

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE MIDDLE DISTRICT OF TENNESSEE**  
**NASHVILLE DIVISION**

In re:	)	
	)	Chapter 11
<b>ORECK CORPORATION, ET AL.</b>	)	Case No. 13-04006
	)	
Debtors.	)	Judge Lundin
	)	(Jointly Consolidated)

**SECOND MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING  
(A) THE DEBTORS TO OBTAIN POSTPETITION FINANCING ON A SENIOR  
SECURED SUPERPRIORITY BASIS PURSUANT TO 11 U.S.C. §§ 105, 361, 362,  
363, AND 364; (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11  
U.S.C. § 363; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION  
SECURED LENDERS PURSUANT TO 11 U.S.C. §§ 361, 363 AND 364; (III)  
SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES  
4001(b) AND (c); AND (IV) GRANTING RELATED RELIEF**

Oreck Corporation and the above Debtors (the “Debtors”)<sup>1</sup>, hereby submit this second motion<sup>2</sup> for entry of interim and final orders (1) approving postpetition financing, (2) granting liens and providing superpriority administrative expense status pursuant to 11 U.S.C. §§ 363 and 364(c) and (d), (3) authorizing use of cash collateral and providing adequate protection pursuant to 11 U.S.C. §§ 361 and 363, (4) modifying automatic stay in limited circumstances, (5) setting final hearing, and (6) granting related relief pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, the Debtors state as follows:

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<sup>1</sup> The Debtors are as follows: Oreck Corporation, ASP Oreck, Inc., Oreck Direct, LLC, Oreck Merchandising, LLC, Oreck HomeCare, LLC, Vecteur, LLC, Oreck Holdings, LLC, Oreck Manufacturing Company, and Oreck Sales, LLC.

<sup>2</sup> Terms used but not otherwise defined herein shall have the meaning ascribed to them in the DIP Interim Order (as defined herein).

## **JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for the relief requested herein are Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Bankruptcy Rules 4001 and 9014.

## **PRELIMINARY STATEMENT**

3. On May 6, 2013 (the "Petition Date"), the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases").
4. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No creditors' committee, trustee or examiner has been appointed in these cases.
5. All of the Debtors' assets are subject to a lien securing a certain revolving line of credit dated August 29, 2012 in the maximum amount of \$20 million held by GSC Recovery III, L.P. (as successor in interest to Wells Fargo Bank, National Association, the "Prior Prepetition First Lien Lender"), as lender (the "Prepetition First Lien Lender").
6. The Debtors' assets are also subject to a lien securing a certain revolving line of credit in original amount of \$5,467,897 held by Gleacher Products Corp., as administrative agent, and certain institutions from time to time party thereto as lenders ("Prepetition Second Lien Lenders"). The rights of the Prepetition Second Lien Lenders, however, are subject to the terms of an Intercreditor Agreement dated March 19, 2010, in which the Prepetition Second Lien Lenders waived all rights that it may have as a junior

lien creditor, including use of cash collateral under §363, DIP Financing under §364 and any “carve out” consented to by the Prepetition First Lien Lender in writing.

7. In addition to their secured debt, the Debtors have unsecured debt of approximately \$15 million owed to various trade creditors and other general unsecured creditors of the Debtors.

8. The Debtors intend to finance themselves pending a potential sale of the Debtors as a going concern and thereby avert a liquidation and wind-down by, among other things, entry into the postpetition financing facility (the “DIP Facility”) to be provided by GSC Recovery III, L.P. and any other lenders that become signatories to the DIP Credit Agreement (the “DIP Lenders”) led by Black Diamond Commercial Finance, L.L.C., as Agent (the “Agent”).<sup>3</sup>

9. The reasons supporting the Debtors’ need to incur postpetition financing are compelling and set forth in detail below. The Debtors’ prepetition credit facility provides that the bank accounts are swept daily such that there is little to no unencumbered cash for the Debtors to fund their postpetition operations, especially the extra expenses resulting from the Chapter 11 filings. In addition, the Debtors simply cannot generate cash fast enough to cover expenses as they arise. Consequently, postpetition financing will be necessary to fund the Debtors’ cash needs during the pendency of the Chapter 11 Cases and after canvassing the market the Debtors believe that the only other potentially available financing is from a potential purchaser of assets, Oreck Acquisition Company, but that, on an overall basis, the DIP Facility is more

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<sup>3</sup> Another Black Diamond entity, Black Diamond Capital Management, LLC, owns or controls investment funds (including GSC Recovery III, L.P.) (such entities, collectively, the “Sponsor”) that own or control a majority of the voting stock of Oreck Holdco 1, Inc., the ultimate parent company of the Debtor.

favorable to the Debtors that the potential financing offered by Oreck Acquisition. Additionally, since the Prepetition First Lien Lender is consenting to this DIP Facility, the Debtors are able to avoid a contested priming lien hearing.

