IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:

INC., et al.,¹

NEW STREAM SECURED CAPITAL,

Chapter 11

Case No. 11-10753(____) (Joint Administration Pending)

Debtors.

MOTION OF DEBTORS FOR ENTRY OF ORDERS (I) APPROVING DEBTOR-IN-POSSESSION FINANCING PURSUANT TO 11 U.S.C. §§ 105(a), 362, AND 364 AND FED. BANKR. P. 2002, 4001 AND 9014 AND LOCAL BANKRUPTCY RULE 4001-2; (II) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362 AND 363 OF THE BANKRUPTCY CODE; (III) GRANTING ADEQUATE PROTECTION AND SUPERPRIORITY ADMINISTRATIVE CLAIMS; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF

New Stream Secured Capital, Inc. ("<u>NSCI</u>"), New Stream Insurance, LLC ("<u>NSI</u>"), New

Stream Capital, LLC ("<u>NSC</u>") and New Stream Secured Capital, L.P. ("<u>NSSC</u>" and collectively

with NSCI, NSI and NSC, the "Debtors")², hereby move (the "Motion") this Court for entry of

an order and request, pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2),

364(c)(3), 364(d)(l), 364(e), 365, 507 and 552 of title 11 of the United States Code (the

"Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy

Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of Bankruptcy Practice

and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local

Bankruptcy Rules"), entry of the proposed interim order substantially in the form annexed hereto

² Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code filed herein, the Asset Purchase Agreement, as defined herein below, and the DIP Credit Agreement, as defined herein below. In the event of any conflict between such documents the Asset Purchase Agreement and the DIP Credit Agreement shall control.



¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: New Stream Secured Capital, Inc. (3903), New Stream Insurance, LLC (6966), New Stream Capital, LLC (0364) and New Stream Secured Capital, L.P. (2948). The corporate address of the Debtors is 38C Grove Street, Ridgefield, CT 06877.

as <u>Exhibit A</u> (the "<u>Interim Order</u>") and a Final Order (defined below) granting, among other things:

(1)authorization and approval for NSI to obtain post-petition financing up to the aggregate principal amount of not more than \$8,000,000 (the "Interim Amount Limit"), on the terms and conditions set forth in the Senior Secured, Super-Priority Debtor in Possession Credit Agreement, substantially in the form attached as Exhibit B to this Motion (the "DIP Credit Agreement"), dated as of March__, 2011, among NSI, as borrower, SSALT Fund Limited, by and through its nominee account which is Barfield Nominees Limited A/C SL101, Compass Special Situations Fund LLC, by and through its nominee account which is Barfield Nominees Limited A/C CSJ01, Compass Coss Master Limited, by and through its nominee account which is Barfield Nominees Limited A/C CSC01, and Special Situations Fund LP, as lenders (collectively, the "DIP Lenders"), and MIO Partners, Inc., as administrative agent (the "Administrative Agent") and collateral agent (the "Collateral Agent", and together with the Administrative Agent, the "Agents"), and that certain Security Agreement, between NSI and the Collateral Agent, dated as of March ___, 2011 (the "Security Agreement"), and any control agreements, pledge agreements or other similar documents contemplated by the DIP Credit Agreement or Security Agreement (collectively, with the DIP Credit Agreement and Security Agreement, the "<u>DIP Documents</u>"); (2)authorization for the Debtors to enter into and perform all acts, requirements and obligations set forth in or in connection with the DIP Documents:

- 2 -

(3) authorization, pursuant to sections 364(c)(2) and 364(d)(1) of the Bankruptcy Code, to grant senior, first-priority, fully-perfected liens (as more fully described in the DIP Documents, the "<u>DIP Liens</u>") to the Collateral Agent, for the benefit of the DIP Lenders, upon all of the Collateral (as defined below), which DIP Liens shall prime all NSI Pre-Petition Liens (as defined below) and any other liens on the Collateral, other than the MIO Pre-Petition Liens (as defined below), as to which the DIP Liens shall be *pari passu*;

(4) authorization, pursuant to section 364(c)(1) of the Bankruptcy Code, to grant Superpriority Claims (as defined below) to the Collateral Agent, for the benefit of the DIP Lenders, and to the DIP Lenders, with priority over all administrative expenses;

(5) authorization for NSI to use Cash Collateral in which the MIO-Pre-Petition Lenders and NSI Pre-Petition Lenders have an interest;

(6) authorization to grant adequate protection, including, among other things, Replacement Liens (as defined below) and Superpriority Claims pursuant to section 364(c)(1) of the Bankruptcy Code to the MIO Pre-Petition Lenders with respect to, *inter alia*, the DIP Liens and NSI's use of Cash Collateral and all diminution in value of the Pre-Petition Senior Collateral (as defined below), which Replacement Liens and Superpriority Claims shall be junior, respectively, to the DIP Liens and Superpriority Claims granted to the Collateral Agent, for the benefit of the DIP Lenders, and to the DIP Lenders, and senior, respectively, to the Replacement Liens and Superpriority Claims granted to the NSI Pre-Petition Lenders; (7) authorization to grant adequate protection, including, among other things, Replacement Liens and Superpriority Claims pursuant to section 364(c)(1) of the Bankruptcy Code to the NSI Pre-Petition Lenders whose liens and security interests are being primed by the Collateral Agent and DIP Lenders in connection with the DIP Facility (as defined below) and pursuant to the DIP Documents, and with respect to NSI's use of Cash Collateral and all diminution in value of the Pre-Petition Subordinated Collateral (as defined below); the Replacement Liens and Superpriority Claims of the NSI Pre-Petition Lenders shall be junior and subordinate in all respects to the DIP Liens and Superpriority Claims granted to the DIP Lenders and the Replacement Liens and Superpriority Claims granted to the MIO Pre-Petition Lenders;

(8) authorization subject to, and only effective upon the entry of, the Final Order (as defined below) granting such relief, to prohibit the Debtors' from surcharging against collateral pursuant to section 506(c) of the Bankruptcy Code; and

(9) the scheduling of a final hearing (the "<u>Final Hearing</u>") to consider entry of a final order authorizing and approving, on a final basis all of the relief requested in the Motion and DIP Documents on a (the "<u>Final Order</u>"), including authorizing NSI to obtain post-petition financing up to the aggregate principal amount of not more than \$56,824,935 (the "<u>DIP Facility</u>").

In support of this Motion, the Debtors submit the Declaration of Michael Buenzow in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief (the "<u>First-Day</u> <u>Declaration</u>"), filed contemporaneously herewith, and respectfully state as follows:

- 4 -

JURISDICTION AND VENUE

1. The Court has jurisdiction to hear this Motion pursuant to 28 U.S.C. § § 157(b) and 1334. This mater constitutes a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 361, 362, 363, and 364(e), 364(d) and 507 of the Bankruptcy Code; Bankruptcy Rules 4001 and 9014; and Local Bankruptcy Rule 4001-2(b).

BACKGROUND

4. The Debtors are an inter-related group of companies that collectively comprise an investment fund, headquartered in Ridgefield, Connecticut. Until very recently, the Debtors had been focused on investments that provided funding solutions for complex transactions in a wide range of industries.

5. On March 13, 2011 (the "<u>Petition Date</u>"), the Debtors each filed their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of the Debtors' chapter 11 cases (the "<u>Cases</u>"), is set forth in detail in the First-Day Declaration.

6. On the Petition Date, the Debtors filed with the Court, among other things, the *Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, dated January 24, 2011 (as amended, the "<u>Plan</u>") and the *Disclosure Statement Relating to the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* (the "<u>Disclosure Statement</u>").

- 5 -

7. The Plan is a "prepackaged" plan of reorganization. The Plan, which was negotiated over several months with the involvement of representatives from each of its three major investor constituencies, is the culmination of restructuring efforts that the Debtors initiated during the first quarter of 2009. The Debtors have filed the Cases, with the support of major creditor constituencies, to seek confirmation of the Plan.

8. On the Petition Date, the Debtors filed a motion requesting entry of an order (a) scheduling a combined hearing as soon as practicable between the dates of April 21, 2011 and May 3, 2011 to consider approval of the adequacy of the Disclosure Statement, confirmation of the Plan, and the adequacy of the solicitation procedures utilized in connection with the prepetition solicitation of votes to accept or reject the Plan, (b) establishing procedures for objecting to the Disclosure Statement, the Plan, and the solicitation procedures, (c) establishing bar dates for the filing of proofs of claim or interests, (d) approving the form, manner, and sufficiency of notice of the combined hearing and the bar dates, and (e) granting related relief..

9. As set forth in greater detail in the Disclosure Statement, a primary component of the Plan is the contemplated sale of the NSI Life Portfolio to Limited Life Assets Master Limited and Limited Life Assets Holdings Limited (collectively, the "<u>Purchaser</u>") pursuant to that certain Asset Purchase Agreement, by and between Purchaser, and NSI, as seller (the "<u>Asset Purchase Agreement</u>"), pursuant to which NSI agreed to sell the NSI Life Portfolio to the Purchasers in accordance with the terms set forth therein. For a variety of structural and logistical funding reasons, the entities that provided the financing under the Pre-Petition Senior Credit Agreement are not the same legal entities that will be the acquisition vehicles for the Insurance Portfolio. However, all of these entities are controlled or managed by MIO Partners, Inc., a Delaware

- 6 -

corporation, solely in its capacity as general partner, adviser, managing member, investment manager or manager.

10. Pursuant to the terms of the Asset Purchase Agreement and the agreement of the DIP Lenders under the DIP Credit Agreement, the principal amount of the DIP Facility is "purchase price neutral" meaning, so long as the Purchasers or their nominee are the ultimate purchasers, an amount equal to the principal amount of the Loans (including Pre-Petition Obligations up to the Petition Date) under the DIP Facility will be added by the Purchasers to the purchase price set forth in the Asset Purchase Agreement for the NSI Life Portfolio and paid in cash by the Purchasers on the Effective Date of the Plan, with NSI immediately using such purchase price proceeds received from the Purchaser to repay the principal amount of the Loans (including all Pre-Petition Obligations up to the Petition Date) under the DIP Facility. This is a critical component to the terms of this DIP Facility.

PRE-PETITION CREDIT FACILITIES

A. <u>Pre-Petition Senior Indebtedness</u>.

11. Prior to the Petition Date, SSALT Fund Limited, by and through its nominee, and Compass Special Situations Fund LLC, by and through its nominee, and Compass Coss Master Limited, by and through its nominee, and Special Situations Fund LP (collectively, the "<u>MIO</u> <u>Pre-Petition Lenders</u>") provided financing to NSI under that certain Secured Promissory Note, dated as of August 4, 2010, in the original principal amount of \$25,000,000, as amended and modified by that certain Amended and Restated Secured Promissory Note, dated as of November 8, 2010, in the amended principal amount of \$39,480,268.58 (as further amended, restated, supplemented or otherwise modified on or prior to the Petition Date, the "<u>Pre-Petition Senior</u> <u>Credit Agreement</u>").

12. As of the Petition Date, NSI was liable to the MIO Pre-Petition Lenders in the amount of \$41,824,935 which includes fees and expenses incurred under and in connection with the Pre-Petition Senior Credit Agreement as provided therein (collectively, the "<u>Pre-Petition</u> <u>Senior Loan Obligations</u>").

13. The Pre-Petition Senior Loan Obligations are secured by first priority, fullyperfected security interests in and liens (the "Senior Pre-Petition Liens") on all of NSI's right, title and interest in, to and under the (a) Additional Life Insurance Policy Portfolio (as defined in the Pre-Petition Senior Credit Agreement), (b) Life Insurance Policy Portfolio (as defined in the Pre-Petition Senior Credit Agreement) (collectively with the Additional Life Insurance Policy Portfolio, the "<u>NSI Life Portfolio</u>"), (c) the New Stream Securities Account and all property contained or credited therein (including, without limitation, all Investment Property, Securities and Financial Assets contained therein (as each such term is defined in the Pre-Petition Senior Credit Agreement)), (d) all Instruments and Documents evidencing any of the foregoing (as each such term is defined in the Pre-Petition Senior Credit Agreement), (e) all Supporting Obligations and Payment Intangibles in respect of any of the foregoing (as each such term is defined in the Pre-Petition Senior Credit Agreement), (f) all books and records pertaining to any of the foregoing, (g) all Proceeds and products of any of the foregoing (as each such term is defined in the Pre-Petition Senior Credit Agreement), and (h) all collateral security and guarantees given by any person or entity with respect to any of the foregoing (collectively, the "Pre-Petition Senior Collateral").

14. The Pre-Petition Secured Obligations are also secured pursuant to that certain Securities Account Control Agreement, dated as of August 4, 2010, among the MIO Pre-Petition Lenders, NSI, and Bank of Utah, as Securities Intermediary, as amended and modified by that

- 8 -

first amendment thereto and as further amended and modified by that certain Amendment No. 2 to the Securities Account Control Agreement, dated as of November 8, 2010 (as further amended, restated, supplemented or otherwise modified on or prior to the Petition Date, the "<u>Pre-Petition SACA</u>", and collectively, with the Pre-Petition Senior Loan Agreement, the NSI Pre-Petition Loan Agreements, the Subordination Agreements, and all other agreements, guarantees, security documents, or otherwise, entered into or relating to the foregoing, collectively, the "<u>Pre-Petition Debt Documents</u>").

B. <u>Pre-Petition Subordinated Indebtedness</u>.

15. Prior to the Petition Date, (a) NSSC and Segregated Account Class C (the "Class C Lender") of New Stream Capital Fund Limited ("<u>NS Capital Fund</u>") provided financing to NSI pursuant to that certain Amended and Restated Loan and Security Agreement; (b) NSSC and Segregated Account Class F of NS Capital Fund (the "<u>Class F Lender</u>") provided financing to NSI pursuant to that certain Amended and Restated Loan and Security Agreement; and (c) NSSC and Segregated Account Class I of NS Capital Fund (the "<u>Class I Lender</u>", and collectively with NSSC, the Class C Lender and the Class F Lender, the "<u>NSI Pre-Petition Lenders</u>", and collectively with the MIO Pre-Petition Lenders, the "<u>Pre-Petition Lenders</u>") provided financing to NSI pursuant to that certain Amended and Restated Loan and Security Agreement (as amended, restated, supplemented or otherwise modified on or prior to the Petition Date, collectively, the "<u>NSI Pre-Petition Loan Agreements</u>").

16. As of the Petition Date, NSI was liable to the NSI Pre-Petition Lenders in at least the amount of \$81,573,375 and for fees and expenses incurred under and in connection with the NSI Pre-Petition Loan Agreements as provided therein (collectively, the "<u>Pre-Petition</u>

- 9 -

<u>Subordinated Loan Obligations</u>", and together with the Pre-Petition Senior Loan Obligations, the "<u>Pre-Petition Obligations</u>"); provided, however, that the NSI Pre-Petition Lenders have reserved the right to assert one or more claims with respect to the Pre-Petition Subordinated Loan Obligations which in the aggregate exceed such amount.

17. The Pre-Petition Subordinated Loan Obligations are secured by fully-perfected security interests in and liens (the "<u>Subordinated Pre-Petition Liens</u>", and collectively with the Senior Pre-Petition Liens, the "<u>Pre-Petition Liens</u>") on all of NSI's right, title and interest in, to and under the NSI Life Portfolio and the other collateral described in the NSI Pre-Petition Loan Agreements (other than with respect to deposit accounts as no control agreements were entered into between NSI, any depository bank and WTC), which security interests and liens are subordinated to the Pre-Petition Senior Liens (collectively, the "<u>Pre-Petition Subordinated</u> <u>Collateral</u>", and together with the Pre-Petition Senior Collateral, the "<u>Pre-Petition Collateral</u>").

C. <u>Consent and Subordination Agreements</u>.

18. The Consent and Subordination Agreements, dated as of August 4, 2010 and November 8, 2010, respectively, each among NSI, NSSC, John C. McKenna, in his capacity as Receiver for the Class C Lender, Class F Lender and Class I Lender (the "<u>NSI Receiver</u>"), and Wilmington Trust Company, as collateral agent (in such capacity "<u>WTC</u>") for the NSI Pre-Petition Lenders (as each agreement may have been amended, restated, supplemented or otherwise modified on or prior to the Petition Date, collectively, the "<u>Subordination</u> <u>Agreements</u>"), pursuant to which the NSI Pre-Petition Lenders and WTC agreed to, among other things, subordinate their right of payment, security interests and liens in connection with the NSI Pre-Petition Loan Agreements and NSI Pre-Petition Subordinated Loan Obligations to the right of payment, security interests and liens of the MIO Pre-Petition Lenders in connection with the Pre-Petition Senior Loan Obligations and MIO Pre-Petition Senior Credit Agreement, are valid, binding and enforceable against the parties thereto and shall govern the respective rights and priorities hereunder of the MIO Pre-Petition Lenders, on one hand, and the NSI Pre-Petition Lenders and WTC, on the other hand (collectively, the "<u>Pre-Petition Lien Holders</u>").

<u>DEBTORS' URGENT NEED FOR POST-PETITION FINANCING</u> <u>AND USE OF CASH COLLATERAL</u>

19. An immediate and critical need exists for NSI to obtain funds and use Cash Collateral in order to, among other thing, pay the actual amounts necessary to fund the premium payments of the insurance policies in the NSI Life Portfolio. The access of NSI to sufficient working capital and liquidity through the use of Cash Collateral and incurrence of post-petition indebtedness is vital to the preservation and maintenance of the going concern value of the NSI Life Portfolio and to the successful consummation of the Sale and reorganization of the Debtors pursuant to the Plan.

20. As set forth above, the Pre-Petition Obligations are secured by Pre-Petition Liens on substantially all of NSI's assets, including the Cash Collateral and NSI does not have any unencumbered cash with which to maintain the NSI Life Portfolio. In addition, the MIO Pre-Petition Lenders are unwilling to permit NSI to use the Cash Collateral on terms other than those described herein and as set forth in the DIP Documents and Financing Orders.

21. Even the use of Cash Collateral, however, would be insufficient to fund NSI's ongoing funding requirements for the NSI Life Portfolio. NSI needs to supplement the use of Cash Collateral with the financing to be provided under the DIP Facility. NSI's use of Cash Collateral and the proceeds of the DIP Facility shall be used solely for the limited purposes of

- 11 -

(i) the conversion of a corresponding amount (on a dollar-for-dollar basis) of the outstanding Pre-Petition Senior Lien Obligations on the Final Order Date to DIP Loans, (ii) paying the actual amounts necessary to fund the premium payments of the insurance policies in the NSI Life Portfolio, and the actual and reasonable fees and costs associated therewith (including servicing fees) and (iii) paying all reasonable fees and costs of the Agents and DIP Lenders incurred in connection with the DIP Facility, the Cases and the enforcement of any rights or remedies under the DIP Documents as more fully set forth in the DIP Credit Agreement, and in each case in accordance with the approved Budget (as defined below).

22. Accordingly, in order to obtain the use of Cash Collateral and the financing available under the DIP Facility, and to avoid immediate and irreparable harm to the Debtors' business operations and their estates, the Debtors seek emergency interim approval of this Motion.

23. By this Motion, the Debtors request entry of the Interim Order authorizing NSI to use Cash Collateral and obtain up to \$8,000,000.00 in interim secured financing and upon entry of the Final Order authorizing the Debtors to obtain up to \$56,824,935 in secured financing, on a final basis subject to the terms and conditions contained in the DIP Documents and Financing Orders. For the avoidance of doubt, upon entry of the Final Order the DIP Facility consists of \$15,000,000 of new financing and a "roll-up" of \$41,824,935 of the Pre-Petition Senior Loan Obligations.

CONCISE STATEMENT PURSUANT TO BANKRUPTCY RULE 4001(c)(1)(B)³

24. Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, the following are the

material provisions of the DIP Credit Agreement and/or the Interim Order:⁴

[
Borrowers	New Stream Insurance, LLC
Guarantor(s)	➢ None.
Administrative Agent	MIO Partners, Inc.
Collateral Agent	MIO Partners, Inc.
DIP Facility Lenders	 SSALT Fund Limited, by and through its nominee account which is Barfield Nominees Limited A/C SL101; Compass Special Situations Fund LLC, by and through its nominee account which is Barfield Nominees Limited A/C CSJ01; Compass Coss Master Limited, by and through its nominee account which is Barfield Nominees Limited A/C CSC01; and Special Situations Fund LP
Amount of Facility	Up to \$56,824,935, with up to \$8,000,000 made available upon entry of the Interim Order. Upon entry of the Final Order the DIP Facility will consist of \$15,000,000 of new financing and a "roll-up" of \$41,824,935 of the Pre-Petition Senior Loan Obligations.
<u>Termination</u> <u>Date</u>	The earliest to occur of : (a) May 16, 2011; (b) the date on which the Bankruptcy Court enters an order confirming the Plan, (c) the occurrence of a DIP Event of a Default and/or Cash Collateral Event of Default.

³ Capitalized terms used in this Concise Statement but not otherwise defined shall have the meanings ascribed to them in the DIP Credit Agreement, as applicable.

⁴ The summaries and descriptions of the terms and conditions of the DIP Credit Agreement and the Interim Order set forth in this Motion are intended solely for informational purposes to provide the Court and parties in interest with a brief overview of the significant terms thereof and should only be relied upon as such. For a complete description of the terms and conditions of the DIP Facility, reference should be made to the DIP Documents and the Interim Order. The summaries and descriptions are qualified in their entirety by the DIP Credit Agreement and the Interim Order. In the event there is a conflict between this Motion and the DIP Credit Agreement or the Interim Order, the DIP Credit Agreement or the Interim Order, as applicable, shall control in all respects. Capitalized terms used in these summaries but not otherwise defined therein or in the Motion shall have the meanings ascribed to them in the DIP Credit Agreement.

<u>Use of the DIP</u> <u>Facility</u>	NSI will use the proceeds of the Loans solely for the limited purposes of (i) the conversion of a corresponding amount (on a dollar-for-dollar basis) of the outstanding Pre-Petition Senior Lien Obligations on the Final Order Date to Loans, (ii) paying the actual amounts necessary to fund the premium payments of the insurance policies in the NSI Life Portfolio, and the actual and reasonable fees and costs associated therewith (including servicing fees) and (iii) paying all fees and costs set
	forth in Section 11.3 in accordance with the 13-Week Budget (subject only to Permitted Variances and Permitted Variance Exceptions, if any).
Entities with Interest in Cash Collateral	Pre-Petition Lien Holders (all of which consent to the use of their Cash Collateral)
Amortization	There are no amortization payments. The principal amount of the Loans is "purchase price neutral"; i.e., so long as the Purchasers or their nominee are the ultimate purchasers, an amount equal to the principal amount of the Loans (including Pre-Petition Obligations up to the Petition Date) under the DIP Facility will be added by the Purchasers to the purchase price set forth in the Asset Purchase Agreement for the NSI Life Portfolio and paid in cash by the Purchasers on the Effective Date of the Plan, with NSI immediately using such purchase price proceeds received from the Purchaser to repay the principal amount of the Loans (including all Pre-Petition Obligations up to the Petition Date) under the DIP Facility. All interest, fees and expenses under the DIP Facility will not be "purchase price neutral" and would be fully payable in cash on the DIP Expiration Date.
Interest Rates	➢ LIBOR, plus 5.50% with a LIBOR floor of 3.50%
Default Interest	2.00% per annum, plus the rate otherwise applicable.

Fees	 <u>Initial Fee</u>: 2.50% of the Additional Commitment, payable to the Administrative Agent for the account of each DIP Lender. The Commitment Fee shall be fully earned upon entry of the Interim Order and shall be paid on the DIP Expiration Date. <u>Unused Commitment Fee</u>: 0.25% per annum on the unused portion of the DIP Credit Facility at such times as outstanding Loans thereunder are less than the amount of the Total Commitment. Each Unused Commitment Fee shall be deemed to have been fully earned upon entry of the Interim Order and shall be paid to the Administrative Agent on the DIP Expiration Date for the account of each DIP Lender. <u>Agent Fee</u>: \$50,000 per month until the occurrence of the DIP Expiration Date (not subject to pro ration). Each Agent Fee shall be deemed to have been fully earned upon entry of the Interim Order and shall be paid to the Interim Order and shall be paid to the Interim Order and shall be paid to pro ration.
<u>Approved</u> <u>Budget</u>	A 13-week rolling budget, as approved by the Administrative Agent prior to the Petition Date (and any subsequent approved budget, the " <u>Budget</u> "), shall be attached to the DIP Credit Agreement and shall reflect on a line-item basis the NSI's anticipated aggregate cash receipts and aggregate necessary and required expenses relating to the NSI Life Portfolio for each week covered by the Budget. For each two week period in the Budget the aggregate disbursements shall not exceed 115% of the aggregate amount of projected disbursements for such two week period (" <u>Permitted Variance</u> "), unless authorized by the Administrative Agent (a " <u>Permitted Variance Exception</u> ").
<u>Financial</u> <u>Covenants</u>	Must comply with the Budget within the Permitted Variances and Permitted Variance Exceptions, if any.

Liens and	\succ	On account of all DIP Obligations, the Agents and DIP Lenders shall,
Priorities		pursuant to sections $364(c)(2)$ and $364(d)(1)$ of the Bankruptcy Code, be
		granted first priority, fully-perfected, senior liens on and security
		interests in the following (i) the NSI Life Portfolio (as may be modified
		from time to time); (ii) the New Stream Securities Account (as defined
		in the SACA, and as may be modified from time to time), including,
		without limitation, all investment property, securities and financial
		assets contained therein; (iii) the Seller's Securities Account (as defined
		in the SACA, and as may be modified from time to time) and all
		property contained or credited therein (including, without limitation, all
		investment property, securities and financial assets contained therein);
		(iv) all instruments and documents evidencing any of the foregoing; (v)
		all cash and Cash Collateral of NSI and any investment of such cash
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		and Cash Collateral, inventory, accounts receivable, other rights to
		payment whether arising before or after the Petition Date, contracts,
		properties, plants, equipment, general intangibles, documents,
		instruments, interests in leaseholds, real properties, patents, copyrights,
		trademarks, trade names, other intellectual property, capital stock of
		subsidiaries, all property purportedly assigned or pledged as collateral
		by NSI to secure any intercompany obligations to the extent any such
		assignment or pledge shall not have been duly perfected as of the
		Petition Date and the proceeds of all the foregoing; provided, however,
		that NSI shall not pledge to the DIP Lenders in excess of 65% of the
		voting capital stock of its direct foreign subsidiaries, if any, or any of the
		capital stock or interests of its indirect foreign subsidiaries, if any, if, in
		the good faith judgment of the Debtors, adverse tax consequences would
		result to the Debtors, which adverse consequences are demonstrated to
		the reasonable satisfaction of the DIP Lenders; (vi) subject to entry of a
		Final Order, the proceeds or property recovered from, NSI's claims and
		causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550
		of the Bankruptcy Code, or any other avoidance actions under the
		Bankruptcy Code (collectively, "Avoidance Actions"); (vii) all
		supporting obligations and payment intangibles in respect of any of the
		foregoing, (viii) all books and records pertaining to any of the foregoing;
		(ix) all proceeds and products of any of the foregoing; (x) all collateral,
		security and guarantees given by any person or entity with respect to any
		of the foregoing; (xi) all of the other assets of NSI, including, without
		limitation, Cash Collateral, all accounts receivable, inventory, general
		intangibles, machinery, equipment, fixtures, and real property, and all
		proceeds and products of any of the foregoing; and (xii) all other pre-
		petition and post-petition property and assets as set forth in the Security
		Agreement, whether existing on the Petition Date or thereafter acquired.
		(collectively, the " <u>Collateral</u> "); <u>provided</u> , <u>however</u> , such liens (a) shall
		prime all Pre-Petition Liens (other than the MIO Pre-Petition Liens, as to
		which the liens of the DIP Lenders shall be <i>pari passu</i>) and any other
		liens on the Collateral and (b) shall be senior in all respects to all
		Replacement Liens.
		Replacement Liens.
	1	

Except as otherwise provided in the Orders, the DIP Obligations shall constitute superpriority administrative expense claims in each of the Cases, as more fully provided in the Financing Orders. Except as

Waivers of Rights (including 506(c) Rights and Deadlines to Bring Certain Causes of Action)	Subject to and effective only upon entry of the Final Order granting such relief, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lenders, the MIO Pre-Petition Lenders and the NSI Pre-Petition Lenders, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lenders and/or the Pre-Petition Lien Holders.
Adequate Protection for Pre-Petition Lien Holders	Adequate protection for the Pre-Petition Lien Holders shall consist of Replacement Liens and Superpriority Claims; provided, however, that the Superpriority Claims granted to Pre-Petition Lien Holders shall be junior in all respects to the Superpriority Claims granted to the DIP Lenders, and Superpriority Claims granted to the MIO Pre-Petition Lenders shall be senior in all respects to the Superpriority Claims granted to the NSI Pre-Petition Lenders.
Events of Default	Article VIII of the DIP Credit Agreement contains Events of Default, many of which are customary for debtor-in-possession credit facilities of this nature, as set forth in more detail therein.
Waiver or Modification of the Automatic Stay	The automatic stay provisions of section 362 of the Bankruptcy Code shall be modified to the extent necessary to permit the Agents and the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default (as defined in the DIP Facility), all rights and remedies provided for in the DIP Documents; provided, <u>however</u> , that the DIP Lenders shall provide five (5) business days written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors and counsel to any official committee appointed in any of the Cases of such Event of Default prior to exercising any enforcement rights or remedies in respect of the DIP Collateral.
Waiver orModification ofApplicability ofNon-BankruptcyLaw Relatingto thePerfection orEnforcement ofa Lien	The DIP Liens and Replacement Liens shall be deemed valid and perfected by entry of the Interim Order and, when applicable, the Final Order. The Agents, DIP Lenders, and Pre-Petition Lien Holders shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the DIP Liens or Replacement Liens.

Indemnification	NSI agrees to indemnify the Agents, each Lender, each Affiliate of any of the foregoing Persons and each of their respective partners, controlling Persons, directors, officers, trustees, employees and agents (each such Person being called an " <u>Indemnitee</u> ") against, and to hold each Indemnitee harmless from, all reasonable out-of-pocket costs and any and all losses, claims, damages, liabilities, penalties, judgments, suits and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution, delivery, performance, administration or enforcement of the DIP Loan Documents, (ii) any actual or proposed use of the proceeds of the DIP Facility or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto; <i>provided</i> that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.
Exculpation	Subject to the entry of a Final Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lenders or Pre-Petition Lien Holders any liability for any claims arising from the Pre-Petition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts.
Conditions to Borrowing	Article IV of the DIP Credit Agreement contains customary conditions precedent for borrowings under debtor-in-possession credit facilities of this nature as more fully set forth therein.
<u>Covenants</u> <u>Baganding</u> Blan	the Bankruptcy Court shall fail to enter the Interim Order by not later than March 16, 2011.
<u>Regarding Plan</u> <u>Confirmation</u>	than March 16, 2011;➤ the Bankruptcy Court shall fail to enter an order that schedules the
Timeline	Confirmation Hearing to take place on a date not later than May 3, 2011;
	the Bankruptcy Court shall fail to enter the Final Order by not later than April 4, 2011;
	the Bankruptcy Court shall fail to enter the Bid Incentives Order by not
	later than April 18, 2011; and the Bankruntay Court shall fail to onter the Confirmation Order by not
	the Bankruptcy Court shall fail to enter the Confirmation Order by not later than May 12, 2011.

