all indebtedness of the Borrower to the Lenders, whether or not due or payable by the Borrower arising during the Case(s), and unconditionally promises to pay such indebtedness, when due, to Administrative Agent for the account of the Lenders, or order, on demand, in lawful money of the United States. Each of the Guarantors further agrees that to the extent that the Borrower or a Guarantor shall make a payment or a transfer of an interest in any property to Administrative Agent, or any Lender, which payment or transfer or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, or otherwise is avoided, and/or required to be repaid to Borrower or a Guarantor, the estate of Borrower or a Guarantor, a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such avoidance or repayment, the obligation or part thereof intended to be satisfied shall be revived and continued in full force and effect as if said payment had not been made.

#### **Section 14.3      Nature of Liability.**

The liability of each Guarantor hereunder is exclusive and independent of any security for or other Guaranty of the indebtedness of the Borrower whether executed by any such Guarantor, any other Guarantor or by any other party, and no Guarantor's liability hereunder shall be affected or impaired by (a) any direction as to application of payment by Borrower or by any other party, (b) any other continuing or other Guaranty, undertaking or maximum liability of a Guarantor or of any other party as to the indebtedness of the Borrower, (c) any payment on or in reduction of any such other Guaranty or undertaking, (d) any dissolution, termination or increase, decrease or change in personnel by Borrower, or (e) any payment made to Administrative Agent, or any Lenders on the indebtedness which Administrative Agent, or such repay the Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each of the Guarantors waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

#### **Section 14.4      Independent Obligation.**

The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor or the Borrower, and a separate action or actions may be brought and prosecuted against

each Guarantor whether or not action is brought against any other Guarantor or the Borrower and whether or not any other Guarantor or Borrower is joined in any such action or actions.

**Section 14.5      Authorization.**

Each of the Guarantors authorizes Administrative Agent, and each Lender 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) renew, compromise, extend, increase, accelerate or otherwise change the time for payment of, or otherwise change the terms of the indebtedness or any part thereof in accordance with this Agreement, including any increase or decrease of the rate of interest thereon, (b) take and hold security from any Guarantor or any other party for the payment of the Guaranty or the indebtedness and exchange, enforce waive and release any such security, (c) apply such security and direct the order or manner of sale thereof as Administrative Agent and the Lenders in their discretion may determine and (d) release or substitute any one or more endorsers, Guarantors, the Borrower or other obligors.

**Section 14.6      Reliance.**

It is not necessary for Administrative Agent, or the Lenders to inquire into the capacity or powers of Borrower or the officers, directors, members, partners or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

**Section 14.7      Waiver.**

(a) Each of the Guarantors waives any right (except as shall be required by applicable statute and cannot be waived) to require Administrative Agent, or any Lender to (i) proceed against Borrower, any other Guarantor or any other party, (ii) proceed against or exhaust any security held from Borrower, any other Guarantor or any other party, or (iii) pursue any other remedy in Administrative Agent's, or any Lender's power whatsoever. Each of the Guarantors waives any defense based on or arising out of any defense of Borrower, any other Guarantor or any other party other than payment in full of the indebtedness, including, without limitation, any defense based on or arising out of the disability of Borrower, any other Guarantor or any other party, or the unenforceability of the indebtedness or any part thereof from any cause, or the cessation from any cause of the liability of Borrower other than payment in full of the indebtedness. Administrative Agent or any of the Lenders may, at their election, exercise any right or remedy Administrative Agent and any Lender may have against Borrower 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 indebtedness has been paid. Each of the Guarantors waives any defense arising out of any such election by Administrative Agent and each of the Lenders, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of Guarantors against Borrower or any other party.

(b) Each of the Guarantors waives all presentments, demands for performance, protests and notices, including, without limitation, notices of nonperformance, notice of protest, notices of dishonor, notices of acceptance of the Guaranty, and notices of the existence, creation or incurring of new or additional indebtedness. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the indebtedness and the nature, scope and extent of the risks which such Guarantor assumes and incurs hereunder, and agrees that neither Administrative Agent nor any Lender shall have any duty to advise such Guarantor of information known to it regarding such circumstances or risks.