10. Unless this Court permits the Debtors to incur postpetition financing, the Debtors will be unable to meet their ordinary course business expenditures, which are necessary to conduct their operations in order to maximize value for the Debtors' creditors. Accordingly, to ensure the Debtors have sufficient liquidity to fund their operations and are not forced to liquidate, this Court should approve the Motion and the DIP Loan Documents (as defined below), and authorize the Debtors to obtain postpetition financing.

#### **THE DIP FACILITY**

11. As a result of negotiations, the Debtors and the DIP Lenders, acting through the Agent, have agreed to provide the Debtors with a postpetition DIP Facility in the maximum amount of \$9,500,000. A true and correct copy of a substantially final draft of the Debtor-in-Possession Credit and Security Agreement (the "DIP Credit Agreement") is attached hereto as Exhibit "A."

12. The Debtors believe that the DIP Facility will provide them with sufficient liquidity to operate their assets during the Chapter 11 Cases in order to maximize the value of their assets for the benefit of its creditors. In contrast, without the DIP Facility, the Debtors will have little available cash and will, effectively, be unable to effectuate a sale of the Debtors as a going concern and a quick conclusion to this Chapter 11 Cases, be unable to maximize the value of their assets, and be unable to minimize the adverse effects of the commencement of the Chapter 11 Cases on their business. Consequently,

this Court should approve the DIP Credit Agreement and the documents related thereto (collectively, the “DIP Loan Documents”) and authorize the Debtors to obtain the postpetition financing contemplated therein.

**A. Terms of the DIP Facility**

13. The terms of the DIP Facility are more specifically set forth in the DIP Credit Agreement attached hereto as Exhibit “A.”<sup>4</sup> The key provisions of the DIP Facility are as follows:<sup>5</sup>

(a) Borrowers: All Debtors and Oreck Franchise Services, LLC, as defined in the Preamble to the DIP Credit Agreement.

(b) Guarantor: ASP Oreck Inc., as set forth in the Parent Guaranty.

(c) Facility Amount: \$9,500,000; of which the revolving credit facility will be used as needed to cover no more than 115% (or, after the four-week anniversary of the Filing Date, 110%) of the estimated weekly amounts under the Budget set forth herein as Exhibit B.

(d) Type of Facility: Senior secured superpriority debtor-in-possession credit facility comprised of a revolving credit facility with a maximum commitment amount of \$9,500,000, which such facilities are governed by a “Borrowing Base” more fully described in the DIP Credit Agreement, in each case, as set forth on Schedule C-1 to the DIP Credit Agreement and as more fully described in Sections 2.1 and 2.2 of the DIP Credit Agreement.

(e) Purpose: To finance working capital and other general corporate purposes while under Chapter 11 protection, including the payment of expenses associated with the Chapter 11 Cases and the sale of the Debtors as a going concern as set forth in Section 7.13 of DIP Credit Agreement.

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<sup>4</sup> The form of DIP Credit Agreement attached hereto as Exhibit A is in substantially final form, but is still being reviewed and edited by the Borrower and the DIP Lenders. Any material modifications will be identified for the Court at or prior to the hearing on the Motion.

<sup>5</sup> To the extent that the terms set forth herein differ from the terms in the attached proposed DIP Interim Order and the DIP Credit Agreement, the DIP Interim Order and the DIP Credit Agreement shall govern.

(f) DIP Agent: Black Diamond Commercial Finance, L.L.C. as defined in the Preamble to the DIP Credit Agreement.

(g) Lenders: The financial institutions identified in the DIP Credit Agreement and as set forth on Schedule C-1 to the DIP Credit Agreement.

(h) Maturity Date: Maturity Date means the earliest of (i) the date that is four months from the Filing Date (as defined in the DIP Credit Agreement), (ii) the date which is thirty (30) days following the date of entry of the Interim DIP Order if the Final DIP Order has not been entered by the Bankruptcy Court on or prior to such date, (iii) the date upon which the automatic stay expires, (iv) the date of the closing of a sale of all or substantially all of the Debtors' assets pursuant to Section 363 of the Code, (v) the date of entry of an order confirming a plan in any of the Chapter 11 Cases and (vi) such earlier date on which all Revolving Loans and other extensions of credit shall become due and payable in accordance with the terms of the DIP Credit Agreement and the other DIP Loan Documents, as defined in Schedule 1.1 to the DIP Credit Agreement.