THE PROPOSED DIP FACILITY

A. Efforts to Obtain Financing

25. After a number of initial exploratory communications with various lending parties, the Debtors quickly concluded that the only viable source of post-petition financing would be the DIP Lenders and that further efforts to obtain post-petition financing on an unsecured, *pari passu* or priming lien basis, or otherwise on more favorable terms than those proposed by the DIP Lenders, would be futile. Because of their affiliation with the Purchasers, the DIP Lenders have agreed that any financing would be "purchase price neutral"; i.e., so long as the Purchasers or their nominee are the ultimate purchasers, an amount equal to the principal amount of the DIP Facility (which, following entry of the Final Order, will include all obligations under the Senior Pre-Petition Credit Agreement up to the Petition Date that has been rolled into the Loans) will be added by the Purchasers to the purchase price set forth in the Asset Purchase Agreement for the NSI Life Portfolio and paid in cash by the Purchasers on the Effective Date of the Plan, with NSI immediately using such purchase price proceeds received from the Purchaser to repay the principal amount of the Loans (including all Pre-Petition Obligations up to the Petition Date) under the DIP Facility.⁵ The economic benefit of such treatment is not something any other person can offer.

26. The Debtors accordingly commenced vigorous arms-length and good faith negotiations with the DIP Lenders regarding the terms and conditions of post-petition financing and use of Cash Collateral. The Debtors, in their sound business judgment, determined that the DIP Lenders' proposal for post-petition financing addressed the NSI's working capital needs to

⁵ For the avoidance of doubt all post-petition interest, fees and expenses incurred under the DIP Facility would not be "price neutral" and would be fully payable in cash upon termination of the DIP Facility.

support the NSI Life Portfolio and consummate the Sale pursuant to the Asset Purchase Agreement and Plan. Accordingly, the Debtors ultimately decided to accept the DIP Lenders' proposal and NSI agreed to enter into the DIP Documents.

B. Supplemental Bankruptcy Rule 4001 and Local Rule 4001-2 Disclosures

27. Delaware Local Rule 4001-2 requires that motions seeking approval of postpetition financing ("<u>Financing Motions</u>") provide disclosure of and justification for certain provisions identified in such Local Rule that are contained in post-petition financing agreements and proposed orders ("<u>Proposed Financing Documents</u>") underlying the Financing Motions).

28. <u>Cross-Collateralization</u>: Delaware Local Rule 4001-2(a)(i)(A) requires the disclosure in Financing Motions of provisions in Proposed Financing documents that grant cross-collateralization protection. The DIP Loan Documents do not grant any cross-collateralization protection to the DIP Lenders.

29. <u>Investigation of Liens</u>: Bankruptcy Rule 4001(c)(1)(B)(iii) and (viii) and Delaware Local Rule 4001-2(a)(i)(B) require the disclosure in Financing Motions of findings of fact in Proposed Financing Documents that are intended to bind the estate with respect to the validity, amount, or perfection of liens or a waiver of claims, without first giving certain parties in interest an opportunity to conduct an investigation as to those facts or claims. The Interim Order contains, as will the proposed Final Order, findings of fact agreed to by the Debtors but provide for a challenge period on the part of any party in interest, including an official committee of unsecured creditors appointed in any of the Cases, to asset any claims or causes of action against the MIO Pre-Petition Lenders seeking to invalidate, subordinate or otherwise challenge the Senior Pre-Petition Liens or Pre-Petition Senior Loan Obligations no later than (a) the earlier of (i) forty-five (45) days from the date of entry of this Interim Order or (ii) the deadline

- 20 -

established by the Court for the filing of objections to the confirmation of the Debtors' Plan. *See* Interim Order ¶ 37.

30. Section 506(c) Surcharge Waiver: Bankruptcy Rule 4001(c)(1)(B)(x) and Delaware Local Rule 4001-2(a)(i)(C) require disclosure in Financing Motions of provisions in Proposed Financing Documents that seek to waive, without notice, whatever rights the estate may have under section 506(c) of the Bankruptcy Code. Although the DIP Documents and Final Order provide for a waiver of rights under section 506(c), such rights are not waived in the Interim Order. The proposed waiver of the Debtors and estates' rights under section 506(c) will be effective only after due notice to parties in interest has been given and after entry of the Final Order granting such relief. *See* Interim Order ¶ 27.

31. Lien Avoidance Actions: Bankruptcy Rule 4001(c)(1)(B)(xi) and Delaware Local Rule 4001-2(a)(i)(D) require disclosure in Financing Motions of provisions in Proposed Financing Documents that grant the pre-petition secured creditors liens on Avoidance Actions (as defined below). Pursuant to the Interim Order, Unencumbered Property shall exclude NSI's claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "Avoidance Actions"), and any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions but, upon entry of a Final Order, shall include any proceeds or property recovered, unencumbered or successful Avoidance Actions but, upon entry of a Successful Avoidance Actionations but, upon entry of a Successful Avoidance Actionation and proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions of NSI. See Interim Order ¶ 16(a).

32. <u>Roll-up of Pre-Petition Debt</u>: Delaware Local Rule 4001-2(a)(i)(E) requires disclosure in Financing Motions of provisions in Proposed Financing Documents that deem prepetition secured debt to be post-petition debt or that use whereby post-petition loans to repay in

- 21 -

part or all pre-petition debt. Under the DIP Documents, on the Final Order Date, the sum of (i) the aggregate principal amount of the Pre-Petition Loans held by the DIP Lenders in their capacities as pre-petition lenders under the Pre-Petition Senior Credit Agreement plus (ii) interest accrued thereon through and including the Petition Date at the rate set forth for such Pre-Petition Loans in the Pre-Petition Credit Agreement, plus (iii) all other Pre-Petition Obligations outstanding on the Petition Date shall become a "Loan" under the DIP Credit Agreement deemed to have been made on the Petition Date. *See* Interim Order ¶ 13(i) and DIP Credit Agreement Section 2.1(b). As noted, however, that all such amounts, plus the \$15,000,000 of principal of the new financing being made available to NSI after the Petition Date, will be added by the Purchasers to the purchase price set forth in the Asset Purchase Agreement for the NSI Life Portfolio and paid in cash by the Purchasers on the Effective Date of the Plan, with NSI immediately using such purchase price proceeds received from the Purchaser to repay the principal amount of the Loans (including all Pre-Petition Obligations up to the Petition Date) under the DIP Facility, and thus will be not repaid by current assets of NSI.

33. <u>Carve-Out</u>: Delaware Local Rule 4001-2(a)(i)(F) requires disclosure of provisions in Financing Motions of provisions in Proposed Financing Documents that provide disparate treatment to professionals retained by a creditors' committee from those professionals retained by a debtor. In this case, the Debtors, including NSI, will not use the DIP Facility to pay for their professionals nor for professionals of any creditors' committee, if appointed. The other Debtors have unencumbered funds with which to pay the fees and expenses of their professionals and those retained by a creditors' committee, if appointed. Accordingly, all professionals retained either by the Debtors and a creditors' committee, if appointed, will be treated equally under the DIP Documents. No borrowings under the DIP Facility, Cash

- 22 -

Collateral or Collateral may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Pre-Petition Debt Documents, or the liens or claims granted under this Interim Order, the DIP Documents or the Pre-Petition Debt Documents, (b) assert claims and defenses or any other causes of action against the DIP Lenders or the Pre-Petition Lien Holders or their respective agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Lenders' or Pre-Petition Lien Holders' assertion, enforcement or realization on the Collateral in accordance with the DIP Documents, the Pre-Petition Debt Documents or this Interim Order, (d) seek to modify any of the rights granted to the DIP Lenders or the Pre-Petition Lien Holders hereunder or under the DIP Documents or the Pre-Petition Debt Documents, in each of the foregoing cases without such parties' prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date or any professional fees and disbursements incurred in connection with such claims or any of the actions set forth in the foregoing clauses (a) through (d) unless in each case such payments are (i) approved by an order of this Court and (ii) in accordance with the DIP Credit Agreement and Original Budget or otherwise approved by the DIP Lenders in their sole discretion. See Interim Order ¶ 39.

34. <u>Priming Liens</u>: Finally, Delaware Local Rule 4001-2(a)(i)(G) requires disclosure in Financing Motions of Provisions in the Proposed Financing Documents that prime any secured liens without the consent of the lienholder. The NSI Pre-Petition Lenders are consenting to the DIP Liens priming their pre-petition liens securing NSI's obligations under the NSI Pre-Petition Loan Agreements in exchange for the liens, claims, and protections granted to them by the DIP Documents. *See* Interim Order ¶ 6.

- 23 -

35. The provisions of the DIP Documents as to which disclosure was required pursuant to Delaware Local Rule 4001-2 are justified under the circumstances of these Cases. First and foremost, without the inclusion of such terms, the DIP Lenders would not agree to make the DIP Facility available to NSI, and the Pre-Petition Lien Holders would not agree to NSI's use of Cash Collateral or the priming (in the case of the NSI Pre-Petition Lenders) of their Pre-Petition Liens by the DIP Lenders. In light of the unavailability of adequate financing alternatives and for the reasons set forth more fully herein and in the First-Day Declaration, the Debtors determined in the exercise of their sound business judgment that agreeing to the disclosed provisions was appropriate under the circumstances of these Cases because the DIP Facility is necessary to the success of the Cases, consummation of the Sale and confirmation of the Plan.

36. Accordingly, the facts and circumstances of these Cases justify the inclusion of the terms that require disclosure under Delaware Local Rule 4001-2.

AUTHORIZATION TO USE CASH COLLATERAL

37. NSI needs to use Cash Collateral in the normal course of its business in order to pay premiums and other costs and expenses relating to the preservation of the NSI Life Portfolio. During the ordinary course of its business, NSI may receive from proceeds from life insurance policies in the NSI Life Portfolio, which proceeds constitute Cash Collateral. However, such proceeds are insufficient to fund NSI's ongoing premium funding requirements for the preservation of the NSI Life Portfolio. Furthermore, NSI cannot rely upon the receipt of such proceeds because such receipt is random and inconsistent as such amounts are only paid upon the death of the party whose life is insured by such policy. It also can take up to six months before such proceeds are paid by the insurance company and received by NSI. Thus, NSI needs to

- 24 -

supplement its use of Cash Collateral with the funds being provided by the DIP Lenders under the DIP Facility. As the DIP Facility is contingent upon the Debtors obtaining approval for NSI to use Cash Collateral, it is imperative that the Debtors obtain authority for NSI to use Cash Collateral subject to the terms set forth in the DIP Documents and Financing Orders. Accordingly, in order to obtain the financing under the DIP Facility and to avoid immediate and irreparable harm to the Debtors' business operations and their estates, the Debtors have an immediate need for authority to use Cash Collateral.

PRE-PETITION LIEN HOLDERS ADEQUATE PROTECTION

38. The Pre-Petition Lien Holders are entitled, under sections 363(e) and 364(d)(1)(B) of the Bankruptcy Code, to adequate protection of their interest in the Pre-Petition Collateral, including the Cash Collateral, for the aggregate diminution in the value of the Pre-Petition Lenders' interest in the Pre-Petition Collateral, including the Cash Collateral, by reason of: (i) the imposition of the automatic stay under section 362 of the Bankruptcy Code; (ii) the priming of the Subordinated Pre-Petition Liens; (iii) the use of the Pre-Petition Lien Holders' Cash Collateral; and (iv) the use, sale or lease of Pre-Petition Collateral pursuant to section 363(a) of the Bankruptcy Code. Accordingly, NSI has agreed, subject to this Court's approval, to grant to the Pre-Petition Lien Holders the following adequate protection for any diminution in the value of their respective interests in the Pre-Petition Collateral from the Petition Date resulting from (a) the use, sale, lease, disposition, shrinkage, decline in market value, consumption or physical deterioration of the Pre-Petition Collateral (including Cash Collateral) by the Debtors, and (b) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, the "Adequate Protection Obligations"): Replacement Liens: The Pre-Petition Lien Holders shall be granted the Replacement Liens subject to the priorities set forth in the Interim Order, the DIP Documents and the Subordination Agreements. Subject in all respects to the Subordination Agreements, and except as otherwise set forth herein, the Replacement Liens granted to the Pre-Petition Lien Holders pursuant to the Interim Order shall be prior and senior to all liens and encumbrances of (a) all other secured creditors in and to such property granted, or arising, subsequent to the date of this Interim Order (including, without limitation, liens and security interests, if any, granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors other than taxes), (b) any intercompany claim of NSI or subsidiary or affiliate of NSI, and (c) any security interest or lien that is avoided or otherwise preserved for the benefit of NSI's estate pursuant to Bankruptcy Code section 551; provided, however, that the Replacement Liens granted to the NSI Pre-Petition Lenders shall be subordinate to the DIP Liens and to the Replacement Liens granted to the MIO Pre-Petition Lenders, and the Replacement Liens granted to the MIO Pre-Petition Lenders shall be subordinate to the DIP Liens. "Replacement Lien" shall mean that, subject to the terms and conditions set forth in the Interim Order, the Pre-Petition Lien Holders shall have (effective upon the date of the Interim Order and without the necessity of the Debtors or the Pre-Petition Lien Holders to execute mortgages, deeds of trust, security agreements, pledge agreements, control agreements, financing statements or otherwise) valid and perfected, security interests in, and liens upon all Collateral, in the same priority and to the

same extent, priority, enforceability, unavoidability and validity applicable to the MIO Pre-Petition Lenders' security interests and liens in the Pre-Petition Collateral and the NSI Pre-Petition Lenders' security interests and liens in the Pre-Petition Collateral; <u>provided</u>, <u>however</u>, the Replacement Liens shall be junior in all respects to the DIP Liens granted to the DIP Lenders.

 \geq Superpriority Claims: The Pre-Petition Lien Holders shall be granted allowed administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and with priority over all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (collectively, the "Superpriority Claims"); provided, however, that the Superpriority Claims granted to Pre-Petition Lien Holders shall be junior in all respects to the Superpriority Claims granted to the DIP Lenders, and the Superpriority Claims granted to the MIO Pre-Petition Lenders shall be senior in all respects to the Superpriority Claims granted to the NSI Pre-Petition Lenders. No cost or expense of administration under Bankruptcy Code §§ 105, 503(b) and 507(b) shall be senior to, or *pari passu* with, any Superpriority Claims; and notwithstanding any provision of the Interim Order or the Pre-Petition Debt Documents to the contrary, the Pre-Petition Lien Holders reserve, and the Interim Order shall be without prejudice to, their respective rights to, among other things, seek additional adequate protection (provided that any adequate protection provided hereafter shall be junior in all respects to the DIP Liens and Superpriority Claims of the DIP Lenders, and if provided to the NSI Pre-Petition Lenders shall also be

provided to the MIO Pre-Petition Lenders on a senior priority basis), claim payment or reimbursement of additional interest (including default interest), fees and expenses (including, without limitation, professional fees and expenses) or other costs and expenses (including claims related to make whole or prepayment premiums, if any) set forth in the Pre-Petition Debt Documents.

RELIEF REQUESTED

39. By this Motion, the Debtors request entry of the Interim Order and Final Order

authorizing, among other things:

- (a) NSI to use Cash Collateral;
- (b) in the case of the Interim Order, NSI to borrow up to an aggregate principal amount of \$8,000,000 under the terms and conditions of the DIP Loan Documents, or in the case of the Final Order, NSI to borrow up to an aggregate principal amount of up to \$56,824,935 under the terms and conditions of the DIP Documents, which consists of \$15,000,000 of new financing and a "roll-up" of \$41,824,935 of the Pre-Petition Senior Loan Obligations;
- (c) NSI to execute and enter into the DIP Credit Agreement and the other DIP Documents and to perform such other and further acts as may be required by the DIP Documents;
- (d) NSI to grant liens and security interests in substantially all of the NSI's assets in favor of the DIP Agent and the DIP Lenders (including property that currently constitutes Pre-petition Collateral) and all proceeds thereof, to secure any and all of the DIP Obligations;
- (e) the Debtors to provide the Adequate Protection Obligations as specified herein in favor of the Pre-Petition Lien Holders in connection with NSI's use of Cash Collateral in which the Pre-Petition Lenders have an interest, and the aggregate diminution in the value of the Pre-Petition Lien Holders' interest in the Pre-Petition Collateral;
- (f) certain stipulations by the Debtors with respect to the Pre-Petition Debt Documents and the Pre-Petition Liens;
- (g) the modification of the automatic stay;

- (h) pursuant to Bankruptcy Rule 4001, that an interim hearing on this Motion be held before the Court to consider entry of the Interim Order;
- subject to and only effective upon the entry of the Final Order granting such relief, the limitation of the Debtors' right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code; and
- (j) the scheduling of the Final Hearing within twenty five (25) days of the entry of the Interim Order and notice with respect thereto in accordance with Rule 4001(c)(2) of the Bankruptcy Rules.

BASIS FOR RELIEF REQUESTED

40. For the following reasons, the Debtors respectfully submit that they have satisfied

the standards applicable for the use of Cash Collateral and Court approval of the DIP Facility.

USE OF CASH COLLATERAL

41. Section 363 of the Bankruptcy Code governs the Debtors' use of property of the

estates.⁶ Section 363(c)(1) of the Bankruptcy Code provides that:

If the business of the debtor is authorized to be operated under Section ... 1108 ... of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c)(1).

42. Section 363(c)(2) of the Bankruptcy Code, however, provides an exception with

respect to "cash collateral" to the general grant of authority to use property of the estate in the

ordinary course set forth in section 363 of the Bankruptcy Code. Specifically, a trustee or

debtor-in-possession may not use, sell, or lease "cash collateral" under subsection (c)(1) unless:

- (A) each entity that has an interest in such collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or

⁶ Pursuant to section 1107 of the Bankruptcy Code, a debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with section 363 of the Bankruptcy Code. *See* 11 U.S.C. § 1107(a).

lease in accordance with the provisions of this section. 11 U.S.C. § 363(c)(2).

43. In this case, the Pre-Petition Lien Holders have consented to the use of Cash

Collateral in exchange for the liens, claims and protections granted to them by the DIP Loan

Documents. Therefore, NSI is authorized to use the Cash Collateral pursuant to Section

363(c)(2) of the Bankruptcy Code.

44. Moreover, the Debtors submit that the Adequate Protection Obligations to be provided to the Pre-Petition Lenders are appropriate. Section 363(e) of the Bankruptcy Code provides as follows:

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used ... by the [debtor in possession], the court, with or without a hearing, shall prohibit or condition such use ... as is necessary to provide adequate protection of such interest. 11 U.S.C. § 363(e)

45. The concept of adequate protection finds its basis in the Fifth Amendment's protection of property interests. H.R. Rep. No. 595, 95th Cong., 1st Sess. 338-40 (1977), reprinted in U.S. Code Cong & Admin. News 1978, pp. 5963. Adequate protection is also grounded in the belief that secured creditors should not be deprived of the benefit of their bargain. *Id*.

46. The Bankruptcy Code does not define adequate protection, but section 361 does list three non-exclusive examples of adequate protection. First, making a cash payment or periodic cash payments to the extent necessary to compensate for any decrease in value of the party's interest in property may constitute adequate protection. *See* 11 U.S.C. § 361(1). Second, providing additional or replacement liens to the extent necessary to compensate for any decrease in value of the interest of the property may suffice. *See* 11 U.S.C. § 361(2). Third, "granting

such other relief ... as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property" may also suffice. *See* 11 U.S.C. § 361(3).

47. As adequate protection under sections 363(e) and 361(1)-(3), the Debtors have agreed to provide the Pre-Petition Lien Holders with the Adequate Protection Obligations, including the Replacement Liens and Superpriority Claims, as described above.

48. Additionally, as noted above, the DIP Lenders' obligations to lend under the DIP Facility are conditioned on the NSI receiving authority to use Cash Collateral. Hence, absent such authority, NSI would not have access to any additional liquidity, which would imperil its ability to pay premiums relating to the NSI Life Portfolio.

49. Therefore, the Debtors request that this Court authorize NSI to use Cash Collateral on an interim and (after a final hearing) final basis.

POST-PETITION FINANCING

50. The Debtors propose to obtain post-petition financing under the DIP Facility by providing security interests and liens as set forth above pursuant to sections 364(c) and (d) of the Bankruptcy Code. The statutory requirement for obtaining post-petition credit under section 364(c) is a finding, made after notice and hearing, that the debtors are "unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c). Indeed, section 364(c) financing is appropriate when the debtor-in-possession is unable to obtain unsecured credit allowable as an ordinary administrative claim. *See In re Ames Dep't 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); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured

credit under section 364(e)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

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

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

b. the credit transaction is necessary to preserve the assets of the estate; and

c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor and proposed lender. *In re Ames Dep't Stores*, 115 B.R. at 37-39.

52. As explained above, because the DIP Facility is "purchase price neutral"; i.e., so long as the Purchasers or their nominee are the ultimate purchasers, an amount equal to the principal amount of the DIP Facility (which, following entry of the Final Order, will include all obligations under the Senior Pre-Petition Credit Agreement up to the Petition Date that have been rolled into the Loans) will be added by the Purchasers to the purchase price set forth in the Asset Purchase Agreement for the NSI Life Portfolio and paid in cash by the Purchasers on the Effective Date of the Plan, with NSI immediately using such purchase price proceeds received from the Purchaser to repay the principal amount of the Loans (including all Pre-Petition Obligations up to the Petition Date) under the DIP Facility. Hence, no other lender can offer such favorable economic terms to NSI. Furthermore, by obtaining post-petition financing, NSI will be able to preserve the value of the NSI Life Portfolio for the benefit of all creditors of the Debtors. Finally, the terms of the DIP Facility are fair, reasonable and adequate given the Debtors' circumstances, all as more fully set forth herein and in the First-Day Declaration.

APPROVAL OF PRIMING LIENS AND ADEQUATE PROTECTION

UNDER SECTION 364(d)

53. If a debtor is unable to obtain credit under the provisions of section 364(b) or (c) of the Bankruptcy Code, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly referred to as a "priming lien." 11 U.S.C. § 364(d). Section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of post-petition debt secured by senior or "priming" liens, provides that the court may, after notice and a hearing, 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 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); *In re Levitt & Sons, LLC*, --- B.R. ----, 2008 WL 413979, at *9 (Bankr. S.D.Fla. Feb. 13, 2008) ("In the event the debtor is unable to obtain credit under the provisions of § 364(c) of the Bankruptcy Code, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly called a "priming lien.").

54. A debtor has the burden of establishing that the holder of a lien to be subordinated, or whose cash collateral will be used, has adequate protection. *See In re Swedeland Devel. Co.*, 16 F.3d 552, 564 (3d Cir. 1994). The determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis. *See In re Mosello*, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996). "Its application is left to the vagaries of each case . . . but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process." *Id.* (quoting *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986)). 55. In accordance with section 364(d) of the Bankruptcy Code, and consistent with the purposes underlying the provision of adequate protection, the proposed Interim Order provides the Pre-Petition Lien Holders with adequate protection, including the Adequate Protection Obligations.

56. Moreover, a "priming" lien may be granted with the consent of the secured creditors whose lien will be primed. *See In re Sun Healthcare Group, Inc.*, 245 B.R. 779, 782 n.5 (Bankr. D.Del. 2000) ("Their consent (to the use of their cash collateral and priming of their liens) was given in exchange for . . . adequate protection"); *In re El Paso Refinery, L P.*, 171 F.3d 249, 252 (5th Cir. 1999) (noting that "El Paso gave BBL a priming lien, which by agreement was given a priority over the preexisting first lien of a group of Term Lenders"); *In re Outboard Marine Corp.*, 2002 WL 571661, at *1 (Bankr. N.D.III. Jan. 9, 2002) ("the DIP Lenders committed to provide certain financing to the Debtors . . . pursuant to which the Pre-petition Lenders consented to the imposition of priming liens upon the Pre-petition Collateral and in favor of the DIP Lenders"), *aff"d, Bank of America, N.A. v. Moglia*, 330 F.3d 942 (7th Cir. 2003).

57. The Pre-Petition Lien Holders have consented to the incurrence by NSI of the Loans to be provided by the DIP Lenders and to the priming of their Pre-Petition Liens (in the case of the NSI Pre-Petition Lenders), provided that the relief requested herein is granted.

58. Accordingly, this Court should authorize the Debtors to grant priming liens to the DIP Lenders to secure the NSI's obligations under the DIP Documents.

- 34 -

NO ADEQUATE ALTERNATIVE TO THE DIP FACILITY IS CURRENTLY AVAILABLE

59. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) and (d) of the Bankruptcy Code. *See In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *See also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992).

60. Because the entire amount of the DIP Facility (other than interest, fees and expenses) would paid to NSI as an increase in the purchase price, which would be used by NSI to repay a corresponding portion of the DIP Facility, so long as the Purchaser or its nominee is the ultimate purchaser, no other lender can offer such favorable economic terms. Accordingly, the Debtors have satisfied the requirement of sections 364(c) and (d) of the Bankruptcy Code that alternative credit on more favorable terms was unavailable to the Debtors.

THE DIP FACILITY TERMS ARE FAIR, REASONABLE, AND APPROPRIATE

61. The proposed terms of the DIP Facility and DIP Loan Documents are fair, reasonable, and adequate under the circumstances. First and foremost, as discussed more fully above, the Debtors have made a concerted, good-faith effort to obtain credit on the most favorable terms available.

62. Against this backdrop, the Debtors and their proposed bankruptcy counsel and financial advisor carefully evaluated the proposed financing offered by the DIP Lenders and engaged in extensive arms' length and good faith negotiations with the DIP Lenders regarding the proposed terms and conditions of the DIP Facility. Eventually, the Debtors, in their sound business judgment, agreed to the DIP Facility as the proposal best suited to the Debtors' needs and, as noted above, was the best available on any terms.

63. The various fees and charges required by the DIP Lenders under the DIP Facility are customary and approval thereof is appropriate. Indeed, courts routinely authorize similar lender incentives beyond the explicit liens and other rights specified in section 364 of the Bankruptcy Code. *See, e.g., In re Defender Drug Stores, Inc.*, 145 B.R. 312, 316 (9th Cir. BAP 1992) (authorizing credit arrangement under Section 364, including a lender "enhancement fee").

64. Accordingly, the terms of the DIP Facility are fair, reasonable, and adequate, and were negotiated in good faith. Therefore, the DIP Lenders under the DIP Facility should be accorded the benefits of section 364(e) of the Bankruptcy Code in respect of the DIP Facility and the DIP Documents.

THE AUTOMATIC STAY SHOULD BE MODIFIED ON A LIMITED BASIS

65. The relief requested herein contemplates a modification of the automatic stay pursuant to section 362 of the Bankruptcy Code to the extent necessary to permit the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default, all rights and remedies provided for in the DIP Loan Documents, and to take any or all of the following actions at the same time or different times: (a) terminate NSI's use of Cash Collateral and cease to make any loans or advances to NSI; (b) declare all obligations under the DIP Documents to be immediately due and payable; (c) terminate any unfunded commitments under the proposed DIP Facility; (d) set off and apply immediately any and all amounts in accounts maintained by NSI with the DIP Lenders against the obligations under the DIP Documents, and otherwise enforce rights against the DIP Collateral in the possession of the DIP Lenders for application towards the post-petition Obligations under the DIP Documents; (e) increase the rate of interest to the default rate of interest; and (f) take any other actions or exercise any other rights or remedies permitted under the Financing Orders, the DIP Documents or applicable law to effect the repayment and satisfaction of the obligations under the DIP Documents; *provided*, *however*, that the DIP Lenders shall provide five (5) business days written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors and counsel to any official committee appointed in any of the Cases of such Event of Default prior to exercising any enforcement rights or remedies in respect of the DIP Collateral (other than the rights described in clauses (a), (b), and (c) above (to the extent they might be deemed remedies in respect of the DIP Collateral) and other than with respect to freezing any deposit accounts or securities accounts); *provided further* that the Debtors shall have the right to seek continuation of the automatic stay during such five (5) business day period.

INTERIM APPROVAL SHOULD BE GRANTED

66. Bankruptcy Rules 4001(b) and (c)(2) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 15 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtors' estates. *See* Fed.R.Bankr.P. 4001(c)(2).

67. The Debtors request that the Court authorize NSI, on an interim basis pending the Final Hearing, to borrow under the DIP Facility in an amount up to \$8,000,000.00. This relief will enable NSI to operate its businesses in a manner that will permit it to preserve and maximize value and thereby avoid immediate and irreparable harm and prejudice to its estate and the estates of the other Debtors and to all other parties in interest pending the Final Hearing.

68. Absent interim approval of the use of Cash Collateral and interim borrowing under the DIP Facility, NSI's businesses would suffer immediate and irreparable harm.

- 37 -

Specifically, NSI would not have funds available to pay the premiums as they come due on the life insurance policies in the NSI Life Portfolio and related servicing fees and would not be able to continue its business operations. This would ultimately lead to the policies going into default and the cancellation of the policies, resulting in the irreversible loss by NSI of its only real assets.

69. The Debtors also believe that interim authority for NSI to use Cash Collateral and to borrow up to \$8,000,000.00 is necessary for the Debtors to implement payments to their vendors that the Debtors believe are critical to their ability to obtain goods and services from their vendors.

70. The failure to obtain interim (and final) approval of the DIP Facility will also imperil the Debtors' going concern value, the Sale and the Debtors' and reorganization efforts.

71. Therefore, the Debtors seek interim approval of NSI's use of Cash Collateral and interim borrowing under the DIP Facility in the amount of \$8,000,000.00. For the same reasons, as discussed below, the Debtors request that this Court waive any stay on the effectiveness of the Interim Order.

FINAL HEARING

72. The Debtors further respectfully request that this Court set a date and time for the Final Hearing not later than April 4, 2011 to consider the entry of the Final Order approving the relief sought in this Motion, including, without limitation, final court approval of the Debtor's use of Cash Collateral and borrowings up to \$56,824,935 under the DIP Facility.

REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY TO AVOID IMMEDIATE AND IRREPARABLE HARM

73. To the extent that Bankruptcy Rule 6004(h) applies to the Debtors' requests for interim and final relief in this Motion, the Debtors seek a waiver of any stay of the effectiveness

- 38 -

of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." For the reasons set forth above, the Debtors submit that good cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

Notice

74. Pursuant to Bankruptcy Rule 4001, notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware (the "<u>U.S. Trustee</u>"); (ii) counsel to the Agents, DIP Lenders and MIO Pre-Petition Lenders; (iii) counsel to the joint receivers of NSSC; (iv) counsel to the NSI Receiver (as defined below); (v) all other known holders of pre-petition liens, encumbrances or security interests against the Debtors' property and (vii) the Internal Revenue Service. As this Motion is seeking first-day relief, notice hereof and of any order entered hereon will be served in accordance with Local Rule 9013-1(m)(iii) and (iv). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice of this Motion is required or necessary.

No Prior Request

75. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter an interim

order, in the form attached hereto as Exhibit A, granting the relief requested herein and such

other and further relief as this Court may deem necessary and proper.

Dated: March 14, 2011 Wilmington, Delaware Respectfully submitted,

REED SMITH LLP

By:/s/ Kurt F. Gwynne

Kurt F. Gwynne (No. 3951) J. Cory Falgowski (No. 4546) 1201 Market Street, Suite 1500 Wilmington, DE 19801 Telephone: (302) 778-7500 Facsimile: (302) 778-7575 E-mail: kgwynne@reedsmith.com

- and –

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Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:

NEW STREAM SECURED CAPITAL, INC., *et al.*,¹

Chapter 11

Case No. 11-10753 (____) (Joint Administration Pending)

Debtors.

INTERIM ORDER (I) APPROVING DEBTOR-IN-POSSESSION FINANCING PURSUANT TO 11 U.S.C. §§ 105(a), 362, AND 364 AND FED. BANKR. P. 2002, 4001 AND 9014 AND LOCAL BANKRUPTCY RULE 4001-2; (II) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362 AND 363 OF THE BANKRUPTCY CODE; (III) GRANTING ADEQUATE PROTECTION AND SUPERPRIORITY ADMINISTRATIVE CLAIMS; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF

Upon consideration of the motion (the "<u>Motion</u>") of New Stream Secured Capital, Inc. ("<u>NSSC</u>"), New Stream Insurance, LLC ("<u>NSI</u>"), New Stream Capital LLC, and New Stream Secured Capital L.P., the debtors and debtors-in-possession (collectively, the "<u>Debtors</u>") in the above-captioned Chapter 11 cases, pursuant to sections 105(a), 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "<u>Bankruptcy Code</u>"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "<u>Bankruptcy Rules</u>") and Local Rule 4001-2 of the Local Bankruptcy Rules for the District of Delaware (the "<u>Local Bankruptcy</u> <u>Rules</u>"), seeking, on an interim basis pursuant to this interim order (this "<u>Interim Order</u>"), among other things:

(1) authorization and approval, , for NSI to obtain post-petition financing up to the aggregate principal amount of not more than \$8,000,000 (the "Interim

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: New Stream Secured Capital, Inc. (3903), New Stream Insurance, LLC (6966), New Stream Capital, LLC (0364) and New Stream Secured Capital, L.P. (2948). The corporate address of the Debtors is 38C Grove Street, Ridgefield, CT 06877.