(c) Each of the Guarantors hereby agrees it will not exercise any rights of subrogation which it may at any time otherwise have as a result of the Guaranty (whether contractual, under Section 509 of the Bankruptcy Code, or otherwise) to the claims of the Lenders against Borrower or any other Guarantor of the indebtedness of Borrower owing to the Lenders (collectively, the "Other Parties") and all contractual, statutory or common law rights of reimbursement, contribution or indemnity from any Other Party which it may at any time otherwise have as a result of the Guaranty until such time as the Loans and the other Obligations hereunder shall have been paid in full in cash. Each of the Guarantors hereby further agrees not to exercise any right to enforce any other remedy which Administrative Agent, or the Lenders now has or may hereafter have against any Other Party, any endorser or any other Guarantor of all or any part of the indebtedness of Borrower and any benefit of, and any right to participate in, any security or collateral given to or for the benefit of the Lenders to secure payment of the indebtedness of Borrower until such time as the Loans and the other Obligations hereunder shall have been paid in full in cash.

**Section 14.8      Limitation on Enforcement.**

The Lenders agree that this Guaranty may be enforced only by the action of Administrative Agent acting upon the instructions of the Required Lenders and that no Lender shall have any right individually to seek to enforce or to enforce the Guaranty, it being understood and agreed that such rights and remedies may be exercised by Administrative Agent for the benefit of the Lenders under the terms of this Agreement. The Lenders further agree that this Guaranty may not be enforced against any director, officer, employee or stockholder of Guarantors.

**Section 14.9      Confirmation of Payment.**

Administrative Agent and the Lenders will, upon request after payment in cash in full of the indebtedness and obligations which are the subject of the Guaranty, confirm to the Borrower, the Guarantors or any other Person that such indebtedness and obligations have been paid.

**SECTION 15  
RELEASE OF CLAIMS**

**Section 15.1      Release.**

(a) IN CONSIDERATION OF AGENT AND LENDERS ENTERING INTO THIS AGREEMENT, CREDIT PARTIES, BY SIGNING THE ACKNOWLEDGEMENT BELOW, EACH, HEREBY RELEASE AND FOREVER DISCHARGE AGENT AND LENDERS AND THEIR RESPECTIVE AGENTS, SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, PARENT CORPORATIONS, SUBSIDIARY CORPORATIONS, AFFILIATED CORPORATIONS, AFFILIATES, AND EACH ASSIGN AND SUCCESSOR OF EACH OF THEM (EACH A "RELEASEE" AND COLLECTIVELY, THE "RELEASEES"), FROM ANY AND ALL CLAIMS, DEBTS, OBLIGATIONS, DEMANDS, OBLIGATIONS, COSTS, EXPENSES, ACTIONS AND CAUSES OF ACTION, OF EVERY NATURE AND DESCRIPTION (IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS, OR OTHERWISE), WHETHER KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT OR CONDITIONAL OR AT LAW OR IN EQUITY, WHETHER OR NOT RELATED TO (BUT, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO) THE NEGOTIATION, EXECUTION, SUBJECT MATTER OR EXERCISE OF ANY RIGHTS AND REMEDIES UNDER THIS AGREEMENT, THE OTHER FINANCING AGREEMENTS, OR WITH RESPECT TO THE OBLIGATIONS UNDER ANY OF THE FOREGOING AND THE CASE(S), INCLUDING, WITHOUT LIMITATION, ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE,