(i) Collateral: All real and personal property of the Debtors, including without limitation, inventory, accounts, equipment, fixtures, general intangibles (including, without limitation, tax refunds, trademarks, and tradenames), instruments, documents, investment property, stock, chattel paper, and goods, (respectively as defined in the Uniform Commercial Code), all real estate and leasehold interests, all proceeds from the sale, disposition, or assignment of any leasehold interest, and all other "Collateral" (as defined in the DIP Loan Documents), all of the foregoing now owned or in which the Debtors have any interest (and without regard to whether acquired prior or subsequent to the Petition Date) or hereafter acquired or in which the Debtors obtain an interest; and the products and proceeds thereof, (but not including all proceeds of any and all avoidance actions under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code), as set forth in Section 3.1 to the DIP Credit Agreement and as defined in Schedule 1.1 to the DIP Credit Agreement.

(j) Priority and Security: The Agent (for the benefit of the Secured Parties) is granted, pursuant to the DIP Loan Documents and the DIP Interim Order, valid, binding, enforceable and perfected first priority Liens in and to the Collateral as set forth in Section 3.1 and Section 5.32 of the DIP Credit Agreement.

(k) Interest Rates and Interest Periods: All Revolving Loans and all other Obligations that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a per annum rate equal to five and a half (5.5%), but in no event more than the maximum lawful rate, as set forth in Section 2.6(a) of the DIP Credit Agreement.

(l) Default Rate: Upon the occurrence and during the continuance of any Event of Default and at the election of DIP Agent or Required Lenders, the applicable interest rate with respect to all loans and other Obligations under the DIP Credit Agreement will increase by 2.00% per annum, as set forth in Section 2.6(b) of the DIP Credit Agreement, but shall be first payable only upon entry of the Final Order.

(m) Agent Fee: \$570,000 (the "Agent Fee"), as more fully described in the Fee Letter.

(n) Advances: Revolving Loans will be available twice a week on an initial basis or daily if a cash control agreement satisfactory to the Agent is entered into, as more fully described in the DIP Credit Agreement.

(o) Payments: Permits voluntary prepayment of Revolver Loans and mandatory prepayments of the Revolver Loans with respect to over-advances, dispositions, extraordinary receipts, non-permitted indebtedness, equity, business interruption insurance and excess liquidity, all such payments to be applied in the manner set forth in Section 2.4.

(p) Borrowing Base: Borrowings of Revolving Loans under the DIP Facility shall be limited to a Borrowing Base, as defined in Schedule 1.1 the DIP Credit Agreement.

(q) Carve-Out: The Carve-Out shall include: (i) fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, (ii) the Success Fee (as such term is defined pursuant to that certain Application for Order of Employment and Retention of Sawaya Segalas & Co., LLC) and (iii) following the occurrence of an Event of Default an amount not exceeding \$750,000 in the aggregate, plus all unpaid professional fees and expenses allowed by this Court that were incurred prior to the occurrence of an Event of Default up to the amount allocated for such fees in the Approved Budget through the date of such Event of Default, as set forth in paragraph 7(b) of the DIP Interim Order.

(r) Use of Cash Collateral: The Borrowers will use Cash Collateral (as defined in the DIP Credit Agreement) to pay down the Prepetition First Lien Credit Agreement Obligations (as defined herein) through the Roll-Up Payments (as defined herein) and then the DIP Facility in a manner consistent with the Financing Order (as defined in Schedule 1.1 of the DIP Credit Agreement) and shall not otherwise use Cash Collateral without the prior written consent of the DIP Agent, as set forth in Section 7.18(b) of the DIP Credit Agreement.

(s) Conditions Precedent to All Loans: Customary conditions precedent for facilities of this nature, as set forth in the DIP Credit Agreement

attached hereto, set forth on Schedule 4.1 and Section 4.2 to the DIP Credit Agreement.

(t) Covenants: The DIP Facility contains affirmative, negative and financial reporting covenants customary for facilities of this nature and otherwise satisfactory to the DIP Agent, as set forth in Articles 6, 7 and 8 of the DIP Credit Agreement, including, without limitation, providing financial statements and collateral reports, maintaining properties, paying taxes, hiring a chief financial officer reasonably satisfactory to the Agent, complying with environmental laws, etc.