Amount Limit"), on the terms and conditions set forth in the Senior Secured, Super-Priority Debtor in Possession Credit Agreement, substantially in the form attached as Exhibit A to the Motion (the "DIP Credit Agreement"), dated as of March__, 2011, among NSI, as borrower, SSALT Fund Limited, by and through its nominee account which is Barfield Nominees Limited A/C SL101, Compass Special Situations Fund LLC, by and through its nominee account which is Barfield Nominees Limited A/C CSJ01, Compass Coss Master Limited, by and through its nominee account which is Barfield Nominees Limited A/C CSC01, and Special Situations Fund LP, as lenders (collectively, the "DIP Lenders"), and MIO Partners, Inc., as administrative agent (the "Administrative Agent") and collateral agent (the "Collateral Agent", and together with the Administrative Agent, the "Agents"), and that certain Security Agreement, between NSI and the Collateral Agent, dated as of March ___, 2011 (the "Security Agreement"), and any control agreements, pledge agreements or other similar documents contemplated by the DIP Credit Agreement or Security Agreement (collectively, with the DIP Credit Agreement and Security Agreement, the "DIP Documents"); (2)authorization for the Debtors to enter into and perform all acts,

requirements and obligations set forth in or in connection with the DIP Documents;

(3) authorization, pursuant to sections 364(c)(2) and 364(d)(1) of the
Bankruptcy Code, to grant senior, first-priority, fully-perfected liens (as more
fully described in the DIP Documents, the "<u>DIP Liens</u>") to the Collateral Agent,
for the benefit of the DIP Lenders, upon all of the Collateral (as defined below),

which DIP Liens shall prime all NSI Pre-Petition Liens (as defined below) and any other liens on the Collateral, other than the MIO Pre-Petition Liens (as defined below), as to which the DIP Liens shall be *pari passu*;

(4) authorization, pursuant to section 364(c)(1) of the Bankruptcy Code, to grant Superpriority Claims (as defined below) to the Collateral Agent, for the benefit of the DIP Lenders, and to the DIP Lenders, with priority over all administrative expenses;

(5) authorization for NSI to use Cash Collateral in which the MIO-Pre-Petition Lenders and NSI Pre-Petition Lenders have an interest;

(6) authorization to grant adequate protection, including, among other things, Replacement Liens (as defined below) and Superpriority Claims pursuant to section 364(c)(1) of the Bankruptcy Code to the MIO Pre-Petition Lenders with respect to, *inter alia*, the DIP Liens and NSI's use of Cash Collateral and all diminution in value of the Pre-Petition Senior Collateral (as defined below), which Replacement Liens and Superpriority Claims shall be junior, respectively, to the DIP Liens and Superpriority Claims granted to the Collateral Agent, for the benefit of the DIP Lenders, and to the DIP Lenders, and senior, respectively, to the Replacement Liens and Superpriority Claims granted to the NSI Pre-Petition Lenders;

(7) authorization to grant adequate protection, including, among other things, Replacement Liens and Superpriority Claims pursuant to section 364(c)(1) of the Bankruptcy Code to the NSI Pre-Petition Lenders whose liens and security interests are being primed by the Collateral Agent and DIP Lenders in connection

with the DIP Facility (as defined below) and pursuant to the DIP Documents, and with respect to NSI's use of Cash Collateral and all diminution in value of the Pre-Petition Subordinated Collateral (as defined below); the Replacement Liens and Superpriority Claims of the NSI Pre-Petition Lenders shall be junior and subordinate in all respects to the DIP Liens and Superpriority Claims granted to the DIP Lenders and the Replacement Liens and Superpriority Claims granted to the MIO Pre-Petition Lenders;

(8) authorization subject to, and only effective upon the entry of, the Final
Order (as defined below) granting such relief, to prohibit the Debtors' from
surcharging against collateral pursuant to section 506(c) of the Bankruptcy Code;
(9) pursuant to Bankruptcy Rule 4001, an interim hearing (the "<u>Interim</u>
<u>Hearing</u>") on the Motion be held before this Court to consider entry of this
Interim Order; and

(10) pursuant to this Interim Order, this Court schedule a final hearing (the "<u>Final Hearing</u>") to consider entry of a final order authorizing and approving, on a final basis all of the relief requested in the Motion and DIP Documents on a (the "<u>Final Order</u>"), including authorizing NSI to obtain post-petition financing up to the aggregate principal amount of not more than \$56,824,935 (the "<u>DIP Facility</u>").

The Interim Hearing having been held by this Court on March ___, 2011, and upon the Declaration of Michael Buenzow in Support of First Day Motions; the record made by the Debtors at the Interim Hearing and the evidence and arguments of counsel, and after due deliberation and consideration and sufficient cause appearing therefor;

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

1. <u>Petition Date</u>. On March __, 2011 (the "<u>Petition Date</u>"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (collectively, the "<u>Cases</u>") with the United States Bankruptcy Court for the District of Delaware (the "<u>Court</u>". The Debtors are continuing in possession of their property, and operating and managing their businesses, as debtors in possession pursuant to Bankruptcy Code §§ 1107 and 1108. The Debtors have filed a motion requesting joint administration of the Cases. No trustee or examiner has been appointed in the Cases.

2. <u>Jurisdiction and Venue</u>. This Court has jurisdiction over the Cases and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 361, 362, 363, and 364(e), 364(d) and 507 of the Bankruptcy Code; Bankruptcy Rules 4001 and 9014; and Local Bankruptcy Rule 4001-2(b).

 <u>Committee Formation</u>. No official committee of unsecured creditors (a "<u>Committee</u>") has been appointed in the Cases.

4. <u>Notice</u>. Notice of the Motion and DIP Documents, the relief requested therein and the Interim Hearing has been served by the Debtors on (i) the Office of the United States Trustee for the District of Delaware (the "<u>U.S. Trustee</u>"); (ii) counsel to the Agents, DIP Lenders and MIO Pre-Petition Lenders; (iii) counsel to the joint receivers of NSSC; (iv) counsel to the NSI Receiver (as defined below); (v) the Debtors' twenty (20) largest unsecured creditors, determined on a consolidated basis; and (vi) all other known holders of pre-petition liens,

encumbrances or security interests against the Debtors' property. Under the circumstances, such notice constitutes due and sufficient notice and complies with Bankruptcy Rules 4001(b), 4001(c) and 4001(d), Local Bankruptcy Rule 4001-2 and section 102(1) of the Bankruptcy Code in light of the emergency nature of the interim relief requested in the Motion, and no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

5. Necessity of Financing. The Debtors submit that the DIP Facility to be made available by the DIP Lenders pursuant to the DIP Loan Agreement, the proceeds of which shall be used solely by NSI to fund the actual premium payments and related servicing fees of the insurance policies (the "Permitted Premium Payments") in the NSI Life Portfolio (as defined below) and the fees and expenses to be paid under the DIP Credit Agreement, and NSI's use of Cash Collateral will allow the Debtors to continue the operations of their businesses and administer and preserve the value of their estates during the pendency of the Cases. The ability of NSI to fund the Permitted Premium Payments during the pendency of the Cases requires the availability of additional working capital, the absence of which would immediately and irreparably harm the Debtors, their estates and their creditors and the Debtors' efforts to pursue and consummate the sale of the NSI Life Portfolio to Limited Life Assets LLC, an affiliate of the DIP Lenders, pursuant to a chapter 11 plan of reorganization (the "Sale"). Entry of this Interim Order approving the DIP Facility and NSI's use of Cash Collateral will benefit the Debtors and their estates and creditors. Therefore, it is in the best interest of the Debtor's estates to establish the DIP Facility contemplated by the DIP Loan Agreement and the other DIP Documents, and to authorize NSI's use of Cash Collateral, subject to the terms and conditions in the DIP Documents and as set forth in this Interim Order.

6. <u>No Credit Available on Other Terms</u>. The Debtors are unable to obtain unsecured credit allowable under sections 503(b)(1), 364(a) or 364(b) of the Bankruptcy Code.

7. <u>Willingness to Lend</u>. The Debtors are unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting the DIP Liens to the Collateral Agent, for the benefit of the DIP Lenders, and the Superpriority Claims to the Collateral Agent, for the benefit of the DIP Lenders, and the DIP Lenders, pursuant to sections 364(d) and 364(c)(1) of the Bankruptcy Code under the terms and conditions set forth in the DIP Documents and this Interim Order. The Debtors are also unable to obtain financing from sources other than the DIP Lenders, or on more favorable terms, than those set forth in the DIP Documents.

8. <u>Business Judgment and Good Faith</u>. The terms of the DIP Facility and DIP Documents and the use of Cash Collateral as described in the Motion and as set forth at the Interim Hearing (including the payment of interest to the DIP Lenders at the times, in the amounts and in the manner provided under the DIP Credit Agreement) are fair and reasonable and the entry into the DIP Facility and DIP Documents represent a sound, prudent exercise of NSI's business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The DIP Facility and use of the Collateral, including Cash Collateral, were negotiated in good faith (as that term is used in section 364(e) of the Bankruptcy Code) and at arm's length and for fair consideration among the Debtors, the DIP Lenders, and the MIO Pre-Petition Lenders and NSI Pre-Petition Lenders (collectively, the "<u>Pre-</u><u>Petition Lien Holders</u>"). Accordingly, all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with the DIP Facility and the DIP Documents, and any Obligations or Indebtedness (as each such term is defined in the DIP Credit Agreement)

permitted thereby, in each case owing to the DIP Lenders or any of their respective affiliates (all of the foregoing collectively, the "<u>DIP Obligations</u>"), shall be deemed to have been extended by the DIP Lenders and their respective affiliates in good faith (as that term is used in section 364(e) of the Bankruptcy Code), and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise. Upon entry of a Final Order, the term "DIP Obligations" as used herein also shall include without duplication, any and all amounts owing or outstanding under the Pre-Petition Senior Credit Agreement (as defined below), and all interest on, fees and other costs, expenses and charges owing in respect of such amounts.

9. <u>Property of the Estate</u>. Each item of the Collateral constitutes property of the estate of at least one Debtor.

10. <u>Good Cause</u>. Good and sufficient cause exists for the entry of this Interim Order. The borrowings under the DIP Facility and NSI's use of Cash Collateral and the other relief requested in the Motion are necessary, essential, appropriate and in the best interest of the Debtors, their creditors, and their estates, as the implementation of the DIP Facility and access to Cash Collateral will, among other things, (a) fund the Permitted Premium Payments and provide the Debtors with the liquidity necessary to preserve the value of the NSI Life Portfolio pending the Sale thereby freeing up liquidity for the other ongoing operations of the Debtors, (b) preserve and maximize the value of the Debtors' estates for the benefit of all creditors, (c) enable the Debtors to pursue and consummate the Sale, (d) form a critical building block of the Debtors' proposed Chapter 11 plan, and (e) avoid immediate and irreparable harm to the Debtors and their

estates, their creditors, their businesses, their employees, and their assets which would result from the failure to fund the Permitted Premium Payments.

11. <u>Debtors' Acknowledgments and Agreements</u>. Without prejudice to the rights of any other party (but subject to the limitations thereon set forth in paragraph 37 of this Interim Order), the Debtors admit, stipulate, acknowledge and agree that:

(i) Pre-Petition Senior Indebtedness. Prior to the Petition Date, SSALT Fund Limited, by and through its nominee, Compass Special Situations Fund LLC, by and through its nominee, and Compass Coss Master Limited, by and through its nominee, and Special Situations Fund LP (collectively, the "MIO Pre-Petition Lenders") provided financing to NSI under that certain Secured Promissory Note, dated as of August 4, 2010, in the original principal amount of \$25,000,000, as amended and modified by that certain Amended and Restated Secured Promissory Note, dated as of November 8, 2010, in the amended principal amount of \$39,480,268.58 (as further amended, restated, supplemented or otherwise modified on or prior to the Petition Date, the "Pre-Petition Senior Credit Agreement"). As of the Petition Date, NSI was liable to the MIO Pre-Petition Lenders in the amount of \$41,824,935 which includes fees and expenses incurred under and in connection with the Pre-Petition Senior Credit Agreement as provided therein (collectively, the "Pre-Petition Senior Loan Obligations"). The Pre-Petition Senior Loan Obligations are secured by first priority, fully-perfected security interests in and liens on all of NSI's right, title and interest in, to and under the (a) Additional Life Insurance Policy Portfolio (as defined in the Pre-Petition Senior Credit Agreement), (b) Life Insurance Policy Portfolio (as defined in the Pre-Petition Senior Credit Agreement) (collectively with the Additional Life Insurance Policy Portfolio, the "NSI Life Portfolio"), (c) the New Stream Securities Account and all property contained or credited therein (including, without

limitation, all Investment Property, Securities and Financial Assets contained therein (as each such term is defined in the Pre-Petition Senior Credit Agreement), (d) all Instruments and Documents evidencing any of the foregoing (as each such term is defined in the Pre-Petition Senior Credit Agreement), (e) all Supporting Obligations and Payment Intangibles in respect of any of the foregoing (as each such term is defined in the Pre-Petition Senior Credit Agreement), (f) all books and records pertaining to any of the foregoing, (g) all proceeds and products of any of the foregoing, and (h) all collateral security and guarantees given by any person or entity with respect to any of the foregoing (collectively, the "<u>Pre-Petition Senior Collateral</u>").

(ii) Pre-Petition Subordinated Indebtedness. Prior to the Petition Date, (a) NSSC and Segregated Account Class C (the "Class C Lender") of New Stream Capital Fund Limited ("NS Capital Fund") provided financing to NSI pursuant to that certain Amended and Restated Loan and Security Agreement; (b) NSSC and Segregated Account Class F of NS Capital Fund (the "Class F Lender") provided financing to NSI pursuant to that certain Amended and Restated Loan and Security Agreement; and (c) NSSC and Segregated Account Class I of NS Capital Fund (the "Class I Lender", and collectively with the Class C Lender and the Class F Lender, the "NSI Pre-Petition Lenders", and collectively with the MIO Pre-Petition Lenders, the "Pre-Petition Lenders") provided financing to NSI pursuant to that certain Amended and Restated Loan and Security Agreement (as amended, restated, supplemented or otherwise modified on or prior to the Petition Date, collectively, the "<u>NSI Pre-Petition Loan Agreements</u>"). As of the Petition Date, NSI was liable to the NSI Pre-Petition Lenders in at least the amount of \$81,573,375 and for fees and expenses incurred under and in connection with the NSI Pre-Petition Loan Agreements as provided therein (collectively, the "Pre-Petition Subordinated Loan Obligations", and together with the Pre-Petition Senior Loan Obligations, the "Pre-Petition

<u>Obligations</u>"); <u>provided</u>, <u>however</u>, that the NSI Pre-Petition Lenders reserve the right to assert one or more claims with respect to the Pre-Petition Subordinated Loan Obligations which in the aggregate exceed such amount. The Pre-Petition Subordinated Loan Obligations are secured by fully-perfected security interests in and liens on all of NSI's right, title and interest in, to and under the NSI Life Portfolio and the other collateral described in the NSI Pre-Petition Loan Agreements (other than with respect to deposit accounts as no control agreements were entered into between NSI, any depository bank and WTC), which security interests and liens are subordinated to the Pre-Petition Senior Liens (collectively, the "<u>Pre-Petition Subordinated</u> Collateral", and together with the Pre-Petition Senior Collateral, the "Pre-Petition Collateral").

(iii) <u>Consent and Subordination Agreements</u>. The Consent and Subordination Agreements, dated as of August 4, 2010 and November 8, 2010, respectively, each among NSI, NSSC, John C. McKenna, in his capacity as Receiver for the Class C Lender, Class F Lender and Class I Lender (the "<u>NSI Receiver</u>"), and Wilmington Trust Company, as Collateral Agent (in such capacity "<u>WTC</u>") for the NSI Pre-Petition Lenders (as each agreement may have been amended, restated, supplemented or otherwise modified on or prior to the Petition Date, collectively, the "<u>Subordination Agreements</u>"), pursuant to which the NSI Pre-Petition Lenders and WTC agreed to, among other things, subordinate their right of payment, security interests and liens in connection with the NSI Pre-Petition Loan Agreements and NSI Pre-Petition Subordinated Loan Obligations to the right of payment, security interests and liens of the MIO Pre-Petition Lenders in connection with the Pre-Petition Senior Loan Obligations and MIO Pre-Petition Senior Credit Agreement, are valid, binding and enforceable against the parties thereto and shall govern the respective rights and priorities hereunder of the MIO Pre-Petition

Lenders, on one hand, and the NSI Pre-Petition Lenders and WTC, on the other hand (collectively, the "<u>Pre-Petition Lien Holders</u>");

(iv) <u>Securities Account Control Agreement</u>. The Securities Account Control Agreement, dated as of August 4, 2010, among the MIO Pre-Petition Lenders, NSI, and Bank of Utah, as Securities Intermediary, as amended and modified by that first amendment thereto and as further amended and modified by that certain Amendment No. 2 to the Securities Account Control Agreement, dated as of November 8, 2010 (as further amended, restated, supplemented or otherwise modified on or prior to the Petition Date, the "<u>SACA</u>", and collectively, with the Pre-Petition Senior Loan Agreement, the NSI Pre-Petition Loan Agreements, the Subordination Agreements, and all other agreements, guarantees, security documents, or otherwise, entered into or relating to the foregoing, collectively, the "<u>Pre-Petition</u> Debt Documents"), is valid, binding and enforceable against the parties thereto;

(v) <u>Validity and Enforceability</u>. (a) The Pre-Petition Debt Documents are valid and enforceable by the Pre-Petition Lien Holders against NSI, (b) the Pre-Petition Obligations constitute legal, valid, binding, and non-avoidable obligations of NSI and are secured by valid, binding, enforceable, duly perfected first liens and security interests granted by NSI to the MIO Pre-Petition Lenders (the "<u>Senior Pre-Petition Liens</u>"), and valid, binding, enforceable, duly perfected subordinated liens and security interests granted by NSI to the NSI Pre-Petition Lenders and WTC (the "<u>Subordinated Pre-Petition Liens</u>", and collectively with the Senior Pre-Petition Liens, the "<u>Pre-Petition Liens</u>") on the Pre-Petition Collateral in the amount and to the extent set forth in the Pre-Petition Debt Documents, including the proceeds derived therefrom, (c) the Pre-Petition Lien Holders duly perfected the Pre-Petition Liens by, among other things, filing financing statements and, where necessary, by the SACA or by possession of

relevant instruments, certificates, cash or other property, and all such financing statements were validly executed by, or at the direction or with the consent of, authorized representatives of NSI, (d) the Pre-Petition Liens are governed by the Subordination Agreements and subject to the SACA, (e) the Senior Pre-Petition Liens are *pari passu* with the DIP Liens, (f) the Subordinated Pre-Petition Liens are subordinate only to the DIP Liens, Senior Pre-Petition Liens, Replacement Liens of the MIO Pre-Petition Lenders; and (g) the NSI Pre-Petition Lenders' Superpriority Claims are subordinate to the Superpriority Claims of the DIP Lenders and the MIO Pre-Petition Lenders;

(vi) No Challenges. (a) No offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the MIO Pre-Petition Lenders or Pre-Petition Senior Loan Obligations (or to any amounts previously paid to the MIO Pre-Petition Lenders on account thereof or with respect thereto) exist, and no portion of the Senior Pre-Petition Liens or Pre-Petition Senior Loan Obligations (or any amounts previously paid to the MIO Pre-Petition Lenders on account thereof or with respect thereto) is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (b) the Debtors and their estates have no valid claims, objections, challenges, causes of actions, or choses in action, including without limitation, Avoidance Actions (as defined below), against the MIO Pre-Petition Lenders or against any of their respective affiliates, agents, attorneys, advisors, professionals, officers, managers, members, directors or employees arising out of, based upon or related to the pre-petition loans extended to NSI under the Pre-Petition Senior Credit Agreement or NSI's incurrence of the Pre-Petition Senior Loan Obligations, and (c) the Debtors irrevocably waive any right to challenge or

contest the Senior Pre-Petition Liens of the MIO Pre-Petition Lenders on the Pre-Petition Senior Collateral or the validity or amount of the Pre-Petition Senior Loan Obligations or Pre-Petition Senior Credit Agreement; and

(vii) <u>Cash Collateral</u>. All of NSI's cash constitutes Cash Collateral (as defined below) or proceeds of the Pre-Petition Collateral and, therefore, is Cash Collateral of the Pre-Petition Lien Holders. For purposes of this Interim Order, the term "<u>Cash Collateral</u>" shall be deemed to include, without limitation: (i) all "cash collateral" as defined under Bankruptcy Code section 363; and (ii) all deposits subject to setoff and cash arising from the collection or other conversion to cash of property of NSI in which the Pre-Petition Lien Holders assert security interests, liens or mortgages, regardless of (a) whether such security interests, liens, or mortgages existed as of the Petition Date or arose thereafter pursuant to this Interim Order, and (b) whether the property converted to cash existed as of the Petition Date or arose thereafter.

Based on the foregoing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

12. <u>Motion Granted</u>. The Motion is granted in accordance with the terms and conditions of this Interim Order. Any objections to the Motion with respect to entry of this Interim Order that have not been withdrawn, waived or settled, are hereby denied and overruled.

13. <u>Authorization of the DIP Facility and DIP Documents</u>. NSI is hereby authorized, pursuant to the terms of this Interim Order and the DIP Documents, to enter into the DIP Credit Agreement and other DIP Documents and borrow funds under the DIP Facility up to an aggregate principal amount of no more than \$8,000,000 during the period from the date of entry of this Interim Order until the date of entry of the Final Order (the "Interim Amount Limit"), in accordance with, and subject to, the terms of the DIP Financing Documents and this Interim

Order. NSI's use of borrowings under the DIP Facility and Cash Collateral, subject to Permitted Variances, shall be in accordance with the Original Budget (as defined below) and subsequent approved budgets.

14. In furtherance of the foregoing and without further approval of this Court, NSI, and each of the other Debtors, is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all reasonable fees and expenses of the Agents and DIP Lenders and their counsel or other retained professionals, that may be reasonably required or necessary for the Debtors' performance of their obligations under or in connection with the DIP Facility and DIP Documents, including, without limitation:

(i) the execution, delivery and performance of the DIP Documents;

(ii) the execution, delivery and performance of one or more waivers, consents or amendments to the DIP Credit Agreement, in each case in such form as the Debtors and the DIP Lenders may agree in writing, which do not (a) materially modify the DIP Credit Agreement as approved by this Interim Order, (b) shorten the maturity of the extensions of credit thereunder, (c) increase the commitments of the DIP Lenders as set forth in the DIP Credit Agreement (the "<u>DIP Commitments</u>") or the rate of interest thereunder, (d) change in a manner adverse to the Debtors any Event of Default under and as defined in the DIP Credit Agreement (a "<u>DIP Event of Default</u>"), or add, remove or amend any covenants therein, or (e) materially and adversely affect the respective rights of the Debtors or as set forth in this Interim Order; and

(iii) the execution, delivery and/or performance of all other documents and acts required under or in connection with the DIP Documents.

15. Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of NSI, enforceable against NSI in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order shall be voidable, or recoverable under the Bankruptcy Code (including without limitation, under section 502(d) of the Bankruptcy Code) or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

16. <u>DIP Liens</u>. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, the DIP Liens set forth in sub-sections (a) and (b) below are hereby granted to the Collateral Agent, for the benefit of the DIP Lenders, on all of the following property, whether existing on the Petition Date or thereafter acquired, as more fully set forth in the Security Agreement (collectively, the "<u>DIP Collateral</u>", and together with the Pre-Petition Collateral, the "<u>Collateral</u>"):

- (i) the NSI Life Portfolio (as may be modified from time to time);
- (ii) the New Stream Securities Account (as defined in the SACA, and as may be modified from time to time), including, without limitation, all investment property, securities and financial assets contained therein;
- (iii) the Seller's Securities Account (as defined in the SACA, and as may be modified from time to time) and all property contained or credited therein (including, without limitation, all investment property, securities and financial assets contained therein);
- (iv) all instruments and documents evidencing any of the foregoing;

- (v) all cash and Cash Collateral of NSI and any investment of such cash and Cash Collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, all property purportedly assigned or pledged as collateral by NSI to secure any intercompany obligations to the extent any such assignment or pledge shall not have been duly perfected as of the Petition Date and the proceeds of all the foregoing; provided, however, that NSI shall not pledge to the DIP Lenders in excess of 65% of the voting capital stock of its direct foreign subsidiaries, if any, or any of the capital stock or interests of its indirect foreign subsidiaries, if any, if, in the good faith judgment of the Debtors, adverse tax consequences would result to the Debtors, which adverse consequences are demonstrated to the reasonable satisfaction of the DIP Lenders;
- (vi) subject to entry of a Final Order, the proceeds or property recovered from, NSI's claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "<u>Avoidance Actions</u>");
- (vii) all supporting obligations and payment intangibles in respect of any of the foregoing,
- (viii) all books and records pertaining to any of the foregoing;

- (ix) all proceeds and products of any of the foregoing;
- (x) all collateral, security and guarantees given by any person or entity with respect to any of the foregoing;
- (xi) all of the other assets of NSI, including, without limitation, Cash
 Collateral, all accounts receivable, inventory, general intangibles,
 machinery, equipment, fixtures, and real property, and all proceeds and
 products of any of the foregoing; and
- (xii) all other pre-petition and post-petition property and assets as set forth in the Security Agreement, whether existing on the Petition Date or thereafter acquired.
- (a) <u>First Lien on Unencumbered Property</u>. Pursuant to section 364(c)(2) of the

Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon the Collateral to the extent not subject to valid, perfected, non-avoidable and enforceable liens in existence as of the Petition Date or valid liens in existence as of the Petition Date that are perfected subsequent to such date to the extent permitted by Section 546(b) of the Bankruptcy Code (collectively, "<u>Unencumbered Property</u>")

(b) <u>Pari Passu and Priming Liens on Pre-Petition Liens</u>. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all Collateral that is subject to the existing liens presently securing the Pre-Petition Obligations. Such security interests and liens (i) shall be *pari passu* in all respects to the MIO Pre-Petition Liens, (ii) shall be senior and prime in all respects the NSI Pre-Petition Liens on such Collateral (other than the MIO Pre-Petition Liens), (iii) shall be senior in all respects to all Replacement Liens granted to the Pre-Petition Lien Holders, and (iv) shall be senior to all other security interests and liens on the Collateral, except with respect to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Pre-Petition Lien Holders become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) <u>Liens Senior to Certain Other Liens</u>. The DIP Liens and the Replacement Liens granted to the DIP Lenders shall be senior to and shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors other than as expressly permitted under the DIP Credit Agreement.

17. <u>DIP Lender Superpriority Claims</u>. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtors with priority over all administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (collectively, the "<u>Superpriority Claims</u>"), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment or otherwise, which allowed claims shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof (including upon entry of the final order, proceeds of Avoidance Actions).

18. Protection of DIP Lenders' Rights.

(a) So long as there are any borrowings or amounts outstanding (other than contingent indemnity obligations), any DIP Lender has a DIP Commitment outstanding under the DIP Credit Agreement or any other DIP Obligations are outstanding, the Pre-Petition Lien Holders shall (other than with the prior written consent of the Administrative Agent and the DIP Lenders) (i) take no action to foreclose upon or recover in connection with the Pre-Petition Liens, the Replacement Liens or any other liens granted pursuant to any other agreements or operation of law, or otherwise exercise remedies against any Collateral, except to the extent expressly authorized by a non-appealable order of this Court, (ii) be deemed to have consented to any release of Collateral authorized under the DIP Documents, (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the Collateral unless, solely as to this clause (iii), the DIP Lenders file financing statements or other documents to perfect the liens granted to them pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date, and (iv) not seek to terminate or modify the use of Cash Collateral, or obtain additional or different adequate protection than as set forth in this Interim Order. Nothing herein shall permit the Pre-Petition Lien Holders to take any action in violation of the Bankruptcy Code or other applicable law or that is contrary to this Interim Order.

(b) The Administrative Agent shall provide five (5) business days' written notice of a DIP Event of Default to counsel for the Debtors, counsel for any Committee, and the U.S. Trustee (the "<u>DIP Default Notice</u>"). Absent entry of an order prohibiting such action, on the sixth (6th) day after receipt of the DIP Default Notice by counsel for the Debtors, counsel for

any Committee, and the U.S. Trustee, the automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified (without further notice or hearing) to permit the Agents and DIP Lenders to exercise immediately, and at any times thereafter, all rights and remedies under the DIP Documents which permit the DIP Lenders to (a) terminate all or any portion of the DIP Facility and the DIP Commitments, (b) declare the DIP Obligations to be immediately due and payable, and (c) take any and all actions and exercise any and all rights and remedies against the Collateral or NSI as permitted under the DIP Financing Documents or applicable law which the DIP Lenders may deem appropriate (including, but not limited to, freezing monies or balances in the Debtors' accounts or in accounts maintained by the Agents or DIP Lenders, charging default interest, and effectuating setoff of monies of the Debtors in accounts maintained with the Agents or DIP Lenders, if any).

19. Use of Cash Collateral: Budget. Subject in all respects to the terms and conditions set forth herein, NSI is authorized to use the proceeds of the DIP Loans and the Cash Collateral in the amounts set forth in the Original Budget attached hereto as Exhibit A (the "Original Budget"), subject to Permitted Variances, through the earliest to occur of (the "Interim Period"): (a) the date of entry of the Final Order, (b) May 16, 2011, and (c) the occurrence of the DIP Expiration Date (as defined below). Subject to the terms and conditions set forth in this Interim Order, NSI is authorized to use the proceeds of the DIP Loans and the Cash Collateral of the MIO Pre-Petition Lenders solely for the purpose of funding the Permitted Premium Payments and the reasonable fees and expenses to be paid under the DIP Credit Agreement the Cash Collateral of the NSI Pre-Petition Lenders to: (x) continue operating while in chapter 11, including paying employees and employee related costs, rent, utilities and other general operating and overhead expenses; and (y) fund the reasonable professional and other fees

associated with the Sale (the "<u>Other Permitted Uses</u>"), in each case in accordance with the Original Budget, as it may be updated from time-to-time.

20. The Original Budget reflects on a line-item thirteen (13) week rolling-basis the Debtors' anticipated aggregate cash receipts and aggregate necessary and required expenses relating to the Permitted Premium Payments and the Other Permitted Uses for each week covered by the Original Budget. For each two-week period covered by the Original Budget and any subsequent budget, the aggregate actual disbursements by the Debtors during such two-week period of determination must be no greater than 115% of the aggregate amount of projected disbursements for such period as set forth in the Original Budget or any subsequent budget (the "Permitted Variance"). For the avoidance of doubt, for purposes of calculating the Permitted Variance, any unused amounts set forth in the Original Budget or any subsequent budget for any period of determination may be carried forward and used during subsequent periods on a line-byline basis, with no carry-over to any other line item. Upon the prior written request of NSI, or upon its own initiative, the Administrative Agent may, but is not required to, authorize NSI to exceed the Permitted Variance. Except as expressly set forth herein, nothing in the Original Budget or this Interim Order shall be deemed or construed as (x) a finding or admission as to the validity of any claim relating to a budgeted amount, (y) an agreement or promise by any party in interest to pay any such budgeted claim, or (z) a waiver of the rights of any party in interest to contest any such claim. Furthermore, nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, nor authorize the use by the Debtors of any proceeds from any such disposition of assets. The Original Budget may be amended or modified in writing from time to time only with the prior written consent of the Administrative Agent, the DIP Lenders and the NSI Pre-Petition Lenders.