WHICH CREDIT PARTIES NOW HAVE OR AT ANY TIME MAY HOLD, BY REASON OF ANY MATTER, CAUSE OR THING OCCURRED, DONE, OMITTED OR SUFFERED TO BE DONE PRIOR TO THE DATE OF THIS AGREEMENT. CREDIT PARTIES, EACH, WAIVE THE BENEFITS OF ANY LAW, WHICH MAY PROVIDE IN SUBSTANCE: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE DEBTOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." CREDIT PARTIES, EACH, UNDERSTAND THAT THE FACTS WHICH THEY BELIEVE TO BE TRUE AT THE TIME OF MAKING THE RELEASE PROVIDED FOR HEREIN MAY LATER TURN OUT TO BE DIFFERENT THAN IT NOW BELIEVES, AND THAT INFORMATION WHICH IS NOT NOW KNOWN OR SUSPECTED MAY LATER BE DISCOVERED. CREDIT PARTIES, EACH, ACCEPT THIS POSSIBILITY, AND CREDIT PARTIES, EACH, ASSUME THE RISK OF THE FACTS TURNING OUT TO BE DIFFERENT AND NEW INFORMATION BEING DISCOVERED; AND CREDIT PARTIES, EACH, FURTHER AGREE THAT THE RELEASE PROVIDED FOR HEREIN SHALL IN ALL RESPECTS CONTINUE TO BE EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION BECAUSE OF ANY DIFFERENCE IN SUCH FACTS OR ANY NEW INFORMATION. THIS RELEASE IS FULLY EFFECTIVE ON THE DATE HEREOF. AGENT AND LENDERS ARE NOT RELEASING ANY OF THE CREDIT PARTIES FROM ANY CLAIMS, DEBTS, OBLIGATIONS, DEMANDS, GUARANTEED OBLIGATIONS, COSTS, EXPENSES, ACTIONS OR CAUSES OF ACTION.

(b) Upon (i) the receipt by Administrative Agent, on behalf of itself and the other Lenders, of payment in full of all Obligations in cash or other immediately available funds, plus cash collateral or other collateral security acceptable to Administrative Agent to secure any Obligations that survive or continue beyond the termination of the Financing Agreements, and (ii) the termination of the Financing Agreements (the "Payment Date"), in consideration of the agreements of Administrative Agent and Lenders contained herein and the making of any Loans by Administrative Agent and Lenders, Borrower and each Guarantor hereby covenants and agrees to execute and deliver in favor of Administrative Agent and Lenders a valid and binding termination and release agreement, in form and substance satisfactory to Administrative Agent. If Borrower or any Guarantor violates such covenant, Borrower and Guarantor agree to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

**[remainder of page intentionally left blank]**

IN WITNESS WHEREOF, Administrative Agent, Lenders and the Credit Parties have caused these presents to be duly executed as of the day and year first above written.

**BORROWER:**

THE NEWARK GROUP, INC., Debtor and Debtor-In-Possession, a New Jersey corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**GUARANTOR:**

NP COGEN, INC., Debtor and Debtor-In-Possession, a California corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**AGENT:**

ORIX FINANCE CORP., as Administrative Agent, Collateral Agent, a Control Agent and a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDERS:**

[TBD], as a Lender

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## EXHIBIT A

### **Form of Assignment and Assumption Agreement**

This Assignment and Acceptance (the "Assignment and Acceptance") is dated as of the Effective Date set forth below and is entered into by and between [the][each] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees] hereunder are several and not joint.]<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Loan and Security Agreement identified below (as amended, restated, modified and/or supplemented from time to time in accordance with the provisions thereof, the "Loan Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Acceptance as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including without limitation any letters of credit and guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty by [the][any] Assignor.

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<sup>1</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: \_\_\_\_\_  
\_\_\_\_\_
2. Assignee[s]: \_\_\_\_\_  
\_\_\_\_\_  
[for each Assignee, indicate [Affiliate][Approved Fund]  
of [identify Lender]
3. Borrower: The Newark Group, Inc., Debtor and Debtor-In-Possession, a New Jersey corporation.
4. Administrative Agent: ORIX Finance Corp., as the administrative agent under the Loan Agreement.
5. Loan Agreement: The Loan and Security Agreement dated as of \_\_\_\_\_, 2010 among the Borrower, the Guarantors from time to time party thereto, the lenders and other financial institutions from time to time party thereto, and ORIX Finance Corp., as Administrative Agent and Collateral Agent.
6. Assigned Interest[s]:

Assignor[s]	Assignee[s]	Facility Assigned	Aggregate Amount of Commitment/ Loans for all Lenders	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/ Loans
			\$	\$	%
			\$	\$	%
			\$	\$	%

[7. Trade Date ]<sup>2</sup>

Effective Date: , 20\_\_

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<sup>2</sup> To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Acceptance are hereby agreed to:

**ASSIGNOR[S]**

**[NAME OF ASSIGNOR]**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**ASSIGNEE[S]**

**[NAME OF ASSIGNEE]**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**[Consented to and]** Accepted:

ORIX FINANCE CORP., as Administrative Agent

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**[Consented to:]**

THE NEWARK GROUP, INC., Debtor and Debtor-In-Possession

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## ANNEX I

### **STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ACCEPTANCE**

#### 1. Representations and Warranties.

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Financing Agreement, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Financing Agreements or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Financing Agreement or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Financing Agreement.