(u) Grant of Lien Under Section 364(c)(1), (c)(2) and (c)(3) and 364(d). The DIP Facility (i) has priority, pursuant to section 364(c)(1) of the Bankruptcy Code, over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, except for the Carve Out, (*DIP Interim Order* ¶ 7(a)); (ii) is secured, pursuant to section 364(c)(2) by liens on all unencumbered prepetition and postpetition property of the Debtors (*DIP Interim Order* ¶ 8(a)); (iii) is secured, pursuant to section 364(c)(3), by perfected junior liens upon all prepetition and postpetition property of the Debtors that is subject a Permitted Prior Senior Lien (*DIP Interim Order* ¶ 7(c)) and (iv) is secured, pursuant to section 364(d)(1), by first priority priming liens on all present and after-acquired property of the Debtors that is subject to a lien on or after the Petition Date on the Debtors' Assets subject only to the Carve Out and the Permitted Prior Senior Liens, *DIP Interim Order* ¶ 8(b).

(v) Adequate Protection of Prepetition Secured Parties. In addition to the Roll-Up Payments, the Prepetition First Lien Lender is granted, a replacement security interest in and junior lien, subject only to the DIP Lien and the Permitted Prior Senior Liens upon all the Collateral of the same type and category in which they had Prepetition Liens and a junior section 507(b) claim (which shall remain senior to the Second Lien Lender Replacement Claim). *DIP Interim Order* P. 14(a) and (c). The Prepetition Second Lien Lenders are granted, a replacement security interest in and junior lien, subject only to the DIP Lien, the Permitted Prior Senior Liens and the First Lien Lender Replacement Lien upon all the Collateral of the same type and category in which they had Prepetition Liens, and a junior section 507(b) claim (which shall remain junior to the First Lien Lender Replacement Claim). *DIP Interim Order* ¶ 14(b) and (d).

(w) Validity of Prepetition Claim or Lien. The Prepetition First Lien Credit Agreement Obligations are deemed valid, legal, binding, enforceable without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$4,230,716.33 and the Debtors release any claims against the Prepetition First Lien Lender and its affiliates with respect to the Prepetition First Lien Credit Agreement Obligations. *DIP Interim Order* ¶ 4(a)(i). The Prepetition Second Lien Obligations are deemed valid, legal, binding, enforceable without defense, counterclaim or offset of any kind, in the aggregate



principal amount of approximately \$5,467,897 and the Debtors release any claims against the Prepetition First Lien Lender and its affiliates with respect to the Prepetition First Lien Credit Agreement Obligations. *DIP Interim Order* ¶ 4(a)(ii). In addition, the liens and security interests granted to the Prepetition Secured Parties are valid, binding, perfected, enforceable, not subject to avoidance, recharacterization or subordination and subject and subordinate only to (x) the DIP Liens, (y) the Carve Out and (z) Permitted Prior Senior Liens. *DIP Interim Order* ¶ 4(b).

(x) Automatic Stay. The automatic stay is modified to the extent necessary to permit the DIP Lenders to exercise, upon the occurrence of an Event of Default and the giving of three (3) business days' written notice provided for in the DIP Documents and to the Committee, all rights and remedies under the DIP Documents (including, without limitation, drawing of the Sponsor L/C); *provided, however*, with respect to Permitted Prior Senior Liens, any exercise of such rights and remedies shall be in accordance with applicable non-bankruptcy law in respect of Permitted Prior Senior Liens; *provided, further*, during the three (3) day notice period, the Debtors, the Committee or any other party in interest may seek an order of the Court staying the DIP Lender's exercise of such remedies; *provided, further*, upon the occurrence of a Default or Event of Default the DIP Lenders' right to have a motion to modify the automatic stay vacated and modified shall be heard on an emergency basis at the earliest possible opportunity. *DIP Interim Order* ¶ 9(b).

(y) Modification of Lien Perfection. The Adequate Protection Liens granted to the Prepetition Second Lien Lenders are perfected upon entry of the DIP Interim Order. *DIP Interim Order* ¶ 14(b). The DIP Liens granted to the DIP Lenders are perfected upon entry of the DIP Interim Order. *DIP Interim Order* ¶ 17.

(z) Waiver of Claims. Without prejudice to the rights of any other party, including the Committee, the Debtors have waived any and all claims and causes of action arising prior to entry of this Order and through the period prior to entry of the Final Order against the DIP Lenders, and their affiliates, directly related to the DIP Documents or the negotiation of the terms thereof. *DIP Interim Order* ¶ 20. A Challenge Deadline with respect to certain Claims and Defenses against the Prepetition Secured Parties or their affiliates, representatives, attorneys or advisors in connection with matters related to the Prepetition Secured Credit Documents, the Prepetition Secured Obligations, or the Prepetition Collateral exists. If no such challenge is filed by the Challenge Deadline, (i) Prepetition Secured Obligations shall constitute allowed claims, (ii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected and (iii) the Prepetition Secured Obligations, the Prepetition Liens on the Prepetition Collateral and the Prepetition Secured Parties shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates. *DIP Interim Order* ¶ 20.