21. The Debtors shall provide to the DIP Lenders, the MIO Pre-Petition Lenders and the NSI Pre-Petition Lenders, so as to actually be received within four (4) business days following the end of each two-week period, (a) an updated rolling 13-week budget, and (b) a line-by-line variance report for the immediately preceding two-week period and on a cumulative basis from the Petition Date to the report date, comparing actual cash receipts and actual cash disbursements to cash receipts and cash disbursements forecasted in the Original Budget for such period and showing on a line-by-line basis any variance to the corresponding line-item of the Original Budget together with an explanation for such variance.

22. <u>Adequate Protection for Pre-Petition Lien Holders</u>. In this Interim Order, the term "<u>Replacement Lien</u>" shall mean that, subject to the terms and conditions set forth in this Interim Order, the Pre-Petition Lien Holders shall have and are hereby granted (effective upon the date of this Interim Order and without the necessity of the Debtors or the Pre-Petition Lien Holders' execution of mortgages, deeds of trust, security agreements, pledge agreements, control agreements, financing statements or otherwise), valid and perfected, security interests in, and liens upon the Collateral, in the same priority and to the same extent, priority, enforceability, unavoidability and validity applicable to the MIO Pre-Petition Lenders' security interests and liens in the Pre-Petition Collateral and the NSI Pre-Petition Lenders' security interests and liens in the Pre-Petition Collateral; <u>provided</u>, <u>however</u>, the Replacement Liens shall be junior in all respects to the DIP Liens granted to the DIP Lenders.

23. The Pre-Petition Lien Holders are granted the following adequate protection for any diminution in the value of their respective interests in the Pre-Petition Collateral from the Petition Date resulting from (a) the use, sale, lease, disposition, shrinkage, decline in market value, consumption or physical deterioration of the Pre-Petition Collateral (including Cash

Collateral) by the Debtors, and (b) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, the "<u>Adequate Protection Obligations</u>"):

24. The Pre-Petition Lien Holders shall have and are hereby granted the Replacement Liens subject to the priorities set forth herein and the Subordination Agreements. Subject in all respects to the Subordination Agreements, and except as otherwise set forth herein, the Replacement Liens granted to the Pre-Petition Lien Holders pursuant to this Interim Order shall be prior and senior to all liens and encumbrances of (a) all other secured creditors in and to such property granted, or arising, subsequent to the date of this Interim Order (including, without limitation, liens and security interests, if any, granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors other than taxes), (b) any intercompany claim of NSI or subsidiary or affiliate of NSI, and (c) any security interest or lien that is avoided or otherwise preserved for the benefit of NSI's estate pursuant to Bankruptcy Code section 551; provided, however, that the Replacement Liens granted to the NSI Pre-Petition Lenders shall be subordinate to the DIP Liens and to the Replacement Liens granted to the MIO Pre-Petition Lenders, and the Replacement Liens granted to the MIO Pre-Petition Lenders to the DIP Liens.

(a) The Pre-Petition Lien Holders are hereby granted allowed Superpriority Claims; <u>provided</u>, <u>however</u>, that the Superpriority Claims granted to Pre-Petition Lien Holders shall be junior in all respects to the Superpriority Claims granted to the DIP Lenders and Superpriority Claims granted to the MIO Pre-Petition Lenders shall be senior in all respects to the Superpriority Claims granted to the NSI Pre-Petition Lenders. No cost or expense of administration under Bankruptcy Code §§ 105, 503(b) and 507(b) shall be senior to, or *pari passu* with, any Superpriority Claims; and

(b) Notwithstanding any provision of this Interim Order or the Pre-Petition Debt Documents to the contrary, the Pre-Petition Lien Holders reserve, and this Interim Order is without prejudice to, their respective rights to, among other things, seek additional adequate protection (provided that any adequate protection provided hereafter shall be junior in all respects to the DIP Liens and Superpriority Claims of the DIP Lenders, and if provided to the NSI Pre-Petition Lenders shall also be provided to the MIO Pre-Petition Lenders on a senior priority basis), claim payment or reimbursement of additional interest (including default interest), reasonable fees and expenses (including, without limitation, professional fees and expenses) or other costs and expenses set forth in the Pre-Petition Debt Documents.

25. The Administrative Agent, and with the prior written consent of the Administrative Agent, the MIO Pre-Petition Lenders and/or NSI Pre-Petition Lenders, may issue a written notice of the occurrence of a Cash Collateral Event of Default (as defined below) to counsel for the Debtors, counsel for any Committee, and the U.S. Trustee (the "<u>Cash Collateral</u> <u>Default Notice</u>"). Absent entry of an order to the contrary (or the agreement of NSI Pre-Petition Lenders), on the sixth (6th) day after receipt of the Cash Collateral Default Notice by counsel for the Debtors, counsel for any Committee, and the U.S. Trustee, NSI may not use Cash Collateral. For purposes of this Interim Order, a "<u>Cash Collateral Event of Default</u>" shall occur with respect to the Debtors' use of Cash Collateral if (a) the Debtors fail to perform any of their obligations in accordance with the terms of this Interim Order, including, without limitation, NSI's failure to use Cash Collateral in compliance with the Original Budget (subject to Permitted Variances) or subsequent budgets or to provide the information or access as required herein, (b) any representation or warranty made by the Debtors under this Interim Order or any pleading, certificate, report or financial statement delivered to the Pre-Petition Lien Holders proves to have

been false or misleading in any material respect as of the time made or given (including by omission of material information or fact necessary to make such representation, warranty or statement not misleading), (c) the appointment of a Chapter 11 trustee or examiner with expanded powers, (d) the Cases are converted to cases under chapter 7, (e) without the prior written consent of the MIO Pre-Petition Lenders and NSI Pre-Petition Lenders, the Debtors shall purport to grant or file a motion seeking to grant a third party a security interest or lien upon all or part of any property of the Debtors that has a priority which is senior to, or equal with, any of the Pre-Petition Liens or Replacement Liens granted hereunder in all or any of a portion of such property (other than the DIP Liens), or (f) a DIP Event of Default shall have occurred.

26. <u>Proceeds of Subsequent Financing</u>. Without limiting any of the other provisions of this Interim Order, if at any time prior to (i) the indefeasible repayment in full in cash of all DIP Obligations, and (ii) the termination of the DIP Commitments, any Debtor or any trustee subsequently appointed in the Cases shall obtain credit or incur debt pursuant to section 364(b), 364(c) or 364(d) of the Bankruptcy Code which in any way results in security interests or liens in or on any or all of the Collateral, then, except as permitted by the DIP Credit Agreement, all of the proceeds of such credit or debt shall immediately be applied to the indefeasible payment in full in cash of the DIP Obligations in accordance with the DIP Documents.

27. <u>Limitation on Charging Expenses Against Collateral</u>. Subject to and effective only upon entry of the Final Order granting such relief, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lenders, the MIO Pre-Petition Lenders and the NSI

Pre-Petition Lenders, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lenders and/or the Pre-Petition Lien Holders.

28. <u>Termination</u>. All (i) DIP Obligations of the Debtors to the DIP Lenders shall be immediately due and payable in accordance with the terms of the DIP Credit Agreement and (ii) authorization to use Cash Collateral shall cease, on the date (the "<u>DIP Expiration Date</u>") that is the earliest to occur of : (a) May 16, 2011; (b) the date on which the Bankruptcy Court enters an order confirming a plan of reorganization for NSI confirmed pursuant to section 1129 of the Bankruptcy Code, (c) the occurrence of a DIP Event of a Default and/or Cash Collateral Event of Default.

29. <u>Access to Collateral</u>. The DIP Lenders and the Collateral Agent and their respective experts and advisors shall be given reasonable access to the Collateral for purposes of monitoring the business of the Debtors and valuing the Collateral.

30. <u>Information</u>. The Debtors shall provide the DIP Lenders and the Pre-Petition Lien Holders with all inspection rights and reports (in addition to those required by this Interim Order) to the extent required under the Pre-Petition Debt Documents or as otherwise reasonably requested by the DIP Lenders or the Pre-Petition Lien Holders.

31. <u>Reservation of Rights of Pre-Petition Lien Holders</u>. Except as expressly provided herein, nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity, to the DIP Lenders or Pre-Petition Lien Holders, including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion).

32. Perfection of DIP Liens and Replacement Liens.

(a) The automatic stay imposed under section 362(a) of the Bankruptcy Code
 is hereby vacated and modified to permit NSI to grant the liens and security interests to the DIP
 Lenders and Pre-Petition Lien Holders contemplated by the DIP Documents (with respect to the
 DIP Lenders) and this Interim Order.

(b) The DIP Liens and Replacement Liens granted pursuant to this Interim Order shall constitute valid and duly perfected security interests and liens (subject to the priorities set forth herein and in the Subordination Agreements), and the DIP Lenders and the Pre-Petition Lien Holders shall not be required to file or serve financing statements, notices of lien or similar instruments which otherwise may be required under federal, state or local law in any jurisdiction, or take any action, including taking possession, to validate and perfect such security interests and liens; and the failure by the Debtors to execute any documentation relating to the DIP Liens or Replacement Liens shall in no way affect the validity, perfection or priority of such liens. The DIP Lenders and Pre-Petition Lien Holders are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Lenders or Pre-Petition Lien Holders shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, nonavoidable and not subject to challenge, dispute or subordination, at the time and as of the date of entry of this Interim Order. Upon the request of the DIP Lenders, the Debtors

and the Pre-Petition Lien Holders, without any further consent of any party, are authorized to take, execute and deliver such instruments (in each case without representation or warranty of any kind) to enable the DIP Lenders to further validate, perfect, preserve and enforce the DIP Liens.

(c) A certified copy of this Interim Order may be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Interim Order for filing and recording.

33. <u>Marshalling</u>. In no event shall the DIP Lenders or the Pre-Petition Lien Holders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

34. <u>Section 552(b)</u>. Subject to entry of a Final Order, the DIP Lenders and Pre-Petition Lien Holders are entitled to all of the rights and benefits of section 552(b)(1) of the Bankruptcy Code and the "equities of the case" exception therein shall not apply.

35. <u>Proofs of Claim</u>. The DIP Lenders and Pre-Petition Lien Holders shall not be required to file proofs of claim in the Cases or any successor cases and any order entered by the Court in relation to the establishment of procedures to file proofs or a bar date in any of the Cases or any successor cases shall, or shall be deemed to, so provide.

36. <u>Preservation of Rights Granted Under this Interim Order.</u>

(a) No claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Lenders or to the Pre-Petition Lien Holders, respectively, shall be granted or allowed while any portion of the DIP Facility (or any refinancing thereof), the DIP Commitments, the DIP Obligations or the Adequate Protection

Obligations remain outstanding, and the DIP Liens and the Replacement Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) To the extent permitted by applicable law, if an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code), to the fullest extent permitted by law, that (i) the DIP Liens, Replacement Liens and Superpriority Claims pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order (and pursuant to the Subordination Agreements) until all DIP Obligations and Adequate Protection Obligations shall have been paid and satisfied in full and that such DIP Liens, Replacement Liens and Superpriority Claims, shall, notwithstanding such dismissal, remain binding on all parties in interest and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred provided for this Interim Order.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations incurred prior to the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Credit Agreement with respect to any DIP Obligations or with respect to the Adequate Protection Obligations. Notwithstanding any such reversal, stay, modification or vacation, any use of Cash Collateral, or

DIP Obligations or Adequate Protection Obligations incurred by the Debtors prior to the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lenders and Pre-Petition Lien Holders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, Replacement Liens, Superpriority Claims and all other rights and remedies of the DIP Lenders and Pre-Petition Lien Holders granted by the provisions of this Interim Order and the DIP Documents, as applicable, shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Cases, terminating the joint administration of the Cases or by any other act or omission or (ii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Cases (whether or not these Cases cease to be jointly administered), or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, Replacement Liens and Superpriority Claims and all other rights and remedies of the DIP Lenders and Pre-Petition Lien Holders granted pursuant to this Interim Order and the DIP Documents, as applicable, shall continue in full force and effect.

37. <u>Effect of Stipulations on Third Parties</u>. The agreements, stipulations and findings contained in this Interim Order shall be binding upon all parties in interest,

including, but not limited to, the Debtors and the Committee, if any, except to the extent that (a) a party in interest with standing, has timely filed an adversary proceeding or contested matter asserting any claims or causes of action against the MIO Pre-Petition Lenders, objecting to the MIO Pre-Petition Lenders' claims or liens, or challenging any of the admissions set forth in paragraph 11 of this Interim Order (a "Challenge") no later than the earlier of (the "Challenge Period") (i) forty-five (45) days from the date of entry of this Interim Order or (ii) the deadline established by the Court for filing objections to confirmation of the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code dated January 24, 2011, and (b) the Court rules in favor of the plaintiff or movant in any such timely-filed Challenge. If no such Challenge is timely commenced within the Challenge Period, (v) all of the admissions in paragraph 11 of this Interim Order shall be binding and preclusive on the Debtors and their estates and their respective creditors, the Committee (if any), equity holders, and all other parties in interest, (w) the Pre-Petition Senior Loan Obligations shall constitute allowed claims for all purposes in the Cases and any subsequent chapter 7 cases, (x) the MIO Pre-Petition Lenders' respective security interest and liens on the Pre-Petition Senior Collateral shall be deemed legal, valid, binding, perfected and otherwise unavoidable, (y) the Pre-Petition Senior Loan Obligations and the MIO Pre-Petition Lenders' security interests and liens on the Pre-Petition Senior Collateral shall not be subject to subordination, counterclaims, set-off, defense, avoidance or any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto, and (z) as a result of the foregoing, the repayment of any Pre-Petition Senior Loan Obligations in accordance with the terms of this Interim Order and the Pre-Petition Senior Credit Agreement shall

constitute an indefeasible payment and shall be final and binding for all purposes. If any such Challenge is timely commenced within the Challenge Period, the agreements, stipulations and findings contained in <u>paragraph 11</u> of this Interim Order shall nonetheless remain binding and preclusive on the Debtors' and their estates and their respective creditors, the Committee (if any), equity holders, and all other parties in interest, except to the extent that such findings or admissions were expressly and successfully disputed in such Challenge. Nothing in this Interim Order confers on any Entity (as defined in the Bankruptcy Code), including, but not limited to any Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including without limitation, claims and defenses with respect to the Pre-Petition Senior Loan Obligations.

38. Except with respect to the matters expressly governed by this Interim Order and subject to the provisions of the Subordination Agreements, entry of this Interim Order shall be without prejudice to any and all the rights, remedies, claims and causes of action which the Pre-Petition Lien Holders may have against the Debtors or any third parties, and without prejudice to the rights, if any, of Pre-Petition Lien Holders to seek relief from the automatic stay in effect pursuant to section 362 of the Bankruptcy Code, or any other relief in the Cases, and without prejudice to the rights of the Debtors or any other party in interest to oppose any such relief. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Pre-Petition Lien Holders, the Debtors, and their respective permitted successors and assigns, including any trustee or other fiduciary hereafter appointed in the Cases as a legal representative of the Debtors or the Debtors' estates.

39. <u>Limitation on Use of DIP Facility Proceeds and Cash Collateral</u>. Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings under the DIP

Facility, Cash Collateral or Collateral may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Pre-Petition Debt Documents, or the liens or claims granted under this Interim Order, the DIP Documents or the Pre-Petition Debt Documents, (b) assert claims and defenses or any other causes of action against the DIP Lenders or the Pre-Petition Lien Holders or their respective agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Lenders' or Pre-Petition Lien Holders' assertion, enforcement or realization on the Collateral in accordance with the DIP Documents, the Pre-Petition Debt Documents or this Interim Order, (d) seek to modify any of the rights granted to the DIP Lenders or the Pre-Petition Lien Holders hereunder or under the DIP Documents or the Pre-Petition Debt Documents, in each of the foregoing cases without such parties' prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date or any professional fees and disbursements incurred in connection with such claims or any of the actions set forth in the foregoing clauses (a) through (c) unless in each case such payments are (i) approved by an order of this Court and (ii) in accordance with the DIP Credit Agreement and Original Budget or otherwise approved by the DIP Lenders in their sole discretion.

40. <u>Right to Credit Bid</u>. Upon approval of the Final Order, the DIP Lenders and MIO Pre-Petition Lenders shall have the right to "credit bid" all or a portion of the allowed amount of their claims during any sale of the Collateral, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or as part of a plan of reorganization subject to confirmation under section 1129 of the Bankruptcy Code.

41. <u>Reimbursement of Fees and Expenses</u>. The Debtors shall reimburse the Agents and DIP Lenders for their reasonable costs, fee, charges and expenses incurred in connection

with the DIP Facility, DIP Documents and the Cases (including, without limitation, their reasonable attorneys' and financial advisors' fees and expenses), whether incurred prior to or after the Petition Date, in accordance with Section 11.3 of the DIP Credit Agreement. A copy of any invoice submitted by the Agents or DIP Lenders to the Debtors shall also be delivered simultaneously to the Debtor, the U.S. Trustee and counsel to any Committee (the "Fee Notice"). None of such costs, fees, charges and expenses shall be subject to Court approval or required to be recorded or maintained in accordance with the United States Trustee guidelines relating to compensation and reimbursement of expenses and no recipient of any such payment shall be required to file any interim or final fee application with the Court. Subject to the Debtor, any Committee, or the U.S. Trustee filing a written objection with this Court to any such fees and expenses within five (5) days after receipt of the Fee Notice, the Debtors shall pay such invoice in accordance with Section 11.3 of the DIP Credit Agreement. To the extent a timely filed objection is filed by the Debtor, any Committee, or the U.S. Trustee, the Debtor (a) shall pay such portion of the fees and expenses to which no objection is interposed and (b) shall pay any remaining fees and expenses as ordered by the Bankruptcy Court (or upon withdrawal or resolution of the objection.

42. <u>Order Governs</u>. In the event of any inconsistency between the provisions of this Interim Order and the Motion, DIP Documents and/or Pre-Petition Debt Documents, the provisions of this Interim Order shall govern and control.

43. <u>Enforceability</u>. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any other Bankruptcy Rule, or Rule 62(a) of the

Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entity and there shall be no stay of execution or effectiveness of this Interim Order.

44. <u>Binding Effect; Successors and Assigns</u>. The DIP Documents and the provisions of this Interim Order, including all findings herein (subject to the paragraph 37 of this Interim Order), shall be binding upon all parties in interest in the Cases, including, without limitation, the DIP Lenders and the Pre-Petition Lien Holders, any Committee and the Debtors and their respective successors and assigns (including any estate representative or any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the DIP Lenders, the Pre-Petition Lien Holders and the Debtors and their respective successors and assigns; provided, however, that the DIP Lenders and the Pre-Petition Lien Holders and the composite or extend any financing, as the case may be, to any trustee or similar responsible person appointed for the estates of the Debtors.

45. <u>Retention of Jurisdiction</u>. The Bankruptcy Court shall retain jurisdiction to enforce the provisions of this Interim Order and the rights of the parties set forth herein, and this retention of jurisdiction shall survive the confirmation and consummation of any Chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such Chapter 11 plan or order confirming such Chapter 11 plan or any order dismissing or closing the Cases.

46. <u>Exculpation</u>. Subject to the entry of a Final Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lenders or Pre-Petition Lien Holders any liability

for any claims arising from the Pre-Petition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts.

47. Final Hearing. The Final Hearing to consider entry of the Final Order will be held on _____, 2011, at ____ prevailing Eastern time. The Debtors shall, on or before _____, 2011, mail copies of a notice of the entry of this Interim Order, together with a copy of this Interim Order, to the parties having been given notice of the Interim Hearing, to any party which has filed prior to such date a request for notice with the Bankruptcy Court and to counsel for the Committee, if any. Such notice shall constitute adequate notice of the Final Hearing, including without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under section 506(c) of the Bankruptcy Code. The notice of entry of this Interim Order shall state that any party in interest objecting to the DIP Facility, the DIP Documents or the use of Cash Collateral on the terms and conditions set forth therein and herein shall file written objections with the United States Bankruptcy Court Clerk for the District of Delaware no later than _____, 2011 at 4:00 p.m., which shall be served so that the same are received on or before such date and time by: (i) counsel to the Agents DIP Lenders and MIO Pre-Petition Lenders: Hogan Lovells US LLP, 875 Third Avenue, New York, New York 10022, Attn: Robin E. Keller, Esq.; (ii) counsel to the Debtors: (a) Reed Smith LLP, 599 Lexington Avenue, 22nd Floor, New York, New York 10022, Attn: Michael J. Venditto, Esq. and (b) Reed Smith LLP, 1201 Market Street, Suite 1500, Wilmington, Delaware 19801, Attn: Kurt F. Gwynne, Esq.; (iii) counsel to the joint receivers of NSSC, Dewey & LeBoeuf LLP, 1301 Avenue of the Americas, New York, New York 10019, Attn: Timothy Q. Karcher. Esq.; (iv) counsel to the NSI Receiver, Goodwin Proctor LLP, The New York Times Building, 620 8th Avenue, New York, New York 10018, Attn. Emanuel C. Grillo, Esq.; (v) counsel to any Committee; and (vi) the U.S. Trustee, J. Caleb

Boggs Federal Building, 844 King Street, Room 5209, Wilmington, Delaware 19801, Attn:

Dated: March ___, 2011 Wilmington, Delaware

_____·

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

\$56,824,935 SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of March [X], 2011

among

NEW STREAM INSURANCE, LLC, as Borrower,

and THE LENDERS PARTY HERETO

and

MIO Partners, Inc., as Administrative Agent

and

MIO Partners, Inc., as Collateral Agent

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS

SECTION 1.1	Defined Terms	2
SECTION 1.2	Terms Generally	
SECTION 1.3	Accounting Terms; GAAP	
SECTION 1.4	Resolution of Drafting Ambiguities	
SECTION 1.5	Timing of Payment and Deliveries	
	ARTICLE II	
	THE CREDITS	
SECTION 2.1	Existing Loans and Total Commitments	18
SECTION 2.2	Loans	19
SECTION 2.3	Borrowing Procedure	20
SECTION 2.4	Evidence of Debt; Repayment of Loans.	20
SECTION 2.5	Fees.	21
SECTION 2.6	Interest on Loans	
SECTION 2.7	Termination and Reduction of Total Commitments	22
SECTION 2.8	Interest Periods	
SECTION 2.9	Optional and Mandatory Prepayments of Loans	23
SECTION 2.10	Alternate Rate of Interest	24
SECTION 2.11	Increased Costs.	24
SECTION 2.12	Breakage Payments	25
SECTION 2.13	Payments Generally; Pro Rata Treatment; Sharing of Set Off	26
SECTION 2.14	Taxes	27
SECTION 2.15	Payment of Obligations	29
SECTION 2.16	No Discharge; Survival of Claims	30
	ARTICLE III	
	REPRESENTATIONS AND WARRANTIES	
SECTION 3.1	Organization; Powers	
SECTION 3.2	Authorization; Enforceability	
SECTION 3.3	No Conflicts	
SECTION 3.4	Financial Statements; Projections	
SECTION 3.5	Properties; Subsidiaries	31
SECTION 3.6	Litigation; Compliance with Laws	
SECTION 3.7	Use of Proceeds	
SECTION 3.8	Taxes	
SECTION 3.9	No Material Misstatements	
SECTION 3.10	Intentionally Omitted	33
SECTION 3.11	Intentionally Omitted	33
SECTION 3.12	Intentionally Omitted	
SECTION 3.13	Validity, Enforceability and Priority of Liens	
SECTION 3.14	Foreign Assets Control Regulations	
SECTION 3.15	Anti-Terrorism Law	
SECTION 3.16	No Default	
SECTION 3.17	Superpriority of Claims	34
ARTICLE IV `		

CONDITIONS TO BORROWINGS

SECTION 4.1	Conditions to Initial Borrowing	
	Conditions to All Loans	
	ARTICLE V	
	AFFIRMATIVE COVENANTS	
SECTION 5.1	Financial Statements, Reports, etc	
	Litigation and Other Notices	40

SECTION 5.2	Liugation and Other Nouces	40
SECTION 5.3	Existence; Businesses and Properties	40
SECTION 5.4	Obligations and Taxes	41
SECTION 5.5	Intentionally Omitted	41
SECTION 5.6	Maintaining Records; Access to Properties and Inspections; Annual	
	Meetings	41
SECTION 5.7	Use of Proceeds	41
SECTION 5.8	Additional Collateral	42
SECTION 5.9	Security Interests; Further Assurances	42
SECTION 5.10	Information Regarding Collateral	43
SECTION 5.11	Subordination of Loans	43

ARTICLE VI NEGATIVE COVENANTS

SECTION 6.1	Indebtedness	43
SECTION 6.2	Liens	44
SECTION 6.3	Investments, Loans and Advances	46
SECTION 6.4	Mergers and Consolidations	47
SECTION 6.5	Asset Sales	47
SECTION 6.6	Acquisitions	47
SECTION 6.7	Dividends	
SECTION 6.8	Transactions with Affiliates	48
SECTION 6.9	Compliance with 13-Week Budget	48
SECTION 6.10	Prepayments of Indebtedness; Modifications of Organizational	
	Documents and Other Documents, etc	48
SECTION 6.11	Limitation on Certain Restrictions on Subsidiaries	49
SECTION 6.12	Limitation on Issuance of Capital Stock	49
SECTION 6.13	Limitation on Creation of Subsidiaries	49
SECTION 6.14	Business	49
SECTION 6.15	Limitation on Accounting Changes	50
SECTION 6.16	Fiscal Year	50
SECTION 6.17	No Further Negative Pledge	50
SECTION 6.18	Anti-Terrorism Law; Anti-Money Laundering	50
SECTION 6.19	Embargoed Person	50
SECTION 6.20	Critical Vendor and Other Payments	51
SECTION 6.21	Adequate Protection Payments.	51
	ARTICLE VII	
	PROCEEDINGS	
SECTION 7.1	Credit Bidding	51
SECTION 7.2	506(c) Waiver.	51
	ARTICLE VIII	
	EVENTS OF DEFAULT	

APPLICATION OF PROCEEDS

SECTION 9.1	Application of Proceeds		
	ARTICLE X		

THE AGENTS

SECTION 10.1	Appointment	.57
SECTION 10.2	Agent in Its Individual Capacity	.57
SECTION 10.3	Exculpatory Provisions	.57
SECTION 10.4	Reliance by Agent	.58
SECTION 10.5	Delegation of Duties	.58
SECTION 10.6	Successor Agent	.58
SECTION 10.7	Non-Reliance on Agent and Other Lenders	.58
SECTION 10.8	Indemnification	.59
SECTION 10.9	Actions in Concert	.59
SECTION 10.10) Enforcement	.59
SECTION 10.11	Withholding Tax	.59

ARTICLE XI

MISCELLANEOUS

SECTION 11.2 Waivers; Amendment	1
SECTION 11.2 Walvers, Amendment	
SECTION 11.3 Expenses; Indemnity	3
SECTION 11.4 Successors and Assigns	4
SECTION 11.5 Survival of Agreement	4
SECTION 11.6 Counterparts; Integration; Effectiveness	5
SECTION 11.7 Severability	5
SECTION 11.8 Right of Setoff	5
SECTION 11.9 Governing Law; Jurisdiction; Consent to Service of Process	5
SECTION 11.10 Waiver of Jury Trial	
SECTION 11.11 Headings	6
SECTION 11.12 Confidentiality	6
SECTION 11.13 Interest Rate Limitation	7
SECTION 11.14 Obligations Absolute	7
SECTION 11.15 USA PATRIOT Act Notice	8
SECTION 11.16 Parties including the Trustees; Bankruptcy Court Proceedings	8

SCHEDULES

Schedule 2.1(a) Schedule 2.1(b)(i)	Total Commitments Principal of Pre-Petition Loans
Schedule 2.1(b)(ii)	Pre-Petition Obligations
Schedule 3.5	Subsidiaries
Schedule 6.1(b)	Existing Indebtedness
Schedule 6.2(c)	Existing Liens
Schedule 6.3(a)	Existing Investments

EXHIBITS

Exhibit A	Form of 13-Week Budget
Exhibit B	Form of Borrowing Request

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

This SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement"), dated as of March [X], 2011, among NEW STREAM INSURANCE, LLC, a Delaware limited liability company, as debtor and as debtor in possession (the "Borrower"), the Lenders (as defined herein), the lenders from time to time parties hereto (the "Lenders"), MIO Partners, Inc., as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and MIO Partners, Inc., as collateral agent (in such capacity, the "Collateral Agent").

RECITALS:

WHEREAS, on March 13, 2011 (the "**Petition Date**"), the Borrower and certain of its affiliates (collectively, the "**Debtors**" and each, individually, a "**Debtor**") commenced Chapter 11 Cases (each a "**Chapter 11 Case**" and collectively, the "**Chapter 11 Cases**") by filing separate voluntary petitions for reorganization under 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

WHEREAS, from and after the Petition Date, each Debtor will continue to operate its business and manage its property as a debtor and a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, prior to the Petition Date, the Prior Lenders (as defined herein) provided financing to the Borrower pursuant to that certain Secured Promissory Note, dated as of August 4, 2010, in the original principal amount of Twenty-Five Million and No/100 Dollars (USD \$25,000,000.00), as amended by the Amended and Restated Secured Promissory Note, dated as of November 8, 2010, in the amended principal amount of Thirty-Nine Million Four Hundred Eighty Thousand Two Hundred Sixty Eight and 58/100 Dollars (USD \$39,480,268.58), made by the Borrower in favor of the Prior Lenders (as further amended, restated, supplemented or otherwise modified on or prior to the Petition Date, the "**Pre-Petition Credit Agreement**").

WHEREAS, the Borrower has requested that the Lenders provide a senior secured, super-priority debtor-in-possession credit facility to the Borrower in an aggregate principal amount of \$56,824,935 to fund the premium payments of the Borrower's life insurance portfolio until the occurrence of the DIP Expiration Date (as defined herein) and to be used in accordance with <u>Section 3.7</u> herein.

In consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Lenders are willing to extend such post-petition loans to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.1 <u>Defined Terms</u>. As used in this Agreement, the following terms shall have the meanings specified below:

"13-Week Budget" shall mean each 13-week cash flow forecast for the Borrower substantially in the form attached hereto as <u>Exhibit A</u> or such other form as shall be reasonably acceptable to the Administrative Agent, reflecting on a line-item basis the Borrower's anticipated aggregate cash receipts and aggregate premium payments of the insurance policies in the NSI Life Portfolio, and the actual and reasonable fees and costs associated therewith (including servicing fees) for each week covered in that forecast. As used herein, "13-Week Budget" shall initially refer to the "13-Week Budget" attached as an exhibit to the motion seeking entry of the Financing Orders delivered by the Borrower to the Administrative Agent and the Lenders prior to the Closing Date, as authorized by the Interim Order and, thereafter, the most recent 13-Week Budget delivered by the Borrower to the Administrative Agent in accordance with <u>Section 5.1(b)</u>.

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

"Additional Commitment" of any Lender shall mean the excess of the Total Commitment of such Lender over such Lender's pro rata share of the Pre-Petition Obligations converted into Loans under this Agreement pursuant to <u>Section 2.1(b)</u>.

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

"Affiliate" shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; *provided* that, for purposes of <u>Section 6.8</u>, the term "Affiliate" shall also include (i) any Person that directly or indirectly owns more than 10% of any class of Equity Interests of the Person specified or (ii) any Person that is an executive officer or director of the Person specified.

"Agent Fee" shall have the meaning assigned to such term in <u>Section 2.5(b)</u>.

"Agents" shall mean the Administrative Agent and the Collateral Agent; and "Agent" shall mean any of them.