1.2 Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all the requirements to be an assignee under the Loan Agreement (subject to such consents, if any, as may be required under the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Loan Agreement and has received or has been accorded the opportunity to receive copies of the most recent financial statements and other reports delivered, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent 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 Assignment and Acceptance and to purchase [the][such] Assigned Interest, and (vii) attached to the Assignment and Acceptance is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by [the][such] Assignee including without limitations the tax forms required by Section 6.5(g) and (h); and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Financing Agreements, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Financing Agreements are required to be performed by it as a Lender.

1.3 Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

1.4 General Provisions. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance shall be governed by, and construed in accordance with, the law of the State of New York.

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**EXHIBIT B**

**Information Certificate**

Attached.

**EXHIBIT C**

**Form of Compliance Certificate**

Dated as of \_\_\_\_\_, 20\_\_

To: ORIX Finance Corp., as Agent  
[TBD]  
[TBD]  
Attention: [TBD]

Ladies and Gentlemen:

I hereby certify to you pursuant to Section 9.6 of the Loan Agreement (as defined below), solely as the Chief Financial Officer of The Newark Group, Inc., Debtor and Debtor-In-Possession, a New Jersey corporation (the "Borrower") and not individually, that:

1. I am the duly elected Chief Financial Officer of the Borrower. Capitalized terms used herein without definition shall have the meanings given to such terms in the Loan and Security Agreement, dated as of \_\_\_\_\_, 2010 by and among ORIX Finance Corp., as administrative agent and collateral agent for the financial institutions party thereto as lenders (in such capacity, "Agent"), the financial institutions party thereto as lenders (collectively, "Lenders"), the Borrower and the Guarantors from time to time party thereto (as such Loan and Security Agreement is amended, restated, modified and/or supplemented, from time to time, the "Loan Agreement").

2. I have reviewed the terms of the Loan Agreement, and have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and the financial condition of Borrower and Guarantors, during the immediately preceding fiscal [month] [quarter].

3. The review described in Section 2 above did not disclose the existence during or at the end of such fiscal [month][quarter], and I have no knowledge of the existence and continuance on the date hereof, of any condition or event which constitutes a Default or an Event of Default, except as set forth on Schedule I attached hereto. Described on Schedule I attached hereto are the exceptions, if any, to this Section 3 listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower or any Guarantor has taken, is taking, or proposes to take with respect to such condition or event.

4. I further certify that, based on the review described in Section 2 above, to my knowledge, neither the Borrower nor any Guarantor has at any time during or at the end of such fiscal [month][quarter], except as specifically described on Schedule II attached hereto or as permitted by the Loan Agreement, done any of the following:

(c) Changed its respective corporate name, or transacted business under any trade name, style, or fictitious name, other than those previously described to you and set forth in the Financing Agreements.

(d) Changed the location of its chief executive office, changed its jurisdiction of incorporation, changed its type of organization or changed the location of or disposed of any of its

properties or assets (other than pursuant to the sale of Inventory in the ordinary course of its business or as otherwise permitted by Section 9.7 of the Loan Agreement), or established any new asset locations.

(e) Materially changed the terms upon which it sells goods (including sales on consignment) or provides services in the ordinary course of business, nor has any vendor or trade supplier to the Borrower or any Guarantor during or at the end of such period materially adversely changed the terms upon which it supplies goods to the Borrower or any Guarantor.

(f) Permitted or suffered to exist any security interest in or liens on any of its properties, whether real or personal, other than as specifically permitted in the Financing Agreements.