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

"Alternate Base Rate" shall mean, for any day, a fluctuating rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the greatest of (a) the Base Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50%, (c) the LIBOR Rate for an Interest Period of one-month beginning on such day (or if such day is not a Business Day, on the immediately preceding Business Day) plus 1.00% and (d) 3.50%. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined

without regard to <u>clause (b)</u> of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate, the Federal Funds Effective Rate or the LIBOR Rate shall be effective on the effective date of such change in the Base Rate, the Federal Funds Effective Rate or the LIBOR Rate or the LIBOR Rate, respectively.

"Anti-Terrorism Laws" shall mean any requirement of law related to terrorism financing or money-laundering including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("Patriot Act") of 2001 (Title III of Pub. L. 107-56), The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act", 31 U.S.C. §§ 53 11-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) and Executive Order 13224 (effective September 24, 2001).

"Applicable Margin" shall mean 5.50% per annum.

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

"Asset Purchase Agreement" shall mean that certain Asset Purchase Agreement, by and between Limited Life Assets Master Limited and Limited Life Assets Holding Limited, as Purchasers, and the Borrower, as Seller, dated as of March 12, 2011, pursuant to which the Borrower shall agree to sell the NSI Life Portfolio to the Purchasers in accordance with the terms set forth therein.

"Asset Sale" shall mean any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any property (excluding dispositions of Cash Equivalents in the ordinary course of the Borrower's cash management activities) by the Borrower.

"Availability Period" shall mean the period from and including the Closing Date to the DIP Expiration Date.

"Avoidance Actions" shall mean any and all claims or causes of action arising under Chapter 5 (other than section 506(c) or section 724(a)) of the Bankruptcy Code to avoid transfers, preserve or transfer liens or otherwise recover property of the estate and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

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

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

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

"Bid Incentives Order" shall have the meaning assigned to such term in <u>Section</u> 4.1(k)(vii).

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

"**Board of Directors**" shall mean, with respect to any Person, (i) in the case of any corporation, the board of directors of such Person and (ii) in any other case, the functional equivalent of the foregoing.

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

"**Borrowing**" shall mean Loans made or continued on the same date and as to which a single Interest Period is in effect.

"**Borrowing Request**" shall mean a request by the Borrower in accordance with the terms of <u>Section 2.3</u> and substantially in the form of <u>Exhibit B</u>, or such other form as shall be approved by the Administrative Agent.

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

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

"Cash Equivalents" shall mean, as to any Person, (a) securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (provided, that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such Person; (b) time deposits and certificates of deposit of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of \$1.0 billion with maturities of not more than one year from the date of acquisition by such Person; (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities; (d) commercial paper issued by any Person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's, and in each case maturing not more than one year after the date of acquisition by such Person; (e) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (d) above.

"Chapter 11 Case" and "Chapter 11 Cases" shall have the meaning assigned to each such term in the recitals hereto.

"**Change in Law**" shall mean (a) the adoption of any law, treaty, order, rule or regulation after the Closing Date, (b) any change in any law, treaty, order, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c)

compliance by any Lender (or for purposes of <u>Section 2.11(b)</u>, by any lending office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date.

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

"Closing Date" shall mean the first date on which all of the conditions set forth in <u>Section</u> <u>4.1</u> are satisfied as specified by the Administrative Agent.

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

"**Collateral**" shall mean, collectively, all assets of the Borrower now owned or hereafter acquired and all other property of whatever kind and nature, in each case, that is pledged as collateral under any Security Document, the Financing Orders or any other order of the Bankruptcy Court in the Chapter 11 Cases, including, without limitation, the proceeds of any Avoidance Actions (to the extent not waived by the Borrower in its Chapter 11 Case).

"Collateral Agent" shall have the meaning assigned to such term in the preamble hereto.

"**Committee**" shall mean the official committee of unsecured creditors, if any, appointed in the Chapter 11 Cases.

"Confidential Information" shall have the meaning assigned to such term in <u>Section</u> <u>11.12</u>.

"Confirmation Hearing" shall have the meaning assigned to such term in <u>Section</u> 4.1(k)(iv).

"**Confirmation Order**" shall have the meaning assigned to such term in the definition of "DIP Expiration Date".

"**Contested Collateral Lien Conditions**" shall mean, with respect to any Permitted Lien of the type described in <u>clauses (a) and (b)</u> of <u>Section 6.2</u>, the following conditions:

(a) the Borrower shall cause any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the Collateral on account of such Lien;

(b) the Borrower shall maintain, to the extent it deems appropriate or is required by GAAP, cash reserves in an amount sufficient to pay and discharge such Lien and the Administrative Agent's reasonable estimate of all interest and penalties related thereto; and

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

"Contingent Obligation" shall mean, as to any Person, any obligation, agreement,

understanding or arrangement of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers' acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided that the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

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

"**Control Agreement**" shall mean that certain Amended and Restated Securities Account Control Agreement, dated as of March [X], 2011, among the Prior Lenders, Lenders, Borrower, and Bank of Utah, as Securities Intermediary.

"**Debt Issuance**" shall mean the incurrence by the Borrower of any Indebtedness after the Closing Date other than as permitted by <u>Section 6.1</u>.

"**Debtor**" and "**Debtors**" shall have the meaning assigned to each such term in the recitals hereto.

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

"Default Rate" shall have the meaning assigned to such term in <u>Section 2.6(b)</u>.

"DIP Expiration Date" shall mean the earliest of (i) the date on which the Bankruptcy Court enters an order (the **"Confirmation Order**") confirming the Borrower's Reorganization Plan; (ii) the occurrence of an Event of Default, or (iii) the Stated Maturity Date.

"Disclosure Statement" shall have the meaning assigned to such term in <u>Section</u> 4.1(k)(iii).

"Disqualified Capital Stock" shall mean any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the

happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the first anniversary of the Stated Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in (a) above, in each case at any time on or prior to the first anniversary of the latest Stated Maturity Date, or (c) contains any repurchase obligation other than repurchase obligations with respect to the Borrower's common Equity Interests issued to employees and directors of the Borrower and its Subsidiaries upon death, disability, retirement, severance or termination of employment or service and which provide that any repurchase obligation shall not be effective during the continuance of an Event of Default or if such repurchase of the Borrower's Equity Interests would not otherwise be permitted by this Agreement or would result in an Event of Default under this Agreement and customary change of control or asset sale proceeds repurchase obligations and which may come into effect prior to payment in full of all Obligations (other than indemnity obligations under the Loan Documents that are not then due and payable and for which no events or claims that could give rise thereto are then pending or outstanding).

"Dividend" with respect to any Person shall mean that such Person has declared or paid a dividend or returned any equity capital to the holders of its Equity Interests or authorized or made any other distribution, payment or delivery of property (other than Qualified Capital Stock of such Person) or cash to the holders of its Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any of its Equity Interests outstanding (or any options or warrants issued by such Person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the Equity Interests of such Person outstanding (or any options or warrants issued by such Person with respect to its Equity Interests). Without limiting the foregoing, "Dividends" with respect to any Person shall also include all payments made or required to be made by such Person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

"dollars" or "\$" shall mean lawful money of the United States.

"Effective Date" shall mean the date on which the Plan becomes effective in accordance with its terms.

"Eligible Assignee" shall mean (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, (d) one or both Purchasers, and (e) any other Person (other than a natural person) approved by (i) the Administrative Agent and (ii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); *provided* that notwithstanding the foregoing, "Eligible Assignee" shall not include the Borrower or any of the Borrower's Affiliates or Subsidiaries.

"Embargoed Person" shall have the meaning assigned to such term in <u>Section 6.19</u>.

"Equipment" shall have the meaning assigned to such term in the UCC.

"Equity Interest" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership,

partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, whether outstanding on, or issued after, the Closing Date, but excluding debt securities convertible or exchangeable into such equity.

"Escrow Account" shall have the meaning assigned to such term in the Control Agreement.

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

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income, branch profits or franchise taxes imposed on (or measured by) its overall net income or overall gross income by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or is otherwise doing business (other than a business deemed to arise as a result of the transactions contemplated by this Agreement) or, in the case of any Lender, in which its applicable lending office is located, (b) in the case of a Foreign Lender upon a Default of the Borrower, any U.S. Federal withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement or designates a new lending office, except to the extent that such Foreign Lender was entitled, at the time of designation of a new lending office, to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.14(a), and (c) any Taxes that are attributable to the failure to comply with Section 2.14(e) or (f). It is understood and agreed, for the avoidance of doubt, that any U.S. Federal withholding tax imposed on a Foreign Lender (including an assignee) as a result of a Change in Law or regulation or interpretation thereof occurring after the time such Foreign Lender became a party to this Agreement shall not be an Excluded Tax.

"Executive Orders" shall have the meaning assigned to such term in <u>Section 6.19</u>.

"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 of the United States arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"Fees" shall mean the Initial Fee, the Unused Commitment Fees, and the Agent Fee.

"**Final Order**" shall mean, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court which order shall be substantially in the form of the Interim Order and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent, and from which no appeal or motion to reconsider has been timely filed (or any such appeal or motion has been conclusively resolved in favor of the Borrower) and such order in any respect is not subject of a stay pending appeal (unless the Administrative Agent and the Required Lenders waive such requirement), together with all extensions, modifications, amendments or supplements thereto, in form and substance reasonably satisfactory to the Administrative Agent, which, among other matters but not by way of limitation, authorizes the Borrower to obtain credit, incur (or guaranty) Indebtedness, and grant Liens under this Agreement and the other Loan Documents, as

the case may be, and provides for the superpriority of the Agents' and the Lenders' claims.

"Final Order Date" shall mean the date of entry of the Final Order.

"**Financial Officer**" of any Person shall mean the chief financial officer, principal accounting officer, treasurer or controller of such Person.

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

"Foreign Lender" shall mean any Agent or Lender that is not a "United States person" within the meaning of Section 7701(a) (30) of the Code.

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

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

"Indebtedness" of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person upon which interest charges are customarily paid or accrued; (d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person; (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business); (f) all Indebtedness of others secured by any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property; (g) all Capital Lease Obligations and synthetic lease obligations of such Person; (h) all obligations of such Person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers' acceptances and similar credit transactions; and (i) all Contingent Obligations of such Person in respect of Indebtedness or obligations of others of the kinds referred to in <u>clauses (a)</u> through (i) above. The Indebtedness of any Person shall not include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, unless (other than in the case of general partner liability) the terms of such Indebtedness expressly provide that such Person is liable therefor. In no event will obligations or liabilities in respect of any Qualified Capital Stock constitute Indebtedness hereunder.

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

"Indemnitee" shall have the meaning assigned to such term in <u>Section 11.3(a)(iv)</u>.

"Initial Fee" shall have the meaning assigned to such term in Section 2.5(b).

"**Intellectual Property**" shall patents, trade marks, trade names, service marks, copyrights, brands, and all other intellectual property whatsoever.

"Interest Payment Date" shall mean with respect to any Loan, (a) the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, and (b) the DIP Expiration Date.

"Interest Period" shall mean, with respect to any Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one month thereafter; *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent continuation of such Borrowing.

"**Interim Amount**" shall mean \$8,000,000.00, which, subject to entry of the Interim Order, shall be the maximum aggregate principal amount of Loans under the Additional Commitments which is permitted to be borrowed between the Interim Order Date and the Final Order Date.

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

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

"Investments" shall have the meaning assigned to such term in <u>Section 6.3</u>.

"Lenders" shall mean the Prior Lenders as lenders under this Agreement.

"Lenders' Securities Account" shall have the meaning given to such term in the Control Agreement.

"LIBOR Rate" shall mean, with respect to any Borrowing for any one-month Interest Period, the higher of (A) 3.50% per annum, or (B) the rate per annum determined by the Administrative Agent to be the arithmetic mean (rounded upward, if necessary, to the nearest 1/100th of 1%) of the offered rates for deposits in dollars with a term comparable to such Interest Period that appears on the Telerate British Bankers Assoc. Interest Settlement Rates Page (as defined below) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; *provided* that (i) if no comparable term for a one-month Interest Period is available, the LIBOR Rate shall be determined under subclause (B) of this definition using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period and (ii) if there shall at any time no longer exist a Telerate British Bankers Assoc. Interest Settlement Rates Page, "LIBOR Rate", shall mean, with respect to each day during each Interest Period pertaining to Borrowings comprising part of the same Borrowing, the higher of (X) 3.50% per annum, or (Y) the rate per annum equal to the rate at which the Administrative Agent is offered deposits in dollars at approximately 11:00 a.m., London, England time, two (2) Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to the amount of such Borrowing to be outstanding during such Interest Period. Notwithstanding the foregoing, for purposes of clause (c) of the definition of Alternate Base Rate, the rates referred to above shall be the rates as of 11:00 a.m., London, England time on the date of determination (rather than the second Business Day preceding the date of determination). **"Telerate British Bankers Assoc. Interest Settlement Rates Page**" shall mean the display designated as Reuters Screen LIBOR01 Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which dollar deposits are offered by leading banks in the London interbank deposit market).

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

"Loan Documents" shall mean this Agreement and the Security Documents.

"Loan Exposure" shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Loans of such Lender.

"**Loans**" shall mean the term loans made by the Lenders to the Borrower pursuant to this Agreement, including Loans made following the Closing Date and Loans resulting from the conversion of Pre-Petition Obligations to Loans pursuant to <u>Section 2.1(b)</u>.

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

"Material Adverse Change" shall mean (a) a material adverse change in the business, property, results of operations, or financial condition of the Borrower; or (b) material impairment of the ability of the Borrower to perform any of its Obligations, covenants or other agreements under any Loan Document.

"**Material Adverse Effect**" shall mean (a) a material adverse effect on the business, property, results of operations, or financial condition of the Borrower; (b) material impairment of the ability of the Borrower to perform any of its Obligations, covenants and other agreements under any Loan Document; or (c) material impairment of the rights of or benefits or remedies available to the Lenders or the Administrative Agent under any Loan Document; *provided* that a Material Adverse Effect shall not be deemed to exist as a result of (x) the filing of the Chapter 11 Cases or (y) with respect to any obligation, contract or agreement to which the Borrower is a party, any default or other legal consequences arising on account of the filing of the Chapter 11 Cases, as applicable (including the implementation of any stay), or the rejection of any such obligation, contract or agreement, the NSI-NSSC Pre-Petition Credit Agreement, or the Control Agreement, or any

agreements, contracts or otherwise relating to, or in connection with any of the foregoing, or any of the Collateral) with the approval of the Bankruptcy Court, if required, under applicable law.

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

"Moody's" shall mean Moody's Investors Service Inc. or any successor by merger or consolidation to its business.

"Net Cash Proceeds" shall mean:

(d) with respect to any Asset Sale (other than any Debt Issuance or any issuance or sale of Equity Interests), the cash proceeds received by the Borrower (or, with respect to the NSI Life Portfolio, received by the Securities Intermediary on behalf of Borrower) (including cash proceeds subsequently received (as and when received by the Borrower (or, with respect to the NSI Life Portfolio, received by the Securities Intermediary on behalf of Borrower)) in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers' fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and the Borrower's good faith estimate of income taxes paid or payable in connection with such sale); (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated with such Asset Sale or any other liabilities retained by the Borrower associated with the properties sold in such Asset Sale and held in the Escrow Account (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); and (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties); and

(e) with respect to any Debt Issuance or any issuance of Equity Interests by the Borrower, the cash proceeds thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith.

"New Stream Securities Account" shall have the meaning given to such term in the Control Agreement.

"**NSI Life Portfolio**" shall mean the Borrower's life insurance settlement and premium finance loan portfolio described in <u>Schedule 1</u> to the Asset Purchase Agreement.

"NSI-NSSC Pre-Petition Liens" shall mean the Liens granted to the NSI-NSSC Pre-Petition Lenders under the NSI-NSSC Pre-Petition Loans.

"**NSI-NSSC Pre-Petition Lenders**" shall mean the respective lenders and agents party from time to the NSI-NSSC Pre-Petition Loans.

"NSI-NSSC Pre-Petition Loans" shall mean (i) that certain Amended and Restated Loan and Security Agreement, dated as of August 1, 2008, among others, the Borrower and Segregated Account Class C, (ii) that certain Second Amended and Restated Loan and Security Agreement, dated as of May 1, 2009, among others, the Borrower and Segregated Account Class F, and (iii) that certain Amended and Restated Loan and Security Agreement, dated as of August 1, 2008,

among others, the Borrower and Segregated Account Class I.

"NSSA Benefits Payments" shall have the meaning assigned to such term in the Control Agreement.

"Obligations" shall mean (a) obligations of the Borrower from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether present or future, primary, secondary, direct, contingent, unliquidated, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower under this Agreement and the other Loan Documents, and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Borrower under or pursuant to this Agreement and the other Loan Documents.

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

"Officer's Certificate" shall mean, as to any Person, a certificate executed by the chairman of the Board of Directors (if an officer), the chief executive officer, the president, the chief restructuring officer or any one of the Financial Officers of such Person, each in his or her official (and not individual) capacity.

"Organizational Documents" shall mean, with respect to any Person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such Person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such Person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such Person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such Person and (v) in any other case, the functional equivalent of the foregoing.

"Other List" shall have the meaning assigned to such term in Section 6.19.

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

"Patriot Act" shall have the meaning assigned to such term in Section 11.15.

"Permitted Liens" shall have the meaning assigned to such term in <u>Section 6.2</u>.

"**Permitted Tax Distributions**" shall mean, (i) with respect to any period during which the Borrower or any Subsidiary of the Borrower is treated as a disregarded entity for federal, state and/or local tax purposes, to the extent relating to the tax liability for such period, the payment of distributions by the Borrower or such Subsidiary of the Borrower to the Borrower in respect of the Borrower's tax liabilities solely as a result of the Borrower (or a Subsidiary of the Borrower) being a disregarded entity for federal, state and/or local tax purposes, in an amount not to exceed the amount of the relevant taxes that the Borrower (or a Subsidiary of the Borrower) would owe if it were filing a separate tax return with respect to such taxes less any such taxes that are paid or will be paid directly by the Borrower (or a Subsidiary of the Borrower) (as applicable), and (ii) for any period in which the Borrower or a Subsidiary of the Borrower is a member of a group filing consolidated, combined or unitary tax returns for which it is not the common parent, payments to the parent of such group to be used to pay the consolidated, combined, unitary or similar federal, state and/or local taxes attributable to the Borrower, or such Subsidiary (as applicable) in an amount not to exceed the amount of the relevant taxes that the Borrower or such Subsidiary (as applicable) would owe if it were filing a separate tax return, taking into account any carryforwards or carrybacks of tax attributes (such as net operating losses) of the Borrower or such Subsidiary (as applicable) from other taxable years, less any such taxes that are paid or will be paid directly by the Borrower or such Subsidiary (as applicable).

"Permitted Variance" shall have the meaning assigned to such term in <u>Section 5.1(b)</u>.

"Permitted Variance Exception" shall have the meaning assigned to such term in <u>Section</u> 5.1(b).

"**Person**" shall mean any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership or government, or any agency or political subdivision thereof, in any case, whether acting in a personal, fiduciary or other capacity.

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

"**Prepaid Loan Amounts**" shall have the meaning assigned to such term in the Control Agreement.

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

"**Pre-Petition Senior Liens**" shall mean Liens of the Prior Lenders under the Pre-Petition Credit Agreement.

"**Pre-Petition Loans**" shall mean the principal amount of loans made by the Prior Lenders to the Borrower under the Pre-Petition Credit Agreement.

"**Pre-Petition Obligations**" shall mean all Pre-Petition Loans and all outstanding accrued but unpaid interest, fees, costs and others expenses, incurred or accrued thereon or under the Pre-Petition Credit Agreement prior to the Petition Date.

"**Prior Lenders**" shall mean (i) SSALT Fund Limited, by and through its nominee; (ii) Compass Special Situations Fund LLC, by and through its nominee; (iii) Compass COSS Master Limited, by and through its nominee; and (iv) Special Situations Fund LP, as the "Lenders" party to the Pre-Petition Credit Agreement.

"**Proceeding**" shall mean, with respect to any Person, any (a) insolvency, bankruptcy, receivership, reorganization, readjustment, composition or other similar proceeding relating to such Person or its property or creditors in such capacity, (b) proceeding for any liquidation, dissolution or other winding-up of such Person, voluntary or involuntary, whether or not involving insolvency or proceedings under the Bankruptcy Code, whether partial or complete and whether by operation of law or otherwise, (c) assignment for the benefit of creditors of such Person or

(d) other marshalling of the assets of such Person.

"**property**" shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any Person and whether now in existence or owned or hereafter entered into or acquired.

"**Purchasers**" shall mean Limited Life Assets Master Limited and Limited Life Assets Holding Limited in their respective capacities as purchasers under the Asset Purchase Agreement.

"Qualified Capital Stock" of any Person shall mean any Equity Interests of such Person that are not Disqualified Capital Stock.

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

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

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

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

"**Reorganization Plan**" shall mean a prepackaged Chapter 11 plan of reorganization of the Borrower, which plan approves and authorizes the sale of the NSI Life Portfolio to the Purchasers.

"**Replacement Liens**" shall mean the replacement liens granted by the Borrower (a) to the Prior Lenders on account of all Pre-Petition Obligations, which shall be junior in priority only to the Liens granted to the Agents and Lenders to secure the Obligations, on all of the collateral securing the Pre-Petition Senior Liens, and which shall be senior in priority to the replacement liens granted to the NSI-NSSC Pre-Petition Lenders, and (b) to the NSI-NSSC Pre-Petition Lenders on account of all obligations arising prior to the Petition Date under the NSI-NSSC Loan Agreements, on all of the collateral securing the NSSC Pre-Petition Liens, which shall be junior in priority to the replacement liens granted to the Prior Lenders and all of the Liens granted to the Agents and Lenders to secure the Obligations.

"Required Bankruptcy Pleadings" shall have the meaning assigned to such term in Section 4.1(k).

"**Required Lenders**" shall mean, at any time, Lenders having Loans and unused Total Commitments representing more than 50% of the sum of all Loans outstanding and unused Total Commitments at such time; *provided* that "Required Lenders" shall include not less than two (2) Lenders.

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

"Responsible Officer" of any Person shall mean any executive officer or Financial Officer

of such Person or any other officer or similar official thereof with responsibility for the administration of the obligations of such Person in respect of this Agreement.

"S&P" shall mean Standard & Poor's Rating Services, Inc., a division of the McGraw-Hill Companies, Inc.

"SDN List" shall have the meaning assigned to such term in <u>Section 6.19</u>.

"SSA Benefits Payments" shall have the meaning assigned to such term in the Control Agreement.

"Securities Collateral" shall have the meaning assigned to such term in the Security Agreement.

<u>"Securities Intermediary</u>" shall mean the Bank of Utah in its capacity as Securities Intermediary under the Control Agreement.

"Security Agreement" shall mean that certain Security Agreement, dated as of the Closing Date, between the Borrower and the Collateral Agent for the benefit of the Agents and Lenders.

"Security Documents" shall mean, collectively, the Security Agreement, the Control Agreement and each other security document or pledge agreement delivered in accordance with applicable local or foreign law to grant a valid, perfected security interest in any property as collateral for the Obligations, and all UCC or other financing statements or instruments of perfection required by this Agreement, the Security Agreement, any mortgage or any other such security document or pledge agreement to be filed with respect to the security interests in property and fixtures created pursuant to the Security Agreement or any mortgage and any other document or instrument utilized to pledge or grant or purport to pledge or grant a security interest in or Lien on any property as collateral for the Obligations.

"Seller's Securities Account" shall have the meaning given to such term in the Control Agreement.

"Stated Maturity Date" shall mean May 16, 2011.

"**Subordinated Indebtedness**" shall mean Indebtedness of the Borrower that is or shall be by its terms subordinated in right of payment to the Obligations of the Borrower as evidenced by documentation on terms and conditions in form and substance satisfactory to the Administrative Agent.

"**Subsidiary**" shall mean, with respect to any Person (the "**parent**") at any date, (i) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent, (ii) any partnership (a) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (b) the only general partners of which are the parent and/or one or more subsidiaries of the parent.

Subsidiary of the Borrower other than Northstar Financial Services Ltd.

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

"**Taxes**" shall mean any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings or other similar charges, whether computed on a separate, consolidated, unitary, combined or other basis and any and all liabilities (including related interest, fines, penalties or additions to tax) with respect to the foregoing.

"**Total Commitment**" shall mean, with respect to each Lender, the commitment of such Lender to make Loans hereunder during the Availability Period in the amount set forth on <u>Schedule 2.1(a)</u>, as the same may be (a) reduced from time to time pursuant to <u>Section 2.7</u> and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to <u>Section 11.4</u>; *provided* that the aggregate amount of the Total Commitments of all Lenders shall not at any time exceed \$56,824,935.

"**Transactions**" shall mean, collectively, the transactions to occur on or prior to the Closing Date pursuant to the Loan Documents and the Chapter 11 Cases, including (a) the execution, delivery and performance of the Loan Documents, and (b) the payment of all fees and expenses to be paid on or prior to the Closing Date and owing in connection with the foregoing.

"**Treasury Services Agreement**" shall mean any agreement relating to treasury, depositary and cash management services or automated clearinghouse transfer of funds.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in any applicable state or jurisdiction.

"United States" shall mean the United States of America.

"Unused Commitment Fee" shall have the meaning assigned to such term in <u>Section</u> 2.5(a).

"Wholly Owned Subsidiary" shall mean, as to any Person, (a) any corporation 100% of whose capital stock (other than directors' qualifying shares) is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person and (b) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person have a 100% equity interest at such time.

SECTION 1.2 <u>Terms Generally</u>. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular

provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, unless otherwise indicated, (e) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time, and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.3 <u>Accounting Terms; GAAP</u>. Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and all terms of an accounting or financial nature shall be construed and interpreted in accordance with GAAP, as in effect on the Closing Date, in each case unless otherwise agreed to by the Borrower and the Required Lenders.

SECTION 1.4 <u>Resolution of Drafting Ambiguities</u>. The Borrower acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

SECTION 1.5 <u>Timing of Payment and Deliveries</u>. Solely in connection with the payment of any obligation or the performance of any covenant, duty or obligation, if stated to be due on a day that is not a Business Day or delivery of any notice, document, certificate or other writing is stated to be required on a day that is not a Business Day, the date of such payment (other than as described in the definition of Interest Period), performance or delivery shall be extended to the immediately succeeding Business Day.

ARTICLE II THE CREDITS

SECTION 2.1 Existing Loans and Total Commitments.

(a) Each Lender has a Total Commitment as set forth for such Lender on <u>Schedule 2.1(a)</u> hereto. Subject to the terms and conditions of this Agreement, including the further terms and conditions in <u>Sections 2.1(b) and (c)</u> and the Financing Orders, and relying upon the representations and warranties herein, each Lender severally, and not jointly, agrees on or after the Closing Date and during the Availability Period to make Loans to the Borrower in dollars in an aggregate principal amount not to exceed its Total Commitment; *provided* that (i) in no event shall Loans be made hereunder (including Loans resulting from the conversion of Pre-Petition Obligations pursuant to <u>Section 2.1(b)</u>) on any date in excess of such Lender's Total Commitment, and (ii) in no event shall Loans exceed the Interim Amount at any time prior to the entry of the Final Order.

(b) Each Lender that is a Prior Lender holds a Pre-Petition Loan to the Borrower in the principal amount set forth next to such Lender's name on <u>Schedule 2.1(b)(i)</u> hereto under the column entitled "Principal of Pre-Petition Loan". The Borrower acknowledges that each such Pre-Petition Loan currently is outstanding from and owed to each Prior Lender under the Pre-Petition Credit Agreement, together with interest thereon. All parties agree that, on the Final Order Date, the sum of (i) the aggregate principal

amount of the Pre-Petition Loan held by such Prior Lender plus (ii) interest accrued thereon through and including the Petition Date at the rate set forth for such Pre-Petition Loan in the Pre-Petition Credit Agreement plus (iii) such Lender's share of all other Pre-Petition Obligations outstanding on the Petition Date shall become a "Loan" under this Agreement deemed to have been made on the Petition Date and shall be governed by this Agreement and shall be deemed to be outstanding hereunder. The amount of each such Loan (being the sum of the foregoing amounts) is the amount set forth opposite the respective Lender's name on <u>Schedule 2.1(b)(ii)</u> under the column entitled "Pre-Petition Obligations". The amount of each Lender's Loan under this <u>Section 2.1(b)</u> shall be deemed to be a Borrowing and a utilization of such Lender's Total Commitment, and shall reduce the available portion of such Total Commitment *pro tanto*. Any commitment of the Prior Lenders to extend credit to the Borrower under the Pre-Petition Credit Agreement, to the extent not previously terminated, is hereby terminated and the Borrower, by entry into this Agreement acknowledges that such commitments are hereby terminated and waives the necessity or requirement, if any, of receipt of any further notice of such termination.

(c) Principal of the Loans, when repaid, may not be reborrowed; *provided* that amounts in the Escrow Account (whether in the Escrow Account on the Petition Date or deposited thereafter) may, with the prior written consent of the Lenders (which consent shall not be unreasonably withheld), and subject to the other terms and conditions of the Control Agreement and this Agreement (including, without limitation, <u>Section 3.7</u> and <u>Section 4.2</u>), may be reborrowed.

SECTION 2.2 Loans. Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Total Commitments; *provided* that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation, if any, to extend additional Loans hereunder (it being understood, however, that no Lender nor any Agent shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender).

(a) Each Lender may at its option make any Loan by causing any Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings having different Interest Periods may be outstanding at the same time; *provided* that the Borrower shall not be entitled to request any Borrowing that, if made, would result in more than ten (10) Borrowings outstanding hereunder at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(b) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 2:00 p.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to the New Stream Securities Account or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(c) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the

Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (b) above, and the Administrative Agent may, but shall have no obligation to, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower, severally, agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Regardless of whether the Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement, the Borrower's obligation to repay the Administrative Agent such corresponding amount pursuant to this Section 2.2(c) shall cease.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or permit to continue, any Borrowing if the Interest Period requested with respect thereto would end after the DIP Expiration Date.

SECTION 2.3 Borrowing Procedure. To request a Borrowing (other than a borrowing permitted under <u>Section 2.1(c)</u>), the Borrower shall deliver, by hand delivery or telecopier, a duly completed and executed Borrowing Request to the Administrative Agent not later than 1:00 p.m., New York City time, three (3) Business Day before the date of the proposed Borrowing. Each Borrowing Request shall be irrevocable and shall specify the following information in compliance with <u>Section 2.2</u>:

- (a) the aggregate amount of such Borrowing;
- (b) the date of such Borrowing, which shall be a Business Day;

(c) the location and number of Borrower's account to which funds are to be disbursed, which shall be the New Stream Securities Account; and

(d) that the conditions set forth in <u>Section 4.1</u> (with respect to the initial Borrowing) and <u>Section 4.2</u> have been satisfied as of the date of the notice.

Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.4 Evidence of Debt; Repayment of Loans.

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender, the unpaid principal amount of each Loan of such Lender on the DIP Expiration Date. All payments or repayments of Loans made pursuant to this Section 2.4(a) shall be made in dollars in the form required pursuant to the Control

Agreement.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders (including without limitation Prepaid Loan Amounts) and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to <u>paragraphs (b)</u> and (c) above shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms. In the event of a conflict between records maintained by any Lender and the records of the Administrative Agent in respect of such matters, the records of the Administrative Agent shall control in the absence of manifest error.

SECTION 2.5 Fees.

(a) <u>Unused Commitment Fee</u>. The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee (the "**Unused Commitment Fee**") equal to 0.25% per annum on the average daily unused amount of the Total Commitment of such Lender during the period from and including the Closing Date to but excluding the DIP Expiration Date. Accrued Unused Commitment Fees shall be fully earned by each Lender on the Interim Order Date and shall be payable in full, in cash on the DIP Expiration Date. Unused Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) <u>Initial Fee</u>. The Borrower agrees to pay to the Administrative Agent for the account of each Lender an initial fee in the amount of 2.50% of the Additional Commitment of such Lender (the "**Initial Fee**"). The Initial Fee shall be fully earned by each Lender on the Interim Order Date and shall be payable in full, in cash on the DIP Expiration Date.