(g) Received any notice of, or obtained knowledge of any of the following not previously disclosed to Agent, which the Borrower is required to report to Agent under the Loan Agreement: (i) the occurrence of any event involving the material release, spill or discharge of any Hazardous Material or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice with respect to: (A) any non-compliance with or violation of any applicable Environmental Law by the Borrower or any Guarantor or (B) the material release, spill or discharge, threatened or actual, of any Hazardous Material other than in the ordinary course of business and other than as permitted under any applicable Environmental Law, or (C) the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which, in each case, adversely affects or could reasonably be expected to adversely affect in any material respect the Borrower or any Guarantor or its business, operations or assets or any properties at which the Borrower or such Guarantor transported, stored or disposed of any Hazardous Materials.

(h) Became aware of, obtained knowledge of, or received notification of, any breach or violation of any covenant contained in any instrument or agreement in respect of Indebtedness for money borrowed by the Borrower or any Guarantor, the violation of which would be an Event of Default under the Loan Agreement.

5. Attached hereto as Schedule III are the calculations used in determining, as of the end of the immediately preceding fiscal [month/quarter], whether Borrower and Guarantors are in compliance with the covenants set forth in Section 9.17 of the Loan Agreement for such fiscal [month/quarter].

The foregoing certifications are made and delivered as of the date first written above.

Very truly yours,

THE NEWARK GROUP, INC., Debtor and Debtor-In-Possession

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title: Chief Financial Officer

**SCHEDULE I**

**Default or Event of Default**

**SCHEDULE II**

**Change in Corporation Name, Location, etc.**

**SCHEDULE III**

**Calculations for Financial Covenants**

## EXHIBIT D

### Form of Guarantor Joinder Agreement

THIS GUARANTOR JOINDER AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, is by and between \_\_\_\_\_, a \_\_\_\_\_ (the "Joining Guarantor") and ORIX Finance Corp., in its capacity as Administrative Agent and Collateral Agent (the "Agent") under that certain Loan and Security Agreement (together with all amendments, modifications, restatements, renewals, extensions, supplements and replacements from time to time, the "Loan Agreement") dated as of \_\_\_\_\_, 2010 by and among The Newark Group, Inc., Debtor and Debtor-In-Possession, a New Jersey corporation (the "Borrower"), the Guarantors from time to time party thereto, the Lenders from time to time party thereto and the Agent. All of the defined terms in the Loan Agreement are incorporated herein by reference.

The Joining Guarantor is required to become a Guarantor pursuant to the terms of the Loan Agreement.

Accordingly the Joining Guarantor hereby agrees as follows with the Agent, for the benefit of the Lenders:

1. The Joining Guarantor hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Joining Guarantor will be deemed to be a party to the Loan Agreement and a "Guarantor" and "Credit Party" for all purposes of the Loan Agreement and the other Financing Agreements, and shall have all of the obligations of a Guarantor thereunder as if it has executed the Loan Agreement and the other Financing Agreements, as applicable. The Joining Guarantor hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Loan Agreement and in the Financing Agreements applicable to a Guarantor, including without limitation (i) all of the representations and warranties set forth in Section 8 of the Loan Agreement and (ii) all of the affirmative and negative covenants set forth in Section 9 of the Loan Agreement.

2. The Joining Guarantor hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Joining Guarantor will be deemed to be a party to the Security Documents applicable to the Joining Guarantor, and shall have all the obligations of a "Pledgor" (as such term is defined in the Pledge Agreement) thereunder as if it had executed the Pledge Agreement. The Joining Guarantor hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Pledge Agreement. Without limiting generality of the foregoing terms of paragraph 1 and this paragraph 2, the Joining Guarantor hereby grants to the Agent, for the benefit of itself and the Lenders, a continuing security interest in, and a right of set off against any and all right, title and interest of the Joining Guarantor in and to all of its property and assets of the type constituting "Collateral" (as defined in the Loan Agreement) to secure the Obligations and acknowledges and agrees that all of such property and assets shall constitute "Collateral" for all purposes under the Loan Agreement and the other Financing Agreements after giving effect hereto.

3. The Joining Guarantor acknowledges and confirms that it has received a copy of the Loan Agreement, the other Financing Agreements and the schedules and exhibits thereto, and the Pledge Agreement and the schedules and exhibits thereto. The schedules to the Loan Agreement and the Pledge Agreement are amended to provide the information shown on the attached Schedule A.