(c) <u>Administrative Agent Fee</u>. The Borrower agrees to pay to the Administrative Agent, for its own account, a monthly administration fee in the amount of \$50,000 for each 30-day period or portion thereof from the Closing Date to the DIP Expiration Date (the "**Agent Fee**"). All Agent Fees shall be fully earned on the Interim Order Date and shall be payable to the Administrative Agent in full, in cash on the DIP Expiration Date.

(d) <u>Due Dates</u>. All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent. Once paid, none of the Fees shall be refundable under any circumstances.

SECTION 2.6 Interest on Loans.

(a) Subject to the provisions of <u>Section 2.6(b)</u>, the Loans, shall bear interest at a rate per annum equal to the LIBOR Rate for the applicable Interest Period, plus the Applicable Margin.

(b) Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, all Obligations shall, to the extent permitted by applicable law, bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of principal of or interest on any Loan, 2% *plus* the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 6.50% *plus* the Alternate Base Rate in effect from time to time (in either case, the "**Default Rate**").

(c) Accrued interest on the Loans shall be due and payable in arrears in full, in cash on the DIP Expiration Date and on each date on which any portion of the Loans is paid; *provided* that (i) interest accrued pursuant to <u>Section 2.6(b)</u> shall be due and payable from time to time on demand, and (ii) in the event of any permitted or required repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be due and payable on the date of such permitted repayment or prepayment; *provided* further that interest paid as part of a Prepaid Loan Amount shall be paid in accordance with Section 3(a) of the Control Agreement.

(d) All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be calculated for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or LIBOR Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error.

SECTION 2.7 <u>Termination and Reduction of Total Commitments.</u>

(a) The Total Commitments shall automatically terminate on the DIP Expiration Date.

(b) At its option, the Borrower may at any time terminate, or from time to time permanently reduce, the Total Commitments; *provided* that (i) each reduction of the Total Commitments shall be in an amount that is an integral multiple of \$500,000 and not less than \$1,000,000, (ii) reductions of the Total Commitments shall be applied pro rata to the Total Commitment of each Lender, and (iii) the Total Commitments shall not be terminated or reduced if, after giving effect to such termination or reduction, the aggregate amount of Loan Exposures would exceed the aggregate amount of the Total Commitments.

(c) The Borrower shall notify the Administrative Agent in writing of any election to terminate or reduce the Total Commitments under <u>Section 2.7(b)</u> at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; *provided* that a notice of termination of the Total Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or

prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Total Commitments shall be permanent. Each reduction of the Total Commitments shall be made ratably among the Lenders in accordance with their respective Total Commitments.

SECTION 2.8 Interest Periods.

(a) Each Borrowing shall have an Interest Period of one (1) month. At the end of such Interest Period (and each successive Interest Period for such Borrowing), the Loans forming part of such Borrowing shall be continued for successive one-month Interest Periods; *provided* that no Interest Period for any Borrowing of Loans may end after the then-scheduled DIP Expiration Date.

(b) The Administrative Agent shall advise each Lender of the details of each Interest Period for each Borrowing.

SECTION 2.9 Optional and Mandatory Prepayments of Loans.

(a) <u>Optional Prepayments</u>. The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, subject to the requirements of this <u>Section 2.9</u>; *provided* that each partial prepayment shall be in an amount that is an integral multiple of \$500,000 and not less than \$500,000 or, if less, the outstanding principal amount of such Borrowing.

(b) <u>Mandatory Prepayments</u>.

(i) <u>Commitment Reductions</u>. In the event of any partial reduction of the Total Commitments pursuant to <u>Section 2.7</u>, then (x) at or prior to the effective date of such reduction, the Administrative Agent shall notify the Borrower and the Lenders of the sum of the Loan Exposures after giving effect thereto and (y) if the sum of the Loan Exposures would exceed the aggregate amount of Total Commitments after giving effect to such reduction, then the Borrower shall, on the date of such reduction, repay or prepay Loans in an aggregate amount sufficient to eliminate such excess.

(ii) <u>NSSA Benefits Payments</u>. Subject to the Financing Orders and pursuant to Section 3(a) of the Control Agreement, promptly upon receipt by the Securities Intermediary of any NSSA Benefits Payment, such amounts shall be deposited by the Securities Intermediary in the Lenders' Securities Account and the Borrower shall be deemed to have prepaid a portion of the principal amount of the Loans and the accrued interest on the principal amount being prepaid in an aggregate amount equal to such NSSA Benefit Payment received. It is understood and agreed that any NSSA Benefits Payments in excess of the outstanding Obligations so deposited in the Lenders' Securities Account shall be transferred to the Escrow Account in accordance with Section 3(a) of the Control Agreement.

(iii) <u>SSA Benefits Amounts</u>. Subject to the Financing Orders and pursuant to Section 3(a) of the Control Agreement, promptly upon receipt by the Securities Intermediary of any SSA Benefits Payments, such amounts shall be deposited by the Securities Intermediary in the Escrow Account pursuant to the

Control Agreement and such SSA Benefits Payments shall not be applied as prepayments of the Loans.

(c) <u>Application of Prepayments</u>.

(i) Subject to the provisions of this <u>Section 2.9(c)</u>, prior to any optional or mandatory prepayment hereunder (except pursuant to <u>Section 2.9(b)(ii)</u>), the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to <u>Section 2.9(c)(ii)</u>. For mandatory prepayments made pursuant to <u>Section 2.9(b)(ii)</u>, such payment shall be deemed to have been applied to the Borrowings in the order they were made.

(ii) <u>Notice of Prepayment</u>. Except for mandatory prepayments made pursuant to <u>Section 2.9(b)(ii)</u>, the Borrower shall notify the Administrative Agent by written notice of any prepayment hereunder not later than 1:00 p.m., New York City time, three (3) Business Days before the date of prepayment. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Such notice to the Lenders may be by electronic communication. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing and otherwise in accordance with this <u>Section 2.9</u>. Prepayments shall be accompanied by accrued interest to the extent required by <u>Section 2.6</u>.

SECTION 2.10 <u>Alternate Rate of Interest</u>. If prior to the commencement of any Interest Period for a Borrowing:

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

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

then the Administrative Agent shall give written notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, Loans shall instead bear interest for each Interest Period at a rate per annum equal to the Alternate Base Rate in effect from time to time during such Interest Period *plus* the Applicable Margin.

SECTION 2.11 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against property of, deposits with or for the account of, or

credit extended by, any Lender or its funding source (except any such reserve requirement reflected in the LIBOR Rate); or

(ii) impose on any Lender, such Lender's funding source or the London interbank market any other condition affecting this Agreement or Loans made by such Lender or any finds obtained therefor or any participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or the cost to such Lender's funding source of making or maintaining the relevant funding, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise) or of such funding source with respect to its respective funding, then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender, as the case may be, for such additional costs incurred or reduction suffered, it being understood that this <u>Section 2.11</u> shall not apply to Taxes to the extent provided for in <u>Section 2.14</u>.

(b) If any Lender determines (in good faith, but in its sole absolute discretion) that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital (or that of such Lender's funding source) or on the capital of such Lender's or such funding source's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender or the funding therefor, to a level below that which such Lender or funding source or such Lender's of funding source's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or other Person's policies and the policies of such Lender's or other Person's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or its funding source or such Lender's or funding source's holding company for any such reduction suffered.

(c) Provided that such demand is made prior to the Stated Maturity Date, failure or delay on the part of any Lender to demand compensation pursuant to this <u>Section 2.11</u> shall not constitute a waiver of such Lender's right to demand such compensation.

A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or its funding source or its funding source's holding company, as the case may be, as specified in <u>paragraph (a)</u> or (b) of this <u>Section 2.11</u> shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be conclusive and binding absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.12 <u>Breakage Payments</u>. In the event of (a) the payment or prepayment, whether optional or mandatory, of any principal of any Loan earlier than the last day of an Interest Period applicable thereto (including as a result of an Event of Default) except for mandatory payments made pursuant to <u>Section 2.9(b)(ii)</u> or (b) the failure to borrow, continue or prepay any Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (which loss, cost and expense shall include, without imitation, any loss, cost or expense that any Lender pays to its own lender or other funding source). In the case of a Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal

amount of such Loan had such event not occurred, at the LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this <u>Section 2.12</u> shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be conclusive and binding absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within five (5) days after receipt thereof.

SECTION 2.13 Payments Generally; Pro Rata Treatment; Sharing of Set Off

Subject to Section 2.9(b)(ii), the Borrower shall make each payment (a) required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or of amounts payable under Section 2.11, 2.12 or 2.14, or otherwise) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 12:00 Noon, New York City time), on the date when due, in immediately available funds, without setoff, deduction or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments to be made hereunder (except for mandatory prepayments made pursuant to Sections 2.9(b)(ii) and (iii)) shall be made to the Administrative Agent at such address as the Administrative Agent may instruct the Borrower from time to time, except that payments pursuant to Sections 2.11, 2.12, 2.14 and 11.3 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, unless specified otherwise, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars and in immediately available funds.

(b) Subject to <u>Section 2.9(b)(ii)</u>, if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (subject to the priorities set forth in <u>Section 9.1</u> in the case of proceeds received by the Administrative Agent in respect of any sale of, collection from or realization upon all or any part of the Collateral pursuant to the exercise by the Administrative Agent of its remedies) (i) *first*, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount

of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee, other than to the Borrower or any of its Subsidiaries or Affiliates (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. If under applicable bankruptcy, insolvency or any similar law any Lender receives a secured claim in lieu of a setoff or counterclaim to which this Section 2.13(c) applies, such Lender shall to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights to which the Lender is entitled under this Section 2.13(c) to share in the benefits of the recovery of such secured claim.

(d) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.14 Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made without setoff, counterclaim or other defense and free and clear of and without deduction or withholding for any and all Indemnified Taxes; *provided* that if the Borrower shall be required by law to deduct any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions or withholdings applicable to additional sums payable under this <u>Section 2.14</u>) the Administrative Agent, the Collateral Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Borrower shall make such deductions or withholdings and (iii) the Borrower shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law and shall indemnify the Administrative Agent, the Collateral Agent and each Lender, within ten (10) Business Days after written demand therefor, for the full amount of Other Taxes paid by the Administrative Agent, the Collateral Agent or such Lender, as the case may be and reasonable expenses arising therefrom or with respect thereto, whether or not such Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate accompanied by reasonable detail as to the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent or Collateral Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) The Borrower shall indemnify the Administrative Agent, the Collateral Agent each Lender, within ten (10) Business Days after payment thereof, for the full amount of any Indemnified Taxes paid by the Administrative Agent, or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder or under any other Loan Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this <u>Section 2.14</u> and reasonable expenses arising therefrom or with respect thereto), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate accompanied by reasonable detail as to the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent or the Collateral Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes and in any event within thirty (30) days of any such payment being due, by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

Any Foreign Lender that is entitled to an exemption from or reduction of (e) withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will permit such payments under this Agreement to be made without withholding or at a reduced rate. Each Foreign Lender, on or before the date it becomes a Foreign Lender, shall to the extent it is legally entitled to do so (i) furnish two copies (which shall be accurate and complete, and originally executed) of either (a) U.S. Internal Revenue Service Form W-8BEN (or successor form), (b) U.S. Internal Revenue Service Form W-8ECI (or successor form), certifying, in the case of (a) or (b), to such Foreign Lender's legal entitlement to an exemption or reduction from U.S. federal withholding tax with respect to payments hereunder, or (c), to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Foreign Lender, U.S. Internal Revenue Service Form W-8IMY (or any successor forms), together with any information, if any, such party chooses to transmit with such form, and any other certificate or statement of exemption required under the Code or the regulations issued thereunder, to establish that such party is not acting for its own account with respect to a portion of any such sums payable to such party, and (ii) to the extent it may lawfully do so at such times, upon reasonable request by the Borrower or the Administrative Agent, provide a new Form W8BEN (or successor form), Form W-8ECI (or successor form) or Form W-8IMY (or successor form) upon the expiration or obsolescence of any previously delivered form to confirm any complete exemption from,

or any entitlement to a reduction in, U.S. federal withholding tax with respect to any payments hereunder, or to establish that such party is not acting for its own account with respect to a portion of any such sums payable to such party; *provided* that any Foreign Lender that is not a "bank" within the meaning of Section 88 1(c)(3)(A) of the Code that is relying on the "portfolio interest exception" under Section 881(c) of the Code shall also furnish a "Non-Bank Certificate" in customary form if it is furnishing a Form W-8BEN. Each Foreign Lender that does not furnish Internal Revenue Service Form W-8ECI (or successor form) represents that, to its knowledge, any Fees paid hereunder are not attributable to services performed by such Lender in the United States.

(f) Any Agent or Lender that is not a Foreign Lender and is not an exempt recipient (as defined in Section 6049(b)(4) of the Code and the regulations issued thereunder) shall deliver to the Borrower (with a copy to the Administrative Agent), on or prior to the date it become a party hereto, and at such other times as may be necessary in the determination of the Borrower in its reasonable discretion, two U.S. Internal Revenue Service Form W-9 (or any successor forms) properly completed and duly executed by such party.

If the Administrative Agent, the Collateral Agent or a Lender (or an (g) assignee) determines in its reasonable discretion that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.14, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.14 with respect to the Indemnified Taxes or the Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, the Collateral Agent or such Lender (or assignee) and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, however, that the Borrower, upon the request of the Administrative Agent, the Collateral Agent or such Lender (or assignee), agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, the Collateral Agent or such Lender (or assignee) within a reasonable time (not to exceed twenty (20) days) after receipt of written notice that the Administrative Agent, the Collateral Agent or such Lender (or assignee) is required to repay such refund to such Governmental Authority. Nothing contained in this Section 2.14(g) shall require the Administrative Agent, the Collateral Agent or any Lender (or assignee) to make available its Tax Returns or any other information which it deems confidential to the Borrower or any other Person. Notwithstanding anything to the contrary, in no event will any Lender be required to pay any amount to the Borrower the payment of which would place such Lender in a less favorable net after-tax position than such Lender would have been in if the Indemnified Taxes or Other Taxes giving rise to such refund had never been paid in the first instance.

SECTION 2.15 <u>Payment of Obligations</u>. Upon the DIP Expiration Date, the Lenders shall be entitled to immediate payment of all Obligations then due and owing without further application to or order of the Bankruptcy Court, subject to the terms of the Loan Documents and the Financing Orders, and, if the DIP Expiration Date shall have occurred as a result of the Confirmation Order having been entered by the Bankruptcy Court, the occurrence of the Effective Date.

SECTION 2.16 <u>No Discharge; Survival of Claims</u>. The Borrower agrees that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a Reorganization Plan in the Chapter 11 Cases (and the Borrower pursuant to section 1141 (d)(4) of the Bankruptcy Code hereby waives any such discharge) and (b) the superpriority administrative expense claim granted to the Agents and the Lenders pursuant to the Financing Orders and the Liens granted to the Agents pursuant to the Financing Orders shall not be affected in any manner by the entry of an order confirming a Reorganization Plan in the Chapter 11 Cases.</u>

ARTICLE III REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders that:

SECTION 3.1 Organization; Powers. The Borrower (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to carry on its business as now conducted and, upon the entry of the Financing Orders by the Bankruptcy Court, has all requisite power and authority to consummate the transactions contemplated hereby and to perform its obligations under or with respect to this Agreement or any other Loan Document and (c) is qualified and in good standing to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. On the Closing Date, there is no existing default under any Organizational Document of the Borrower or any event which, with the giving of notice or passage of time or both, would constitute a default by any party thereunder, other than any defaults which have or may result from the commencement of the Bankruptcy Cases.

SECTION 3.2 <u>Authorization; Enforceability</u>. The Transactions to be entered into by the Borrower, including any Loans hereunder, are within the Borrower's powers and have been duly authorized by all necessary action on the part of the Borrower. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document to which the Borrower is to be a party, when executed and delivered by the Borrower, will constitute, subject to the entry of the Financing Orders by the Bankruptcy Court, a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.</u>

SECTION 3.3 <u>No Conflicts</u> Upon entry of the Financing Orders by the Bankruptcy Court, the Transactions, including any Loans hereunder and the granting of security under the Security Documents, (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created by the Loan Documents and (iii) consents, approvals, registrations, filings, permits or actions the failure to obtain or perform which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect or to the extent such noncompliance is permitted by the Bankruptcy Court, (b) will not violate the Organizational Documents of the Borrower or any judgment, decree or order of any Governmental Authority that is binding on the Borrower or its property, (c) will not violate or result in a default or require any consent or approval under any indenture, agreement, Organizational Document or other instrument binding upon the Borrower or its property, or give rise to a right thereunder to require any payment to be made by the Borrower,

except for violations, defaults or the creation of such rights that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect or to impose any liability whatsoever on the Administrative Agent, the Collateral Agent or any Lender, and (d) will not result in the creation or imposition of any Lien on any property of the Borrower, except Liens created by the Loan Documents and Permitted Liens (including pursuant to the Financing Orders).

SECTION 3.4 Financial Statements; Projections

(a) The Borrower has heretofore delivered to the Lenders the financial statements and other reports which have actually been provided under the Pre-Petition Credit Agreement. Except as set forth in such financial statements and other than the commencement of the Chapter 11 Cases, there are no post-Petition Date liabilities of the Borrower of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which could reasonably be expected to result in a Material Adverse Effect, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a post-Petition Date liabilities under the Loan Documents.

(b) The forecasts of financial performance of the Borrower, including projected income statements, statements of cash flows and balance sheets furnished to the Lenders have been prepared in good faith by the Borrower, and based on assumptions believed by the Borrower to be reasonable (it being understood that forecasts are subject to uncertainties and contingencies and that no representation or warranty is given that any forecast will be realized).

(c) Since December 31, 2010, no event or circumstance has occurred that, individually or in the aggregate, constitutes a Material Adverse Change.

SECTION 3.5 <u>Properties; Subsidiaries.</u>

(a) The Borrower owns or has rights to use all of the Collateral and all rights with respect to any of the foregoing used in, necessary for or material to the Borrower's business as currently conducted. The use by the Borrower of such Collateral and all such rights with respect to the foregoing does not infringe on the rights of any Person other than such infringement which could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No claim has been made and remains outstanding that the Borrower's use of any Collateral does or may violate the rights of any third party that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) The Borrower has no Subsidiaries other than those listed on <u>Schedule 3.5</u>.

SECTION 3.6 Litigation; Compliance with Laws

(a) Except for the Chapter 11 Cases and for litigation that is stayed by the commencement and continuation of the Chapter 11 Cases and the pending inquiry by the Securities and Exchange Commission as previously disclosed to the Administrative Agent, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any business, property or rights of the Borrower: (i) that challenge the enforceability or validity of any Loan Document or any of the Transactions

or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Neither the Borrower nor any of its property is in violation of, nor will the continued operation of its property as currently conducted violate, any Requirements of Law (including Employee Benefits Law) or any restrictions of record or agreements affecting the Borrower's property or is in default with respect to any judgment, writ, injunction, decree, rule or order of any Governmental Authority, in each case where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(c) No authorization, consent, approval, license or, or registration or filing with, any Governmental Authority is necessary or desirable for the execution, delivery and performance of this Agreement and the other Loan Documents or for the consummation of the transactions contemplated hereby, other than the Financing Orders.

SECTION 3.7 <u>Use of Proceeds</u>. The Borrower will use the proceeds of the Loans solely for the limited purposes of (i) the conversion of a corresponding amount (on a dollar-for-dollar basis) of the outstanding Pre-Petition Obligations as of the Petition Date on the Final Order Date to Loans pursuant to <u>Section 2.1(b)</u>, (ii) paying the actual amounts necessary to fund the premium payments of the insurance policies in the NSI Life Portfolio, and the actual and reasonable fees and costs associated therewith (including servicing fees) and (iii) paying all fees and costs set forth in <u>Section 11.3</u>, in accordance with the 13-Week Budget (subject only to Permitted Variances and Permitted Variance Exceptions, if any), other than the use permitted under <u>Section 3.7(i)</u> which shall be in accordance with <u>Section 2.1(b)</u>.

SECTION 3.8 <u>Taxes</u>. The Borrower has (a) timely filed or caused to be timely filed all federal, state, local and foreign Tax Returns required to have been filed by it and all such Tax Returns are true and correct in all respects and (b) duly and timely paid or caused to be duly and timely paid all Taxes (whether or not shown as due on any Tax Return) and all assessments received by it, except (i) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower has set aside on its books adequate reserves in accordance with GAAP and (ii) any taxes, fees, or other charges, the nonpayment of which is required or permitted by the Bankruptcy Code. The Borrower has made adequate provision in accordance with GAAP on its *pro forma* financial statements referred to in <u>Section 3.4(b)</u> for all material Taxes not yet due and payable as of the date of such financial statements. The Borrower is unaware of any proposed or pending tax assessments, deficiencies or audits that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.9 <u>No Material Misstatements</u>. No information, report, financial statement, certificate, Borrowing Request, exhibit or schedule furnished in writing by or on behalf of the Borrower to the Administrative Agent, the Collateral Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto, taken as a whole, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading as of the date such information is dated or certified; *provided* that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection or pro forma adjustment, the Borrower represents only that it acted in good faith and utilized reasonable assumptions and due

care in the preparation of such information, report, financial statement, exhibit or schedule (it being understood that forecasts are subject to uncertainties and contingencies and that no representation or warranty is given that any forecast will be realized).

SECTION 3.10 <u>Intentionally Omitted</u>. SECTION 3.11 <u>Intentionally Omitted</u>. SECTION 3.12 <u>Intentionally Omitted</u>.

SECTION 3.13 Validity, Enforceability and Priority of Liens.

(a) Upon entry of the Interim Order and Final Order, as applicable, the Agents and Lenders will have legal, valid, perfected and enforceable Liens having the priority specified in the Financing Orders on, and security interests in, all of the Borrower's right, title and interest in and to the Collateral and all proceeds thereof, as security for the Obligations.

(b) Pursuant to sections 364(c)(2) and 364(d)(1) of the Bankruptcy Code, upon entry of the Financing Orders, and without limiting the generality of this <u>Section 3.13</u>, the Liens created by the Security Documents shall be senior and prime all NSI-NSSC Pre-Petition Liens and all other Liens on the Collateral, other than Liens of the Prior Lenders under the Pre-Petition Credit Agreement, to which the Liens under the Security Documents shall be *pari passu*, and shall be senior in all respect to all Replacement Liens.

SECTION 3.14 Foreign Assets Control Regulations. The Borrower is not, and after the consummation of the Transactions and the application of the proceeds of the Loans will not be, by reason of being a "national" of a "designated foreign country" or a "specially designated national" within the meaning of the Regulations of the Office of Foreign Assets Control, United States Treasury Department (31 C.F.R., Subtitle B, Chapter V), or for any other reason, in violation in any material respect of, any United States Federal statute or Executive Order concerning trade or other relations with any foreign country or any citizen or national thereof or the ownership or operation of any property.

SECTION 3.15 Anti-Terrorism Law

(a) Neither the Borrower nor, to the knowledge of the Borrower, any of its Affiliates is in violation of any Anti-Terrorism Laws.

(b) Neither the Borrower nor, to the knowledge of the Borrower, any of its Affiliates, nor any broker or other agent of the Borrower acting or benefiting in any capacity in connection with the Loans, is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Orders;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Orders; (iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "**terrorism**" as defined in the Executive Orders; or

(v) a Person that is named as a "specially designated national and blocked Person" on the most current list published by OFAC at its official website or any replacement web site or other replacement official publication of such list.

(c) Neither the Borrower nor any of its Affiliates nor, to the knowledge of the Borrower, any broker or other agent of the Borrower acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

SECTION 3.16 No Default. No Default has occurred and is continuing.

SECTION 3.17 <u>Superpriority of Claims</u>. Pursuant to section 364(c)(1) of the Bankruptcy Code, upon the entry of, and pursuant to the terms of, the Financing Orders, all of the Obligations from time to time owing to the Agents and Lenders shall enjoy superpriority administrative expense claim status, and accordingly, shall rank and will rank senior in priority to all other administrative expenses of the Debtors in the Chapter 11 Cases of any nature whatsoever.

ARTICLE IV CONDITIONS TO BORROWINGS

SECTION 4.1 <u>Conditions to Initial Borrowing</u>. The obligation of each Lender to fund the initial Borrowing requested to be made by it shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this <u>Section 4.1</u>.

(a) <u>Loan Documents</u>. All legal matters incident to this Agreement, the Loans hereunder and the other Loan Documents shall be satisfactory to the Lenders and to the Administrative Agent and there shall have been delivered to the Administrative Agent an executed counterpart of each of the Loan Documents;

(b) <u>Interim Order</u>. The Bankruptcy Court shall have entered the Interim Order within five (5) days after the Petition Date;

(c) <u>Corporate Documents</u>. The Administrative Agent shall have received:

(i) a certificate of the secretary or assistant secretary of the Borrower dated as of the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of the Borrower certified (to the extent applicable) as of a recent date by the Secretary of State of the state of its organization, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of the Borrower authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of the Borrower (together with a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate in this clause (i)); and

(ii) a certificate as to the good standing of the Borrower (in so-called "long-form" if available) as of a recent date, from such Secretary of State of its jurisdiction of incorporation or organization, as applicable.

(d) <u>Officer's Certificate</u>. The Administrative Agent shall have received a certificate, dated as of the Closing Date and signed by the chief restructuring officer of Borrower, confirming compliance with the conditions precedent set forth in this <u>Section 4.1</u> and applicable sections of <u>Section 4.2</u>.

(e) <u>Personal Property Requirements</u>. The Borrower shall have delivered to the Administrative Agent:

(i) if requested by Administrative Agent, all certificates, agreements or instruments representing or evidencing the Pledged Equity Interests accompanied by instruments of transfer and stock powers undated and endorsed in blank, as applicable;

(ii) if requested by Administrative Agent, certified copies of UCC, tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name the Borrower as debtor and that are filed in those state jurisdictions in which the Borrower is organized and such other searches that the Administrative Agent deems necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Security Documents (other than Permitted Liens or any other Liens acceptable to the Administrative Agent).

(f) <u>Intentionally Omitted</u>.

(g) <u>USA Patriot Act Information</u>. The Lenders shall have received, sufficiently in advance of the Closing Date, all documentation and other information that may be reasonably requested and required by the Lenders in order to enable compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the United States PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) including the information described in <u>Section 11.15</u>.

(h) <u>13-Week Budget</u>. The Administrative Agent and the Lenders shall have received the initial 13-Week Budget, in form and substance acceptable to the Administrative Agent.

(i) <u>Cash Management Systems</u>. The Administrative Agent and the Required Lenders shall have received such information as they may reasonably request with respect

to the Borrower's cash management systems, and such cash management systems (including mechanics for collections) shall be in form and substance satisfactory to the Administrative Agent. The Administrative Agent acknowledges that the Control Agreement is in compliance with this requirement.

(j) <u>Other Information</u>. The Administrative Agent, the Collateral Agent and the Lenders shall have received and shall be satisfied with such other financial and other information relating to the Borrower as any of them may reasonably request.

(k) <u>Chapter 11 Case Administration</u>. On the Petition Date, the Borrower shall have filed each of the following with the Bankruptcy Court (each of which shall be in form and substance satisfactory to the Administrative Agent) (collectively, the "**Required Bankruptcy Pleadings**"):

(i) a voluntary Chapter 11 petition;

(ii) the Reorganization Plan, as approved prior to the Petition Date by the requisite holders of claims required to vote thereon;

(iii) a disclosure statement accompanying the Reorganization Plan (the "**Disclosure Statement**");

(iv) a motion to schedule a combined hearing on an expedited basis (the "**Confirmation Hearing**") to approve the Borrower's Disclosure Statement and enter the Confirmation Order approving the Reorganization Plan not later than May 3, 2011;

(v) a motion for entry of the Interim Order and Final Order approving this Agreement, the Loans and all Loan Documents and the Borrower's limited use of the cash collateral of the Prior Lenders and the NSI-NSSC Pre-Petition Lenders;

(vi) the Asset Purchase Agreement (to be attached as an exhibit to the Reorganization Plan or Disclosure Statement);

(vii) a motion for entry of an order under sections 105, 365, 1123 and 1129 of the Bankruptcy Code and applicable bankruptcy and local bankruptcy rules approving certain bid incentives for the Purchasers in connection with the purchase of the NSI Life Portfolio (the "**Bid Incentives Order**"); and

(viii) other necessary or required "first day" pleadings as determined by the Debtors in consultation with the Administrative Agent.

(1) <u>No litigation</u>. There shall exist no claim, action, suit, investigation, litigation or other proceeding, pending or threatened, in any court or before any arbitrator or Governmental Authority which relates to the Pre-Petition Credit Agreement, the Loans or the Loan Documents or which, individually or in the aggregate, in the sole opinion of the Administrative Agent, could, if adversely determined, have any reasonable likelihood of having a Material Adverse Effect, and the Borrower shall have so certified to the Administrative Agent and Lenders.

(m) <u>Additional Collateral</u>. The Borrower shall have deposited into the New

Stream Securities Account additional insurance policies (which shall be reasonably acceptable to the Administrative Agent) or cash into New Stream Securities Account in an amount equal to not less than \$30,000,000; and the Administrative Agent shall be satisfied that it holds a perfected, first priority security interest in all such additional Collateral.

(n) <u>Other Matters</u>. The Administrative Agent, the Collateral Agent and the Lenders shall have received and shall be satisfied with all such other agreements, instruments, documents, opinions, certificates and other matters as any of them may reasonably request.

All obligations of the Agents and Lenders under this Agreement shall automatically terminate without any further action if the conditions required under this <u>Section 4.1</u> (including, without limitation, <u>Section 4.1(k)</u>) have not been satisfied on or before March 16, 2011.

SECTION 4.2 <u>Conditions to All Loans</u>. The obligation of each Lender to make any Loan (including the initial Loan) shall be subject to, and to the satisfaction of, each of the conditions precedent set forth below.

(a) <u>Notice</u>. The Administrative Agent shall have received a Borrowing Request as required by <u>Section 2.3</u>.

(b) <u>No Default</u>. The Borrower shall be in compliance in all material respects with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and, at the time of and immediately after giving effect to such Loans the application of the proceeds thereof, no Default shall have occurred and be continuing on such date.

(c) <u>Representations and Warranties</u>. Each of the representations and warranties made by the Borrower set forth in <u>Article III</u> hereof or in any other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" or "Material Adverse Change" shall be true and correct in all respects) on and as of the date of such Loan the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(d) <u>No Legal Bar</u>. No order, judgment or decree of any Governmental Authority shall purport to restrain any Lender from making any Loans to be made by it or otherwise to consummate the Transactions.

(e) <u>Bankruptcy Matters</u>.

(i) If the amount of such Loan, when aggregated with all other Loans, shall be in excess of Interim Amount, the Bankruptcy Court shall have entered the Final Order, and the Final Order shall be in form and substance satisfactory to the Administrative Agent.

(ii) At the time of such Loan, (A) if such Loan is prior to the entry and effectiveness of the Final Order, the Interim Order shall not have terminated or expired, (B) if such Loan is after the entry and effectiveness of the Final Order, the Final Order shall be effective, and shall not have been terminated or expired, (C) each Financing Order and all other material orders of the Bankruptcy Court shall remain in full force and effect, and none of them shall have been vacated, reversed,

stayed, amended, supplemented or otherwise modified (without the consent of the Administrative Agent), (D) no motion for reconsideration of any Financing Order shall be pending, and (E) no appeal of any Financing Order shall be pending and no Financing Order shall be the subject of a stay pending appeal or a motion for a stay pending appeal.

(f) <u>Budget</u>. The Borrower shall be in compliance with the Budget, subject to any Permitted Variances and Permitted Variance Exceptions, if any.

(g) <u>Total Commitments</u>. After giving effect to such Loan, the aggregate principal amount of the Loans then outstanding shall not exceed the aggregate amount of the Commitments.

(h) <u>No Material Adverse Change</u>. No Material Adverse Change shall have occurred and be continuing since December 31, 2010.

(i) <u>Bankruptcy Court Orders</u>. All orders entered by the Bankruptcy Court related to or in connection with this Agreement or the Required Bankruptcy Pleadings, including, but not limited to, the Financing Orders, the Bid Incentives Order and the Confirmation Order, shall be in form and substance satisfactory to the Administrative Agent. For the avoidance of doubt, unless otherwise specified, the entry of any of the aforementioned orders is not a condition under this <u>Section 4.2</u>.

Each of the delivery of a Borrowing Request and the acceptance by the Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Borrowing (both immediately before and after giving effect to such Borrowing and the application of the proceeds thereof) the conditions contained in this <u>Section 4.2</u> have been satisfied. The Borrower shall provide such information as the Administrative Agent may reasonably request to confirm that the conditions in this <u>Section 4.2</u> have been satisfied.

ARTICLE V AFFIRMATIVE COVENANTS

The Borrower agrees with each Agent and Lender that so long as this Agreement shall remain in effect and until the Total Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts due and payable under any Loan Document shall have been paid in full, unless the Administrative Agent shall otherwise consent in writing, the Borrower will:

SECTION 5.1 Financial Statements, Reports, etc.

(a) <u>Financials</u>. Furnish, upon the request of the Administrative Agent or any Lender, the following financial statements and other reporting required to be delivered under the Pre-Petition Credit Agreement:

(i) As soon as practicable after the end of each month, but in any event within thirty (30) days thereafter: (1) an unaudited consolidated balance sheet of the Borrower at the end of such month and (2) unaudited consolidated statements of income, retained earnings and cash flows of the Borrower for such month. Such statements shall be (x) prepared in accordance with GAAP consistently applied

(except that notes thereto may be omitted), (y) in reasonable detail and (z) certified by the principal financial or accounting officer of the Borrower;

(ii) As soon as practicable after the end of each fiscal year of the Parent (as defined in the Pre-Petition Credit Agreement), but in any event within one hundred and twenty (120) days thereafter: (1) an audited consolidated balance sheet of the Parent (as defined in the Pre-Petition Credit Agreement) at the end of such year and (2) audited consolidated statements of income, retained earnings and cash flows of the Parent (as defined in the Pre-Petition Credit Agreement) for such year, setting forth in each case in comparative form the figures for the previous year. Such statements shall be prepared in accordance with GAAP consistently applied.

(iii) Promptly upon receipt thereof, any additional reports or other detailed information concerning significant aspects of the operations and condition, financial or otherwise, of the Borrower, if any, given to the Borrower by its independent accountants.

(b) <u>13-Week Budget; Operating Forecasts</u>.

(i) A 13-Week Budget, as approved by the Administrative Agent prior to the Petition Date shall be attached to the motion seeking entry of the Financing Orders and shall reflect on a line-item basis the Borrower's anticipated aggregate cash receipts and actual amounts necessary to fund the premium payments of the insurance policies in the NSI Life Portfolio, and the actual and reasonable fees and costs associated therewith (including servicing fees) for each week covered by the 13-Week Budget. For each two week period in the 13-Week Budget the aggregate disbursements shall not exceed 115% of the aggregate amount of projected disbursements for such two week period ("**Permitted Variance**"). Upon the prior written request of the Debtors, or upon its own initiative, the Administrative Agent may authorize the Borrower in writing to exceed the Permitted Variance (each a "**Permitted Variance Exception**)". Any unused amounts in the 13-Week Budget may carried forward by the Borrower to successive weeks on a line-by-line basis, with no carry-over surplus to any other line item.

(ii) On each bi-weekly anniversary of the Petition Date, the Borrower shall provide the Administrative Agent with an updated 13-Week Budget, including a report of variances on a line-item basis.

(c) <u>Organizational Documents</u>. As soon as reasonably practicable, provide copies of any Organizational Documents that have been amended or modified in accordance with the terms hereof and deliver a copy of any notice of default given or received by the Borrower under any Organizational Document within fifteen (15) days after the Borrower gives or receives such notice.

(d) <u>Documents filed with the Bankruptcy Court or Delivered to the U.S.</u> <u>Trustee or Committee</u>. Promptly, upon their being filed with the Bankruptcy Court, provide copies of all monthly reports as well as all pleadings, motions, applications, judicial information or other information with respect to the Borrower's financial condition filed by or on behalf of the Borrower with the Bankruptcy Court or served by the Borrower to or upon the United States Trustee or any Committee, at the time such document is filed with the Bankruptcy Court or served by the Borrower to or upon the United States Trustee or any Committee, to the extent such document has not otherwise been served pursuant to an order of the Bankruptcy Court establishing notice procedures in the Chapter 11 Cases or otherwise.

(e) <u>Other Information</u>. As soon as reasonably practicable, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

SECTION 5.2 <u>Litigation and Other Notices</u>. Furnish to the Administrative Agent written notice of the following as soon as reasonably practicable (and, in any event, within five (5) Business Days of the occurrence thereof):

(a) any Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, (i) against the Borrower that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document; and

(c) the incurrence of any material Lien (other than Permitted Liens) on, or claim asserted against any of the Collateral (other than as a result of the filing of proofs of claims in the Chapter 11 Cases).

SECTION 5.3 <u>Existence; Businesses and Properties</u>. Except as resulting from the Chapter 11 Cases, continue to:

(a) do or cause to be done all things reasonably necessary to preserve, renew and maintain in full force and effect its legal existence; and

(b) do or cause to be done all things reasonably necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, privileges, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; comply with all applicable Requirements of Law (including any and all employee benefits law) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except in all cases where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; pay and perform its obligations under all Loan Documents; and at all times maintain, preserve and protect all property material to the conduct of such business and keep such property in good repair, working order and condition (other than wear and tear occurring in the ordinary course of business subject to condemnation and casualty events) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times, except in all cases where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; *provided* that nothing in this Section 5.3(b) shall prevent (i) sales of property, consolidations or mergers by or involving the Borrower in accordance with Section 6.4 or Section 6.5; (ii) the withdrawal by the Borrower of its qualification as a foreign corporation in any jurisdiction where such withdrawal,

individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment by the Borrower of any property, rights, franchises, licenses, trademarks, trade names, copyrights or patents that it reasonably determines, in consultation with the Administrative Agent, are not useful to its business or no longer commercially desirable.

SECTION 5.4 Obligations and Taxes

(a) Except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect, subject to the approval of the Bankruptcy Court in the Chapter 11 Cases and to the restrictions set forth in this Agreement, pay its Indebtedness and other obligations in accordance with their terms and pay and discharge promptly when due and payable all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, services, materials and supplies or otherwise that, if unpaid, might give rise to a Lien other than a Permitted Lien upon such properties or any part thereof.

(b) Timely and correctly file all Tax Returns required to be filed by it, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

(c) The Borrower does not intend to treat the Loans as being a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4. In the event the Borrower determines to take any action inconsistent with such intention, it will promptly notify the Administrative Agent thereof.

SECTION 5.5 <u>Intentionally Omitted</u>.

SECTION 5.6 Maintaining Records; Access to Properties and Inspections; Annual Meetings. Keep proper books of record and account (i) in which full, true and correct entries are made in conformity with all Requirements of Law (ii) in form permitting financial statements conforming with GAAP to be derived therefrom and (iii) in which all dealings and transactions in relation to its business and activities are recorded. The Borrower will permit any representatives designated by the Administrative Agent, the Collateral Agent or any Lender to visit and inspect the financial records and, subject to the rights of tenants, the property of the Borrower upon reasonable prior notice during regular business hours and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent, the Collateral Agent or any Lender to discuss the affairs, finances, accounts and condition of the Borrower with and be advised as to the same by the officers and employees thereof and the independent accountants therefor, all at such reasonable times and intervals and to such reasonable extent as the Administrative Agent, the Collateral Agent or any Lender (in the case of any Lender only, during the continuance of a Default or an Event of Default) may request. The Borrower shall be permitted to reasonably coordinate the visits and inspections of individual Lenders to minimize inconvenience.

SECTION 5.7 <u>Use of Proceeds</u>. Use the proceeds of the Loans only for the purposes set forth in <u>Section 3.7</u>.

SECTION 5.8 Additional Collateral

Subject to this Section 5.8, with respect to any property acquired after the (a) Closing Date by the Borrower that is intended to be subject to the Lien created by any of the Security Documents or the Financing Orders but is not so subject (but in any event excluding any assets described in the last sentence of paragraph (b) of this Section 5.8), the Borrower shall promptly give written notice of the same to the Administrative Agent and, if requested by the Administrative Agent, the Borrower shall (i) execute and deliver to the Administrative Agent and the Collateral Agent such amendments or supplements to the relevant Security Documents or such other documents as the Administrative Agent or the Collateral Agent shall reasonably deem necessary to grant to the Collateral Agent, for its benefit and for the benefit of the other Agent and Lenders, a Lien on such property having the priority specified in the Financing Orders, and (ii) to the extent not already created and/or perfected, take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Document or the Financing Orders and not already perfected in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent. The Borrower shall otherwise take such actions and execute and/or deliver to the Administrative Agent such documents as the Administrative Agent or the Collateral Agent shall reasonably require to confirm the validity, perfection and priority of the Lien under the Financing Orders or the Security Documents against such after-acquired properties.

(b)With respect to any Person that is or becomes a Subsidiary after the Closing Date, the Borrower shall promptly give written notice of the same to the Administrative Agent and, if requested by the Administrative Agent, the Borrower shall (A) deliver to the Collateral Agent the certificates, if any, representing all of the Equity Interests of such Subsidiary that are owned by the Borrower, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the Borrower, and all intercompany notes owing from such Subsidiary to the Borrower together with instruments of transfer executed and delivered in blank by a duly authorized officer of the Borrower and (B) cause such new Subsidiary to the extent not already created and/or perfected, to take all actions reasonably necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the applicable Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent.

SECTION 5.9 <u>Security Interests; Further Assurances</u>. As soon as reasonably practicable, upon the reasonable request of the Administrative Agent or the Collateral Agent, at the Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents, the Financing Orders or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary or desirable for the continued validity, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except Permitted Collateral Liens as permitted by the applicable Security Document or the Financing Orders, or use commercially reasonable efforts to obtain any consents or waivers as may be necessary or appropriate in connection therewith. Deliver or cause to be delivered to the

Administrative Agent or the Collateral Agent from time to time such other documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent as either Agent shall reasonably deem necessary to perfect or maintain the Liens on the Collateral pursuant to the Security Documents or the Financing Orders. Upon the exercise by the Administrative Agent or the Collateral Agent of any power, right, privilege or remedy pursuant to any Loan Document which requires any consent, approval, registration, qualification or authorization of any Governmental Authority execute and deliver all applications, certifications, instruments and other documents and papers that the Administrative Agent may reasonably require.

SECTION 5.10 Information Regarding Collateral. Not effect any change (i) in the Borrower's legal name, (ii) in the location of the Borrower's chief executive office, (iii) in the Borrower's identity or organizational structure, (iv) in the Borrower's Federal Taxpayer Identification Number or organizational identification number, if any, or (v) in the Borrower's jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given the Administrative Agent and the Collateral Agent not less than thirty (30) days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Administrative Agent or the Collateral Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory to the Administrative Agent and the Collateral Agent to maintain the perfection and priority of the security interest of the Collateral Agent for the benefit of the Agents and Lenders in the Collateral, if applicable. The Borrower agrees, as soon as practicable, to provide the Administrative Agent and Collateral Agent with certified Organizational Documents reflecting any of the changes described in the preceding sentence. The Borrower also agrees to promptly notify the Administrative Agent and the Collateral Agent of any change in the location of any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral is located (including the establishment of any such new office or facility)

SECTION 5.11 <u>Subordination of Loans</u>. The Borrower covenants and agrees that any existing and future loans or notes, to the extent permitted hereunder, owing by the Borrower to a Subsidiary shall be Subordinated Indebtedness.

ARTICLE VI NEGATIVE COVENANTS

The Borrower agrees with each Lender that, so long as this Agreement shall remain in effect, and until the DIP Expiration Date and the principal of and interest on each Loan, all Fees and all other expenses or amounts due and payable under any Loan Document have been paid in full, unless the Administrative Agent shall otherwise consent in writing, the Borrower will not:

SECTION 6.1 <u>Indebtedness</u>. Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

(a) Indebtedness incurred under (i) this Agreement and the other Loan Documents, (ii) the Pre-Petition Credit Agreement and related loan documents, (iii) loan documents evidencing the NSI-NSSC Pre-Petition Loans, and (iv) any other liabilities existing on November 10, 2010, and disclosed on the Borrower's financial statements as of that date.

(b) (i) Indebtedness, other than that set forth in <u>Section 6.1(a)</u>, outstanding on the Petition Date and listed on <u>Schedule 6.1(b)</u> and (ii) refinancings or renewals thereof; *provided* that (A) any such refinancing Indebtedness is in an aggregate principal amount not greater than the aggregate principal amount of the Indebtedness being renewed or refinanced, plus the amount of any premiums required to be paid thereon and reasonable fees and expenses associated therewith, (B) such refinancing Indebtedness has a later or equal final maturity and longer or equal weighted average life than the Indebtedness being renewed or refinanced and (C) the covenants, events of default, subordination and other provisions thereof (including any guarantees thereof) shall be, in the aggregate, no less favorable to the Lenders than those contained in the Indebtedness being renewed or refinanced;

(c) Contingent Obligations of the Borrower in respect of Indebtedness otherwise permitted under this <u>Section 6.1;</u>

(d) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided* that such Indebtedness is extinguished within five (5) Business Days of incurrence; and

(e) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business.

Notwithstanding the foregoing, any Indebtedness incurred in accordance with this <u>Section</u> <u>6.1</u> (other than Indebtedness referred to in <u>Sections 6.1(a)(i)</u> and (ii)) shall be junior and subordinate to the Obligations and shall not have an administrative expense claim status under the Bankruptcy Code senior to or *pari passu* with the superpriority administrative expense claim of the Agents and Lenders or the administrative expense claim of the Prior Lenders and NSI-NSSC Pre-Petition Lenders.

SECTION 6.2 <u>Liens</u>. Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, the "**Permitted Liens**"):

(a) Liens for taxes, assessments or governmental charges or levies not yet due and payable or delinquent and Liens for taxes, assessments or governmental charges or levies, which (i) are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien or (ii) in the case of any such charge or claim which has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(b) Liens in respect of property of the Borrower imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, including, without limitation, carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of the business of the Borrower, and (i) which do not in the aggregate materially detract from the value of the property of the Borrower, and do not

materially impair the use thereof in the operation of the business of the Borrower, (ii) which, if they secure obligations that are then due and unpaid, are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien, and (iii) in the case of any such Lien which has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(c) any Lien in existence on the Petition Date and set forth on <u>Schedule 6.2(c)</u> and any Lien granted as a replacement or substitute therefor; *provided* that any such replacement or substitute Lien (i) except as permitted by <u>Section 6.1(b)(ii)(A)</u>, does not secure an aggregate amount of Indebtedness, if any, greater than that secured on the Closing Date and (ii) does not encumber any property other than the property subject thereto on the Closing Date (any such Lien, an "**Existing Lien**");

(d) Liens arising out of judgments, attachments or awards not resulting in an Event of Default;

(e) Liens (x) arising by virtue of deposits made in connection therewith in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security legislation, (y) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (z) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided* that such Liens shall in no event encumber any property other than cash and Cash Equivalents and the aggregate amount of deposits at any time pursuant to clause (y) and clause (z) of this paragraph (e) shall not exceed \$100,000 in the aggregate;

(f) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and other account arrangements, including those involving pooled accounts and netting arrangements; *provided* that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(g) licenses of Intellectual Property granted by the Borrower in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Borrower;

(h) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(i) Liens securing other obligations that do not in the aggregate exceed \$100,000 at any time outstanding, so long as such Liens, to the extent covering any

Collateral, (i) are junior to the Liens granted to the Collateral Agent pursuant to the Financing Orders or the Security Documents or (ii) constituting cash if any cash deposits or cash collateral is provided, such cash deposits or cash collateral shall be made in accordance with the 13-Week Budget; and

(j) Liens granted pursuant to (i) the Financing Orders or the Security Documents to secure the Obligations, (ii) the Pre-Petition Senior Liens, (iii) the NSI-NNSC Pre-Petition Liens, and (iv) the Replacement Liens.

provided that no consensual Liens shall be permitted to exist, directly or indirectly, on any Securities Collateral, other than Liens granted pursuant to the Financing Orders or the Security Documents. Notwithstanding the foregoing, Liens permitted under <u>Sections 6</u>. <u>2(a)</u> through (i) shall at all times be junior and subordinate to the Liens under the Loan Documents and the Financing Orders, the Replacement Liens, the Pre-Petition Senior Liens and the NSI-NSSC Pre-Petition Liens. Notwithstanding the foregoing, the Liens securing the Obligations shall at all times be senior to the Liens permitted under Section 6.2(j)(iii)-(iv). The prohibition provided for in this <u>Section 6.2</u> specifically includes, without limitation, the Borrower any Committee, or any other party-in-interest in the Chapter 11 Cases or any successor case to priming or creating *pari passu* to any claims, Liens or interests of the Administrative Agent, the Collateral Agent and the Lenders (and the adequate protection claims and Liens of the Prior Lenders and NSI-NSSC Pre-Petition Lenders) any Lien irrespective of whether such claims, Liens or interests may be "adequately protected" (unless the Obligations and adequate protection claims will be paid in full in cash upon the granting of any such Lien and the Total Commitments terminated).

SECTION 6.3 <u>Investments, Loans and Advances</u>. Directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any Person, or purchase or acquire any stock, bonds, notes, debentures or other obligations or securities of, or any other interest in, or make any capital contribution to, any other Person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, "Investments"), except that the following shall be permitted:

(a) Investments outstanding on the Petition Date and identified on Schedule 6.3(a);

(b) the Borrower may (i) acquire and hold accounts receivable owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms and historical practice, (ii) invest in, acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments held for collection in the ordinary course of business or (iv) make lease, utility and other similar deposits in the ordinary course of business;

(c) Investments by the Borrower in any Subsidiary existing on the Petition Date;

(d) Investments in securities of trade creditors or customers in the ordinary course of business and consistent with the Borrower's past practices that are received in settlement of *bona fide* disputes or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or

customers;

(e) Investments made by the Borrower as a result of consideration received in connection with an Asset Sale made in compliance with <u>Section 6.5;</u>

(f) other investments in an aggregate amount not to exceed the amounts set forth in, and for the purposes set forth in the 13-Week Budget; *provided* that it shall not be deemed a breach of this <u>clause (f)</u> if the amount of any such investments exceed the limits set forth in the 13-Week Budget by amounts less than the Permitted Variance;

(g) by the Borrower consisting of Contingent Obligations permitted under Section 6.1(c); and

(h) Investments held by the Borrower in the New Stream Securities Account, the Seller's Securities Account and the Escrow Account.

SECTION 6.4 <u>Mergers and Consolidations</u>. Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (or agree to do any of the foregoing at any future time), except that the following shall be permitted:

- (a) Asset Sales in compliance with <u>Section 6.5;</u> and
- (b) acquisitions in compliance with <u>Section 6.6</u>.

SECTION 6.5 <u>Asset Sales</u>. Effect any Asset Sale, except that the following shall be permitted:

(a) sale of the NSI Life Portfolio to the Purchasers pursuant to the Reorganization Plan;

(b) leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents;

- (c) mergers and consolidations in compliance with <u>Section 6.4</u>; and
- (d) Investments in compliance with <u>Section 6.3.</u>

To the extent the Required Lenders or all the Lenders, as applicable, waive the provisions of this <u>Section 6.5</u> with respect to the sale of any Collateral, or any Collateral is sold as permitted by this <u>Section 6.5</u>, such Collateral (unless sold to the Borrower) shall be sold free and clear of the Liens created pursuant to the Financing Orders or by the Security Documents.

SECTION 6.6 <u>Acquisitions</u>. Purchase or otherwise acquire (in one or a series of related transactions) any part of the property (whether tangible or intangible) of any Person, except that the following shall be permitted:

(a) Investments in compliance with <u>Section 6.3;</u>

(b) leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents; and

(c) mergers and consolidations in compliance with <u>Section 6.4;</u>

provided that the Lien on and security interest in such property granted or to be granted in favor of the Collateral Agent pursuant to the Financing Orders or under the Security Documents shall be maintained or created in accordance with the provisions of <u>Section 5.9</u> or <u>Section 5.10</u>, as applicable.

SECTION 6.7 <u>Dividends</u>. Authorize, declare or pay, directly or indirectly, any Dividends with respect to the Borrower, except that the following shall be permitted:

(a) (i) to the extent actually used by the Borrower to pay such taxes, costs and expenses, payments by the Borrower to or on behalf of its members in an amount sufficient to pay franchise taxes and other fees required to maintain the legal existence of the Borrower, (ii) payments by the Borrower to or on behalf of its members in an amount sufficient to pay out-of-pocket legal, accounting and filing costs, incidental expenses and other expenses in the nature of corporate overhead in the ordinary course of business of the Borrower; *provided* that the aggregate amount of all Dividends and distributions made pursuant to Section 6.7(b)(i) and (ii) shall not exceed \$100,000 per month during the term of this Agreement; and

(b) Permitted Tax Distributions by the Borrower, so long as such amounts are (i) used to pay Taxes attributable to the Borrower (or any Subsidiary) or are to be distributed to the payor of such Taxes and (ii) in accordance with the 13-Week Budget.

SECTION 6.8 <u>Transactions with Affiliates</u>. Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of the Borrower, other than on terms and conditions at least as favorable to the Borrower as would reasonably be obtained by the Borrower at that time in a comparable arm's-length transaction with a Person other than an Affiliate, except that the following shall be permitted:

- (a) Dividends permitted by <u>Section 6.7;</u>
- (b) Investments permitted by <u>Sections 6.3(d)</u> and <u>(e)</u>;

(c) reasonable director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and indemnification and reimbursement arrangements, in each case approved by the Board of Directors and consistent with the historical practice of the Borrower; and

(d) the Borrower may enter into employment, non-competition or confidentiality agreements with their employees in the ordinary course of business.

SECTION 6.9 <u>Compliance with 13-Week Budget</u>. Fail to comply with the 13-Week Budget within the Permitted Variances and Permitted Variance Exceptions, if any.

SECTION 6.10 <u>Prepayments of Indebtedness; Modifications of Organizational</u> <u>Documents and Other Documents, etc.</u> Directly or indirectly:

(a) except as specifically set forth in the Financing Orders, make (or give any notice in respect thereof) any voluntary or optional payment or mandatory prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, Change in Control or similar event of, (i) any Subordinated Indebtedness,

and (ii) the Obligations (as defined in the Pre-Petition Credit Agreement) under the Pre-Petition Credit Agreement, except, in any such case in connection with the refinancing thereof as permitted pursuant to <u>Section 6.1</u>;

(b) amend or modify, or permit the amendment or modification of, any provision of any Subordinated Indebtedness, in any manner that is adverse in any material respect to the interests of the Lenders;

(c) terminate, amend, modify (including electing to treat any Pledged Interests (as defined in the Security Agreement) as a "security" under Section 8-103 of the UCC) or change any of its Organizational Documents (including by the filing or modification of any certificate of designation) or amend or modify any agreements relating to cash management and, in each case, other than any such amendments, modifications or changes or such new agreements which are not adverse in any material respect to the interests of the Lenders;

(d) make any payments or transfer, or agree to any setoff or recoupment, with respect to any Pre-Petition claim, Pre-Petition Lien or Pre-Petition Indebtedness, except as approved by order of the Bankruptcy Court; or

(e) amend or modify, or permit the amendment or modification of, (i) any Financing Order without the prior written consent of the Administrative Agent or (ii) any order entered by the Bankruptcy Court in the Chapter 11 Cases except for amendments or modifications which are not in any way adverse in any material respect to the interests of the Agents or Lenders in such capacities.

SECTION 6.11 Limitation on Certain Restrictions on Subsidiaries. Directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by the Borrower or any of its Subsidiaries, or pay any Indebtedness owed to the Borrower or any Subsidiary, (b) make loans or advances to the Borrower or any of its Subsidiaries or (c) transfer any of its properties to the Borrower or any Subsidiary, except for such encumbrances or restrictions existing under or by reason of (i) applicable law; (ii) this Agreement, the other Loan Documents and the Loan Documents (as defined in the Pre-Petition Credit Agreement); (iii) customary provisions restricting assignment of any agreement entered into in the ordinary course of business; (v) any holder of a Lien permitted by Section 6.2 restricting the transfer of the property subject thereto; (vi) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 6.5 pending the consummation of such sale.

SECTION 6.12 <u>Limitation on Issuance of Capital Stock</u>. Issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest.

SECTION 6.13 <u>Limitation on Creation of Subsidiaries</u>. Establish, create or acquire any additional Subsidiaries without the prior written consent of the Administrative Agent.

SECTION 6.14 <u>Business</u>. Engage (directly or indirectly) in any business other than those businesses in which the Borrower is engaged on the Petition Date.

SECTION 6.15 <u>Limitation on Accounting Changes</u>. Make or permit, any change in accounting policies or reporting practices, except changes that are required by GAAP.

SECTION 6.16 <u>Fiscal Year</u>. Change its fiscal year-end to a date other than December 31.

SECTION 6.17 <u>No Further Negative Pledge</u>. Enter into any agreement, instrument, deed or lease which prohibits or limits the ability of the Borrower to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation, except the following: (1) this Agreement and the other Loan Documents; (2) covenants in documents creating Liens permitted by <u>Section 6.2</u> prohibiting further Liens on the properties encumbered thereby; (3) the Pre-Petition Loan Documents; (4) any other agreement that does not restrict in any manner (directly or indirectly) Liens created pursuant to the Loan Documents on any Collateral securing the Obligations and does not require the direct or indirect granting of any Lien securing any Indebtedness or other obligation by virtue of the granting of Liens on or pledge of property of the Borrower to secure the Obligations; and (5) any prohibition or limitation of the sort described in <u>clauses (i), (iii), (iv), (v) or (vi)</u> of <u>Section 6.11</u>.

SECTION 6.18 Anti-Terrorism Law; Anti-Money Laundering.

(a) Directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in <u>Section 3.15</u>, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Borrower's compliance with this <u>Section 6.18</u>).

(b) Cause or permit any of the funds of the Borrower that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of law.

SECTION 6.19 Embargoed Person. Cause or permit (a) any of the funds or properties of the Borrower that are used to repay the Loans to constitute property of, or be beneficially owned directly or indirectly by, any Person subject to sanctions or trade restrictions under United States law ("Embargoed Person" or "Embargoed Persons") that is identified on the "List of Specially Designated Nationals and Blocked Persons" (the "SDN List") maintained by OFAC and/or on any other similar list ("Other List") maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § § 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any executive order or regulation promulgated thereunder with the result that the investment in the Borrower (whether directly or indirectly) is prohibited by law, or the Loans made by the Lenders would be in violation of law, the executive order, any related enabling legislation or any other similar executive orders (collectively, "Executive Orders"), or (2) any Embargoed Person to have any direct or indirect, of any nature whatsoever in the Borrower, with the result that the investment in the investment in the Borrower (whether directly or indirectly or indirectly) is prohibited by law or the Loans are in

violation of law.

SECTION 6.20 <u>Critical Vendor and Other Payments</u>. Without the prior written consent of the Administrative Agent, the Borrower shall not make or agree to make (a) any pre-petition "critical vendor" payments or other payments on account of any creditor's pre-petition unsecured claims, (b) payments on account of claims or expenses arising under section 503(b)(9) of the Bankruptcy Code, or (c) payments under any plan or on account of any claim that requires approval pursuant to section 503(c) of the Bankruptcy Code, except in each case in amounts and on terms and conditions that (y) are approved by order of the Bankruptcy Court and (z) are expressly permitted by the terms of the Loan Documents and the 13-Week Budget.</u>

SECTION 6.21 <u>Adequate Protection Payments.</u>. The Borrower shall not make any adequate protection payments on account of any Indebtedness incurred prior to or after the Petition Date.

ARTICLE VII PROCEEDINGS

SECTION 7.1 <u>Credit Bidding</u>. The parties hereto agree that each Lender shall have the right, but not the obligation to, bid for and become the purchaser, and may pay all or any portion of the purchase price of any or all Collateral by crediting Obligations against the purchase price of the Purchased Assets (as defined in the Asset Purchase Agreement) or any item thereof.

SECTION 7.2 <u>506(c) Waiver</u>. Subject to the entry of the Final Order, neither the Collateral nor any of the Administrative Agent, the Collateral Agent, the Lenders or Prior Lenders shall be subject to surcharge, pursuant to sections 105, 506(c) or 552 of the Bankruptcy Code or otherwise, by the Borrower or any other party-in-interest, without the prior written consent of the affected party. The "equities of the Chapter 11 case" exception contained in section 552(b) of the Bankruptcy Code is hereby waived.