4. The Joining Guarantor confirms that all of the Obligations under the Loan Agreement, upon the Joining Guarantor becoming a Guarantor will and shall continue to be, in full force and effect and that immediately upon the Joining Guarantor becoming a Guarantor, the term

"Obligations", as used in the Loan Agreement, shall include all Obligations of such Joining Guarantor under the Loan Agreement and under each other Financing Agreement.

5. The Joining Guarantor agrees that at any time and from time to time, upon the written request of the Agent, it will execute and deliver such further documents and do such further acts and things as the Agent may reasonably request in order to effect the purposes of this Agreement.

6. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract.

7. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PROVISIONS THEREOF other than Section 5-1401 of the New York General Obligations Law.

IN WITNESS WHEREOF, the Joining Guarantor has caused this Guarantor Joinder Agreement to be duly executed by its authorized officers, and the Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

**[JOINING GUARANTOR]**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ORIX FINANCE CORP.

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**SCHEDULE A**  
**to**  
**Guarantor Joinder Agreement**

**[Identify Schedules in Information Certificate to be Amended]**

**[Schedule 2(a) to Pledge Agreement Pledged Capital Stock]**

**EXHIBIT E**

**Authorized Officers**

**EXHIBIT F**

**Budget**

Attached.

**EXHIBIT G**

**Projections**

Attached.

**SCHEDULE A**

**Schedule of Obligations**

(Unpaid principal as of \_\_\_\_\_, 2010)

TOTAL: \$ \_\_\_\_\_ \*

\*plus indemnification obligations, accrued and accruing interest, costs, fees, attorneys' fees and disbursements and other charges as well as adjustments, credits, and charges as provided as provided under the Financing Agreements.

**SCHEDULE 1**

**Mortgaged Property**

**SCHEDULE 2**

**Reserved**

**SCHEDULE 3**

**Foreign Subsidiaries**

**SCHEDULE 4**

**Exit Mortgage Properties**

1. 1004 South White Avenue, Bay Minette, Baldwin County, Alabama.
2. 312 Ellawood Avenue, Cedartown, Polk County, Georgia.
3. 6001 South Eastern Avenue, Los Angeles, Los Angeles County, California.
4. 935 East 59th Street, Los Angeles, Los Angeles County, California.
5. 525 Mathew Street, Santa Clara, Santa Clara County, California.
6. 4501 West 16th Street, Chicago, Cook County, Illinois.
7. 1514 East Thomas Avenue, Milwaukee, Milwaukee County, Wisconsin.
8. 100 South Kimball Street, Haverhill, Essex County, Massachusetts.
9. 91 Glenn Street, Lawrence, Essex County, Massachusetts.
10. 100 Newark Way, Fitchburg, Worcester County, Massachusetts.
11. 645 Montroyal Road, Rural Hall, Forsyth County, North Carolina.
12. 300 Chestnut Street, Franklin, Warren County, Ohio.
13. 2510 North George Street, Manchester Township, York County, Pennsylvania.
14. 902 South Williams, Atlanta, Cass County, Texas.
15. 620 11th Avenue, Longview, Cowlitz County, Washington.
16. 50 East Sixth Street, Franklin, Warren County, Ohio.
17. 310 West Water Street, Baltimore, Fairfield County, Ohio.
18. 701 Mobile Street, Mobile, Mobile County, Alabama.
19. 1001 Loucks Mill Road, Spring Garden/Springettsbury Township, York County, Pennsylvania.
20. 70 Better Way, Chicopee, Hampden County, Massachusetts.
21. 709 Eastport Road, Jacksonville, Duval County, Florida.
22. 732 Industrial Loop Road, New London, Outagamie County, Wisconsin.
23. 60 Lockwood Street, Newark, Essex County, New Jersey.
24. 250 Canal Street, Lawrence, Essex County, Massachusetts.
25. 800B West Church St., Stockton, San Joaquin County, California.

**SCHEDULE 5**

**Reserved**

**SCHEDULE 9.12(b)(iii)**

**Scheduled Affiliate Transactions**