ARTICLE VIII EVENTS OF DEFAULT

SECTION 8.1 <u>Events of Default</u>. Upon the occurrence and during the continuance of the following events ("Events of Default"):

(a) default shall be made in the payment of any principal of or interest on any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise;

(b) default shall be made in the payment of any Fee or any other amount (other than an amount referred to in <u>paragraph (a)</u> above) due under any Loan Document, when and as the same shall become due and payable;

(c) any representation or warranty made or deemed made in or in connection with any Loan Document or the Loans, or any representation, warranty, statement or information contained in any, certificate, or other document furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished; (d) the Borrower shall fail to file the Required Bankruptcy Pleadings in accordance with Section 4.1(k);

(e) the Bankruptcy Court shall fail to enter the Interim Order by not later than March 16, 2011;

(f) the Bankruptcy Court shall fail to enter an order that schedules the Confirmation Hearing to take place on a date not later than May 3, 2011;

(g) the Bankruptcy Court shall fail to enter the Final Order by not later than April 4, 2011;

(h) the Bankruptcy Court shall fail to enter the Confirmation Order by not later than May 12, 2011;

(i) the Bankruptcy Court shall fail to enter the Bid Incentives Order by not later than April 18, 2011;

(j) default shall be made in the due observance or performance by the Borrower of any covenant, condition or agreement contained in Section 5.2, 5.3(a), 5.8, or in Article VI;

(k) default shall be made in the due observance or performance by the Borrower of any covenant, condition or agreement contained in any Loan Document (other than those specified in <u>paragraphs (a), (b) or (j)</u> immediately above) and such default shall continue unremedied or shall not be waived for a period of ten (10) days after such occurrence;

(1) the Borrower shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations) incurred or entered into after the Petition Date, when and as the same shall become due and payable beyond any applicable grace period, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness entered into after the Petition Date if the effect of any failure referred to in this <u>clause (ii)</u> is to cause, or to permit the holder or holders of such Indebtedness or a trustee or other representative on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity; *provided* that, it shall not constitute an Event of Default pursuant to this <u>paragraph (l)</u> unless the aggregate amount of all such Indebtedness referred to in <u>clauses \$10,000,000</u> at any one time;

(m) one or more judgments, orders or decrees for the payment of money in an aggregate amount in excess of \$10,000,000 (exclusive of amounts covered by insurance for which coverage is not denied) in respect of obligations arising after the Petition Date shall be rendered against the Borrower and the same shall remain undischarged, unvacated or unbonded for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon properties of the Borrower to enforce any such judgment;

(n) any Lien created or purported to be created by any Security Document shall cease to be in full force and effect, or shall cease to give the Collateral Agent, for the

benefit of the Agents and Lenders, the Liens, rights, powers and privileges purported to be created and granted under such Security Documents or the Financing Orders (including a perfected first priority Lien on all of the Collateral thereunder in favor of the Collateral Agent) or shall be asserted by the Borrower not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement, such Security Document or the Financing Orders) security interest in or Lien on the Collateral covered thereby;

(o) any Loan Document, the Asset Purchase Agreement or any material provision of any thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by the Borrower or any other Person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or the Borrower shall repudiate or deny any portion of its liability or obligation for the payment of Obligations or the performance of any of its obligations under any Loan Document or the Asset Purchase Agreement;

- (p) a termination of the Asset Purchase Agreement shall have occurred;
- (q) the occurrence of any of the following in any of the Chapter 11 Cases:

(i) the entry of an order or ruling (which has not been withdrawn, dismissed or reversed): (w) to obtain additional financing under section 364 of the Bankruptcy Code not otherwise permitted pursuant to this Agreement (unless the proceeds of such financing will refinance and pay in full the Obligations with the termination of the Total Commitments); (x) to grant any Lien other than Permitted Liens upon or affecting any Collateral without the prior written consent of the Administrative Agent (unless the granting of such Lien is simultaneous with a refinancing to pay in full in cash all Obligations with the termination of the Total Commitments); or (y) to use cash collateral of the Lenders under section 363(c) of the Bankruptcy Code except as provided in the Financing Orders;

(ii) (a) the filing by the Borrower or any of its Affiliates, (b) the failure of the Borrower to oppose any filing by any third party or (c) the entry of an order with respect to the approval, of any reorganization plan or disclosure statement attendant thereto other than the Reorganization Plan and Disclosure Statement, or any direct or indirect material amendment to the Reorganization Plan or Disclosure Statement without the prior written consent of the Administrative Agent;

(iii) the entry of an order in any of the Chapter 11 Cases confirming the Reorganization Plan or another Chapter 11 plan of reorganization that does not provide for (a) the sale of the NSI Life Portfolio to the Purchasers under the Asset Purchase Agreement, (b) the termination of the Total Commitments and (c) the satisfaction of all Obligations as set forth herein;

(iv) (a) the filing by the Borrower or any of its Affiliates, (b) the failure of the Borrower to oppose any filing by a third party, or (c) the entry of an order with respect to the approval, of a motion to sell all or a portion of the NSI Life Portfolio pursuant to section 363 of the Bankruptcy Code or otherwise;

(v) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents, the Interim Order or the Final Order

(except with respect to ministerial changes) without the written consent of the Administrative Agent or the filing of a motion for reconsideration with respect to the Interim Order or the Final Order;

(vi) the entry of an order allowing any claim or claims under section 506(c) of the Bankruptcy Code or otherwise against the Administrative Agent, the Lenders, the Prior Lenders or any of the Collateral;

(vii) the appointment of an interim or permanent trustee in any of the Chapter 11 Cases or the appointment of a receiver or an examiner in any of the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, the reorganization of the Borrower or any of the other Debtors (or the Borrower or any of the other Debtors seeks or acquiesces in such relief);

(viii) the dismissal of any of the Chapter 11 Cases, or the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or the Borrower shall file a motion or other pleading seeking the dismissal or conversion of any of the Chapter 11 Cases;

(ix) other than pursuant to the Interim Order or the Final Order, the entry of an order by the Bankruptcy Court granting relief from, or modifying, the automatic stay under section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a lien on any Collateral, or (y) with respect to any lien on or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a Material Adverse Effect;

(x) the entry of an order in any of the Chapter 11 Cases avoiding or requiring disgorgement of any portion of the fees or other payments made on account of the Obligations pursuant to Loan Documents;

(xi) the failure of the Borrower to perform any of its obligations under the Interim Order or the Final Order, which materially and adversely affects the interests of any or all of the Lenders, the Administrative Agent, or the Prior Lenders as reasonably determined by the affected party; or

(xii) except as otherwise provided by the Interim Order or Final Order, the entry of an order in the any of Chapter 11 Cases granting any other superpriority administrative claim or lien junior, equal or superior to those granted to the Administrative Agent, the Lenders, or the Prior Lenders;

then, and in every such event (except with respect to Events of Default set forth in <u>clauses (d) – (i)</u>, if the date set forth in any such Event of Default has been extended with the prior written consent of the Administrative Agent, upon the expiration of any such extension), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Bankruptcy Court (but subject to any applicable provisions of the Loan Documents and the Financing Orders) by notice to the Borrower, take any or all of the following actions, at the same or different times (provided that the foregoing actions shall be subject to the Interim Order and Final Order, as the case may be):

(A) suspend the Total Commitments with respect to additional Loans, whereupon any additional Loans shall be made or incurred in the Administrative Agent's sole discretion (or in the sole discretion of the Required Lenders, if such suspension occurred at their direction) so long as such Event of Default is continuing;

(B) declare the Total Commitments to be terminated forthwith, whereupon the Total Commitments and such obligations shall immediately terminate;

(C) increase the rate of interest applicable to the Loans to the interest rate specified in Section 2.6(c);

(D) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind (except as provided in the Loan Documents and the Financing Orders), all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding;

(E) direct any or all of the Borrower to sell or otherwise dispose of any or all of the Collateral on terms and conditions reasonably acceptable to the Agents and the Required Lenders pursuant to sections 363, 365 and other applicable provisions of the Bankruptcy Code and the Administrative Agent and/or the Collateral Agent (on behalf of the Lenders) shall have the right to "credit bid" the allowed amount of the Lenders' claims during any sale of all or substantially all of the Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any Reorganization Plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code (and, without limiting the foregoing, direct the Borrower to assume and assign any lease or executory contract included in the Collateral to the Administrative Agent's or the Collateral Agent's designees in accordance with and subject to section 365 of the Bankruptcy Code,

(F) enter onto the premises of the Borrower in connection with an orderly liquidation of the Collateral, and/or

(G) exercise any rights and remedies provided to such Agent under the Loan Documents or at law or in equity, including all remedies provided for under the UCC and, pursuant to the Interim Order and the Final Order.

Notwithstanding anything herein or in any of the other Loan Documents to the contrary, the Administrative Agent or the Collateral Agent, as applicable, shall first seek to satisfy all outstanding Obligations from the Collateral comprised solely of the NSI Life Portfolio; *provided* that, if Collateral comprised solely of the NSI Life Portfolio is not sufficient at that time to satisfy all outstanding Obligations, the Administrative Agent or the Collateral Agent, as applicable, shall have the right to satisfy all remaining outstanding Obligations from the collateral in the

manner and order reasonably determined by the Administrative Agent or the Collateral Agent, as applicable.

Upon the occurrence and during the continuance of an Event of Default and the exercise by the Administrative Agent or the Collateral Agent, on behalf of the Lenders, of their rights and remedies under this Agreement and the other Loan Documents, the Borrower shall use commercially reasonably efforts to assist the Administrative Agent, the Collateral Agent and the Lenders in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to the Administrative Agent, the Collateral and the Required Lenders.

ARTICLE IX APPLICATION OF PROCEEDS

SECTION 9.1 <u>Application of Proceeds</u>. The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies following the occurrence and continuation of an Event of Default shall be applied, in full or in part, together with any other sums then held by Agents pursuant to this Agreement, promptly by the Administrative Agent as follows:

(a) *First*, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Administrative Agent and the Collateral Agent and their respective Advisors, and all expenses, liabilities and advances made or incurred by the Administrative Agent and the Collateral Agent in connection therewith and all amounts for which the Administrative Agent or the Collateral Agent is entitled to indemnification pursuant to the provisions of any Loan Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) *Second*, to the payment of all other reasonable costs and expenses of such sale, collection or other realization including compensation to the other Agents and Lenders and their agents and counsel and all costs, liabilities and advances made or incurred by the other Agents and Lenders in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) *Third*, without duplication of amounts applied pursuant to <u>clauses (a)</u> and <u>(b)</u> above to the payment in full in cash, *pro rata*, of interest and other amounts constituting Obligations (other than principal), in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(d) *Fourth*, to the payment in full in cash, *pro rata*, of principal amount of the Obligations; and

(e) *Fifth*, the balance, if any, to the Person lawfully entitled thereto (including the Borrower or its successors or assigns) or as a court of competent jurisdiction may direct.

(f) In the event that any such proceeds are insufficient to pay in full the items described in <u>clauses (a)</u> through (e) of this <u>Section 9.1</u>, the Borrower shall remain liable for

any deficiency.

ARTICLE X

THE AGENTS

SECTION 10.1 <u>Appointment</u>. Each Lender hereby irrevocably designates and appoints the Administrative Agent and the Collateral Agent as an agent of such Lender under this Agreement and the other Loan Documents. The Administrative Agent hereby irrevocably designates and appoints the Collateral Agent as an agent of the Administrative Agent under this Agreement and the other Loan Documents. Each Lender that holds Loans or has Commitments hereby irrevocably designates and appoints the Administrative Agent and the Collateral Agent as an agent of such Person under this Agreement. Each Lender irrevocably authorizes each Agent, in such capacity, through its agents or employees, to take such actions on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each Lender hereby authorizes the Administrative Agent to consent, on behalf of each Lender, to the Interim Order and the Final Order, and each Lender and the Administrative Agent or Lender.

SECTION 10.2 <u>Agent in Its Individual Capacity</u>. Each Person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or Affiliate thereof as if it were not an Agent hereunder.

SECTION 10.3 Exculpatory Provisions. No Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that such Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.2), and (c) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose or shall be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as such Agent or any of its Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.2) or in the absence of its own gross negligence or willful misconduct. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by the Borrower or a Lender, and no Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any

condition set forth in Article IV or elsewhere in any Loan Document.

SECTION 10.4 <u>Reliance by Agent</u>. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed or sent by a proper Person. Each Agent also may rely upon any statement made to it orally and believed by it to be made by a proper Person, and shall not incur any liability for relying thereon. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other advisors selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or advisors.

SECTION 10.5 <u>Delegation of Duties</u>. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through or delegate any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Affiliates of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

SECTION 10.6 Successor Agent. Either Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice, the Required Lenders (with the approval of the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned) shall have the right to appoint a successor to such Agent from among the Lenders. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after such retiring Agent gives notice of its resignation, then such retiring Agent may (with the approval of the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned)), on behalf of the Lenders, appoint a successor to such Agent, which successor shall be a commercial banking institution organized under the laws of the United States (or any State thereof) or a United States branch or agency of a commercial banking institution, in each case, having combined capital and surplus of at least \$500,000,000 (unless otherwise consented to by Borrower); *provided* that if such retiring Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth above, such retiring Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of such Agent hereunder until such time, if any, as the Required Lenders (with the approval of the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned)) appoint a successor to such Agent. Upon the acceptance of a successor's appointment as an Agent hereunder, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article X and Section 11.3 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

SECTION 10.7 <u>Non-Reliance on Agent and Other Lenders</u>. Each Lender acknowledges that it has, independently and without reliance upon any 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 Agreement. Each Lender further represents and warrants that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

SECTION 10.8 Indemnification. The Lenders severally agree to indemnify each Agent in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective outstanding Loans and Commitments in effect on the date on which indemnification is sought under this Section 10.9 (or, if indemnification is sought after the date upon which all Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such outstanding Loans and Commitments as in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

SECTION 10.9 <u>Actions in Concert</u>. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement (including exercising any rights of setoff) without first obtaining prior written consent of the Administrative Agent and the Required Lenders, it being the intent of the Lenders that any such action to protect or enforce rights under this Agreement shall be taken in concert and at the direction or with the consent of the Administrative Agent or the Required Lenders and as provided in <u>Section 8.1</u>.

SECTION 10.10 Enforcement. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent or the Collateral Agent, as applicable, or as the Required Lenders may require or otherwise direct the Administrative Agent or the Collateral Agent, as applicable, for the benefit of all Lenders; *provided* that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Collateral Agent from exercising the rights and remedies that inure to its benefit (solely in its capacity as Collateral Agent), (c) any Lender from exercising setoff rights in accordance with, and subject to, the terms of this Agreement, or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under any bankruptcy or insolvency law.

SECTION 10.11 Withholding Tax. To the extent required by any applicable law,

the Administrative Agent or the Collateral Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. Each Lender shall, and does hereby, indemnify the Administrative Agent and the Collateral Agent, and shall make payable in respect thereof within 30 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent or the Collateral Agent) incurred by or asserted against the Administrative Agent or the Collateral Agent by the Internal Revenue Service or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent or the Collateral Agent, as applicable, of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent or the Collateral Agent shall be conclusive absent manifest error. Each Lender hereby authorizes each of the Administrative Agent and the Collateral Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent or the Collateral Agent under this Section. The agreements in this Section shall survive the resignation and/or replacement of the Administrative Agent or the Collateral Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Total Commitments and the repayment, satisfaction or discharge of all other Obligations.

ARTICLE XI MISCELLANEOUS

SECTION 11.1 <u>Notices</u>. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier, as follows:

(a) if to the Borrower, to it at:

New Stream Insurance, LLC 38C Grove Street Ridgefield, CT 06877 Attention: John Collins Telecopier No.:

with copies to (which shall not constitute notice):

Reed Smith LLP 2500 One Liberty Place 1650 Market Street Philadelphia, PA 19103 Attention: Scott Esterbrook, Esq. Telecopier No.: (215) 851-1420

(b) if to the Administrative Agent or the Collateral Agent, to it at:

MIO Partners, Inc. 55 East 52nd Street New York, NY 10055 Attention: Chief Financial Officer and Casey Lipscomb Telecopier No.: (212) 891-4909

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

Hogan Lovells US LLP 875 Third Avenue

New York, NY 10022 Attention: Robin E. Keller Telecopier No.: (212) 918-3100

and

(c) if to a Lender:

c/o MIO Partners, Inc.55 East 52nd StreetNew York, NY 10055Attn: Frank Goveia, Chief Financial OfficerTelecopier No.: (646) 307-6150

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

Hogan Lovells US LLP 875 Third Avenue New York, NY 10022 Attention: Robin E. Keller Telecopier No.: (212) 918-3100

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopier or by certified or registered mail, in each case delivered, sent or mailed (properly addressed) to such party as provided in this <u>Section 11.1</u> or in accordance with the latest unrevoked direction from such party given in accordance with this <u>Section 11.1</u>, and failure to deliver courtesy copies of notices and other communications shall in no event affect the validity or effectiveness of such notices and other communications.

(d) <u>Change of Address, etc.</u> Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

SECTION 11.2 Waivers; Amendment.

(a) No failure or delay by any Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and each Lender hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether any Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent, the Collateral Agent and the Borrower, in each case with the written consent of the Required Lenders; *provided* that no such agreement shall:

(i) increase the Commitment or Additional Commitment of any Lender without the written consent of such Lender;

(ii) reduce the principal amount or premium of any Loan or reduce the rate of interest thereon, or reduce any Fees payable hereunder, or change the currency of payment of any Obligation, without the written consent of each Lender affected thereby;

(iii) postpone or extend the maturity of any Loan, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby or amend the definition of "Interest Period" so as to allow intervals of greater than one month without the regard to the consent of each affected Lender;

(iv) change <u>Section 2.14(b)</u> or (c) in a manner that would alter the *pro rata* sharing of payments or setoffs required thereby, without the written consent of each Lender; or

(v) change the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document (including this Section) specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender;

(vi) release all or substantially all of the Collateral from the Liens under the Financing Orders or the Security Documents or alter the relative priorities of the Obligations entitled to the Liens under the Financing Orders or the Security Documents (except in connection with securing additional Obligations equally and ratably with the other Obligations), in each case without the written consent of each Lender;

provided, further, that (1) no such agreement shall amend, modify or otherwise affect the rights or

duties of the Administrative Agent or the Collateral Agent without the prior written consent of the Administrative Agent or the Collateral Agent, as the case may be and (2) no such agreement shall increase the aggregate amount of Commitments (or increase the principal amount of outstanding Loans) without the prior written consent of the Required Lenders.

SECTION 11.3 Expenses; Indemnity.

(a) The Borrower agrees to pay:

(i) on the DIP Expiration Date, all of the reasonable out-of-pocket fees, costs and expenses of the Agents and Lenders, including the reasonable fees, charges and disbursements of Advisors for any Agent or Lender, in connection with, including, but not limited to, (w) the negotiation, preparation, drafting, revising, review, reproduction, and execution and delivery of term sheets, amendments, pleadings, documents and reports related to the Pre-Petition Credit Agreement, the Loans, the NSI Portfolio, the Loan Documents, the Chapter 11 Cases and any subsequent case under Chapter 7 of the Bankruptcy Code, (x) the sale of the NSI Portfolio to the Purchasers, (y) attendance at meetings, court hearings or conferences related to the Chapter 11 Cases and any subsequent case(s) under Chapter 7 of the Bankruptcy Code, and general monitoring of the Chapter 11 Cases and any subsequent case(s) under Chapter 7 of the Bankruptcy Code, and (z) the administration of the Loans and Commitments, the perfection and maintenance of the Liens securing the Collateral and any actual or proposed amendment, supplement or waiver of any of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), regardless of whether any fees, costs and expenses were incurred prior to or after the Petition Date:

(ii) promptly upon demand, all reasonable out-of-pocket costs and expenses incurred by the Agents and Lenders, including the reasonable fees, charges and disbursements of Advisors for the Agents and Lenders, in connection with any action, suit or other proceeding affecting the Collateral or any part thereof, in which action, suit or proceeding the Agents or the Lenders are made a party or participate or in which the right to use the Collateral or any part thereof is threatened, or in which it becomes necessary in the reasonable judgment of the Administrative Agent or the Collateral Agent to defend or uphold the Liens granted pursuant to the Financing Orders or by the Security Documents (including any action, suit or proceeding to establish or uphold the compliance of the Collateral with any Requirements of Law);

(iii) promptly upon demand, all costs and expenses incurred by any Agent or any Lender, including the reasonable fees, charges and disbursements of Advisors for any Agent or Lender, incurred in connection with the enforcement or protection of its rights under the Loan Documents, including its rights under this <u>Section 11.3(a)</u>, or in connection with the Loans made hereunder and the collection of the Obligations, including all such costs and expenses incurred during any workout, restructuring or negotiations in respect of the Obligations; and

(iv) The Borrower agrees to indemnify the Agents, each Lender, each Affiliate of any of the foregoing Persons and each of their respective partners,

controlling Persons, directors, officers, trustees, employees and agents (each such Person being called an "**Indemnitee**") against, and to hold each Indemnitee harmless from, all reasonable out-of-pocket costs and any and all losses, claims, damages, liabilities, penalties, judgments, suits and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution, delivery, performance, administration or enforcement of the Loan Documents, (ii) any actual or proposed use of the proceeds of the Loans, or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(b) The provisions of this <u>Section 11.3</u> shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the Transactions, the repayment or other treatment of the Loans provided for herein, the release of all or any portion of the Collateral, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Agents or any Lender. All amounts due under this <u>Section 11.3</u> shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

SECTION 11.4 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent, the Collateral Agent and each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void). Nothing in this Agreement, expresss or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender shall have the right at any time to assign to an Eligible Assignee all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it).

SECTION 11.5 <u>Survival of Agreement</u>. All covenants, agreements, representations and warranties made by the Borrower in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full

force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Total Commitments have not expired or terminated. The provisions of Sections 2.11, 2.12, 2.14 and 11.3 and Article X shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

SECTION 11.6 <u>Counterparts; Integration; Effectiveness</u>. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by the Administrative Agent and the Collateral Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 11.7 <u>Severability</u>. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 11.8 <u>Right of Setoff</u>. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates are hereby authorized (notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion to, hearing before, or order from, the Bankruptcy Court) but subject in all cases to the provisions of the Financing Orders, at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 11.9 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York, including Section 5-1401 of the General Obligations Law of that State, which is expressly made applicable hereto. The Borrower hereby consents and agrees that the Bankruptcy Court (or if the reference is withdrawn, the applicable United States District Court) shall have exclusive jurisdiction to hear and determine any claims or disputes between or among the Borrower, Agents and the Lenders pertaining to this Agreement or any of the other Loan Documents or to any other matter arising out of or relating to this Agreement; *provided* that Agents, the Lenders and the Borrower acknowledge that any appeals from the Bankruptcy Court may have to be heard by a court

other than the Bankruptcy Court; *provided further* that nothing in this Agreement shall be deemed or operate to preclude Agents from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Agents. The Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any court, and the Borrower hereby waives any objection that the Borrower may have based upon lack of personal jurisdiction, improper venue or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Borrower hereby waives personal service of the summons, complaint and other process may be made by registered or certified mail addressed to the Borrower at the address set forth in <u>Section 11.1</u> of this Agreement and that service so made shall be deemed completed upon the earlier of the Borrower's actual receipt thereof or three (3) days after deposit in the United States mail, proper postage prepaid.

(b) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in <u>Section 11.9(a)</u>. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than telecopier) in <u>Section 11.1</u>. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by applicable law.

SECTION 11.10 <u>Waiver of Jury Trial</u>. Each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement, any other Loan Document or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

SECTION 11.11 <u>Headings</u>. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 11.12 <u>Confidentiality</u>. Neither any Agent nor any Lender shall disclose any Confidential Information to any Person without the consent of the Borrower, other than (a) to such Agent's or such Lender's Affiliates and their officers, directors, employees, agents and advisors and to potential lenders and potential assignees of the Lenders, and then only if such potential lender or assignee has agreed to be bound by the terms of this <u>Section 11.12</u> and any other confidentiality agreement entered into by such Agent or such Lender with respect to such Confidential Information, (b) as required by any law, rule or regulation or judicial process, (c) as

requested or required by any state, federal or foreign Governmental Authority or regulatory authority or examiner regulating such Lender Party (including the National Association of Insurance Commissioners), , and (d) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder in a related court proceeding so long as such Confidential Information is (i) filed under seal with the applicable court, (ii) used in a manner consistent with any applicable protective order entered by any applicable court proceeding, or (iii) as may be agreed between the Administrative Agent and the Borrower. "Confidential Information" means information concerning the Borrower of any of its direct or indirect shareholders, or any of their respective employees, directors, or Subsidiaries, or Affiliates (including without limitation the Permitted Holders) received by any Agent or any Lender on a confidential basis from the Borrower or any other Person under or pursuant to this Agreement or any other Loan Document including without limitation financial terms and financial and organizational information contained in any documents, statements, certificates, materials or information furnished, or to be furnished, by or on behalf of the Borrower or any other Person on a confidential basis in connection with this Agreement and the Loan Documents, but does not include any such information that (i) is publicly available at the time of disclosure or becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to any Agent or any Lender on a nonconfidential basis from a source other than the Borrower or any of its direct or indirect shareholders, or any of their respective employees, directors, Subsidiaries or Affiliates (including without limitation, the Permitted Holders) or any of their respective agents or representatives.

SECTION 11.13 <u>Interest Rate Limitation</u>. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively, the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 11.14 <u>Obligations Absolute</u>. To the fullest extent permitted by applicable law, all obligations of the Borrower hereunder with respect to the granting of any Lien on any property shall be absolute and unconditional irrespective of:

(a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Borrower or any other Person;

(b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any other Person;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;

(d) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations;

(e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or

(f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any other Person.

SECTION 11.15<u>USA PATRIOT Act Notice</u>. Each Lender that is subject to the Patriot Act (as hereinafter defined) and each of the Administrative Agent and the Collateral Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name, address and tax identification number of the Borrower and other information regarding the Borrower that will allow such Lender or the Administrative Agent or Collateral Agent, as applicable, to identify the Borrower in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Lenders, the Collateral Agent and the Administrative Agent.

SECTION 11.16 Parties including the Trustees; Bankruptcy Court Proceedings.

This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon the Borrower, the bankruptcy estate of the Borrower, and any trustee, other bankruptcy estate representative or any successor-in interest of the Borrower in the Chapter 11 Cases or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of Agents and Lenders and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any of the Chapter 11 Cases or any other bankruptcy case of the Borrower to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of any of the Chapter 11 Cases or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Administrative Agent or the Collateral Agent file financing statements or otherwise perfect its Liens under applicable law. The Borrower may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the express written consent of the Agents and Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by the Borrower without the prior express written consent of Agents and Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of the Borrower, Agents and Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

IN WITNESS WHEREOF, this Agreement has been executed and delivered on the date set forth above by a duly authorized representative of each of the parties hereto.

BORROWER

NEW STREAM INSURANCE, LLC

By: New Stream Capital, LLC, its Special Member

By: _____

Name: Title:

LENDERS

MIO PARTNERS, INC.,

as manager, managing member, general partner, investment manager, adviser or authorized signatory, as the case may be, for each of the Lenders

By:

Name: Title:

AGENTS

MIO PARTNERS, INC., in its capacity as Administrative Agent and Collateral Agent

By:

Name: Title:

SCHEDULES

SCHEDULES 2.1(a), 2.1(b)(i) and 2.1(b)(ii)

Lender	Percentage	2.1 (a)	2.1(b)(i)	2.1(b)(ii)	New Commitment	
		Total Commitment	Principal of Pre-Petition Loan	Pre-Petition Obligations		
SSALT Fund Limited, a Guernsey, Channel Islands limited company, through its Barfield Nominees Ltd nominee account which is Barfield Nominees Limited A/C SLI01	54.13%	\$30,759,337	\$21,370,669	\$22,639,837	\$8,119,500	
Compass Special Situations Fund LLC, a Delaware limited liability company, through its Barfield Nominees Ltd nominee account which is Barfield Nominees Limited A/C CSJ01	19.02%	\$10,808,103	\$7,509,147	\$7,955,103	\$2,853,000	
Compass COSS Master Limited, a Guernsey, Channel Islands protected cell company, through its Barfield Nominees Ltd nominee account which is Barfield Nominees Limited A/C CSC01	21.98%	\$12,490,121	\$8,677,763	\$9,193,121	\$3,297,000	
Special Situations Investment Fund LP, a Delaware limited partnership	4.87%	\$2,767,374	\$1,922,689	\$2,036,874	\$730,500	
TOTALS	100%	\$56,824,935	\$39,480,268	\$41,824,935	\$15,000,000	

SCHEDULE 3.5 TO CREDIT AGREEMENT

SUBSIDIARIES

CFC of Delaware LLC

Georgia Premium Funding Company I, LLC

Georgia Premium Funding II, LLC

National Life Funding, LLC

New Stream Insurance Holdings, LLC

Northstar Financial Services, Ltd.

Premium Funding II, LLC

Secondary Life Capital Management, LLC

United National Funding Collateral Holdings, LLC

Vantage Funding, LLC

Vantage Funding II, LLC

SCHEDULE 6.1(B) TO CREDIT AGREEMENT

EXISTING INDEBTEDNESS

- 1. Approximately \$37,000 in consulting fees past due to SPAR LP.
- 2. Contingent obligation to Guggenheim payable on sale of NSI Life Portfolio.

SCHEDULE 6.2(C) TO CREDIT AGREEMENT

EXISTING LIENS

To be added prior to closing.

SCHEDULE 6.3(A) TO CREDIT AGREEMENT

EXISTING INVESTMENTS

- 1. Insurance Premium Loans in an aggregate amount of \$69,531,524.
- 2. Life Settlements in an aggregate amount of \$15,171,567.

EXHIBIT A

New Stream Insurance, LLC 13-Week Budget

Period Beginning	Budget 3/14/2011	Budget 3/21/2011	Budget 3/28/2011	Budget 4/4/2011	Budget 4/11/2011	Budget 4/18/2011	Budget 4/25/2011	Budget 5/2/2011	Budget 5/9/2011	Budget 5/16/2011	Budget 5/23/2011	Budget 5/30/2011	Budget G/G/2011	
Period Ending	3/20/2011	3/27/2011	4/3/2011	4/10/2011	4/17/2011	4/24/2011	5/1/2011	5/8/2011	5/15/2011	5/22/2011	5/29/2011	6/5/2011	6/12/2011	Total
Beginning Cash	420,915	420,915	420,915	420,915	420,915	420,915	420,915	420,915	420,915	420,915	420,915	420,915	420,915	420,915
Cash Receipts Interest income Redemptions of life settlement contracts														
Proceeds from DIP loan Transfers from Bank of Utah Escrow Account Other	750,000	1,070,237	1,352,040	1,083,182	2,117,860	1,393,811	1,413,494	1,193,239	1,721,010	1,853,452	1,051,675 236,385	1,155,764	1,506,304	15,000,000 2,898,452
Total Cash Receipts	750,000	1,070,237	1,352,040	1,083,182	2,117,860	1,393,811	1,413,494	1,193,239	1,721,010	1,853,452	1,288,060	1,155,764	1,506,304	17,898,452
Cash Disbursements Portfolio Company Expenses														
Legal	-	-	-	-	-	-	83,500	-	-	-	136,000	-	-	219,500
Other Professionals and Consultants		10,000	1,800		25,000	10,000	3,600	-	25,000	10,000	3,600		35,000	124,000
Accounting, Tax & Administrative Interest Expense	-	-	-	-	59,500	2,500	-	-	59,500	2,500	-	-	59,500	183,500
Settlements (Surrender & Other)	-	-	-	-	-	25,000	-	-	-	25,000	-	-	-	50,000
Other Expenses	-	-	-	12,635	60,500		-	12,635	500	60,000	-	-	500	146,770
Operating entities total	•	10,000	1,800	12,635	145,000	37,500	87,100	12,635	85,000	97,500	139,600	•	95,000	723,770
Life Settlement Premiums Contingency Reserve	750,000	1,060,237	1,350,240	1,070,547	1,972,860	1,356,311	1,326,394	1,180,604	1,636,010	1,755,952	1,148,460	1,155,764	1,411,304	16,424,682 750,000
Total Cash Disbursements	750,000	1,070,237	1,352,040	1,083,182	2,117,860	1,393,811	1,413,494	1,193,239	1,721,010	1,853,452	1,288,060	1,155,764	1,506,304	17,898,452
Cash Source / (Use)	-	-		-	-	-	-		-	-				-
Ending Cash	\$ 420.915	\$ 420.915 \$	420.915 \$	420.915 \$	420.915 \$	420.915 \$	420.915 \$	420.915 \$	420.915 \$	420.915 \$	420.915 \$	420.915 \$	420.915 \$	420.915

EXHIBIT B

EXHIBIT B

BORROWING REQUEST

_____, 2011

MIO Partners, Inc. as Administrative Agent for the Lenders referred to below
55 East 52nd Street
New York, NY 10055
Attention: Chief Financial Officer and Casey Lipscomb Telecopier No.: (212) 891-4909

Ladies and Gentlemen:

Reference is made to the Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of March ___, 2011, among new Stream Insurance, LLC, as Borrower (the "<u>Borrower</u>"), SSALT Fund Limited, by and through its nominee, Compass Special Situations Fund LLC, by and through its nominee, Compass COSS Master Limited, by and through its nominee, and Special Situations Fund LP, as Lenders, and MIO Partners, Inc., as Administrative Agent (the "<u>Administrative Agent</u>") and Collateral Agent (as may be amended or otherwise modified from time to time, the "<u>DIP Credit Agreement</u>"). Capitalized terms which are not otherwise defined herein shall have the meanings given to such terms in the DIP Credit Agreement.

This notice constitutes a Borrowing Request and the Borrower hereby requests Borrowings under the DIP Credit Agreement, and in that regard the Borrower specifies the following information with respect to such Borrowings requested hereby:

Aggregate Amount of Borrowing:	\$		
Date of Borrowing (which shall be a Business Day):	, 2011		
Location and Number of Borrower's Account to Which Funds are to be Disbursed (which shall be the New Stream Securities Account):			

The Borrower hereby represents and warrants that the conditions set forth in [Section 4.1]¹ and Section 4.2 have been satisfied as of the date of this Borrowing Notice.

Very truly yours,

NEW STREAM INSURANCE, LLC

By: New Stream Capital, LLC, its Special Member

By:_____

Name: Title:

¹ Only applies for initial borrowing; delete for subsequent borrowings.