(aa) Release, Waiver or Limitation under 506(c). Upon entry of the Final Order, no expenses of administration of the Cases or any future proceeding that may result therefrom shall be charged against or recovered from the Collateral, the Prepetition Collateral or the Prepetition Secured Parties' Replacement Collateral pursuant to section 506(c) without the prior written consent of the DIP Lenders or the Prepetition Secured Parties, as the case may be. *DIP Interim Order* ¶ 10. In the event no action by a third party is brought before the Challenge Deadline, upon entry of the Final Order, any and all payments or proceeds remitted to the DIP Lenders or the Prepetition First Lien Lender pursuant to the provisions of this Order or any subsequent order of the Court shall be received free and clear of any claim, charge, assessment or other liability including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b). *DIP Interim Order* ¶ 11.

(bb) Events of Default: Customary events of default for facilities of this nature, as set forth in Article 9 to the DIP Credit Agreement.

14. The Debtors request the approval of the DIP Facility because the Debtors are in a precarious financial position. The Debtors are losing money and sales by the Debtors are quickly deteriorating. The Debtors are unable to find other financing and converting these cases to cases under Chapter 7 would result in a loss of significant value to the Debtors' estates.

15. Despite the Debtors' negotiation efforts, however, certain of the terms and conditions of the DIP Facility may be considered objectionable by the Court and other parties in interest. Accordingly, the Court and other parties in interest are urged to review the terms and conditions of the DIP Facility and the proposed DIP Interim Order carefully. Among other things, the DIP Facility and the proposed DIP Interim Order provide for the following:

(a) The DIP Credit Agreement provides that the Debtors shall utilize cash collateral to repay, on a rolling basis, the Prepetition First Lien Credit Agreement Obligations. See DIP Interim Order, ¶ 13.

(b) The Debtors have agreed to (i) release and discharge the Prepetition Lender from any and all claims and causes of action arising out of the Prepetition Loan Documents, and (ii) waive any and all claims, defenses as to the validity, perfection, priority, enforceability, and avoidability of the Prepetition Obligations or the security interests, liens, deeds of trust or mortgages granted to secure the Prepetition Obligations, and (iii) agree, without further Court order, to the allowance of the prepetition claims of the Prepetition Lender as secured claims in an amount not less than the Prepetition Obligations pursuant to Sections 502 and 506(a)(1) and (6) of the Bankruptcy Code. Such release, discharge, waivers and agreements are without prejudice to the right of the Creditors' Committee or any party in interest to seek to disallow the Prepetition Lender's claims, avoid any security or collateral interest in the assets of the Debtors claimed by the Prepetition Lender, and to seek the disgorgement of all or any part of any payment made by the Debtors to the Prepetition Lender within a specific amount of time. See DIP Interim Order, ¶ 19.

(c) The Debtors and the DIP Lenders have agreed that the Agent's Liens in the Collateral and the Super-Priority Claim are subject and subordinate to the Carve-Out, which shall be an amount equal to the sum of (a) all accrued and unpaid bankruptcy court allowed professional fees and expenses of attorneys, accountants, financial advisors and consultants retained by the Debtors or the Creditors' Committee (the "Professional Fees"), whether incurred prior to or following the occurrence of an Event of Default provided that such Professional Fees to be included in the Carve-Out and entitled to priority over the Liens and

the Super-Priority Claim shall not exceed \$750,000 in the aggregate, plus (b) the Success Fee (as such term is defined pursuant to that certain Application for Order of Employment and Retention of Sawaya Segalas & Co., LLC), plus (c) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a) (the “U.S. Trustee Fees”) (the “Carve-Out”). See DIP Interim Order, ¶ 7(b).

**B. The Necessary Showings Under Section 364**

16. Section 364 of the Bankruptcy Code provides, in pertinent part, as follows:

(a) If the trustee is authorized to operate the business of the debtor under Section 721, 1108, 1203, 1204, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

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

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

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

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

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

11 U.S.C. § 364(a) through (d).

17. Generally, Section 364(c) of the Bankruptcy Code requires a debtor to demonstrate that alternative sources of credit are not available under the other provisions of Section 364. See In re Ames Dep't Stores, Inc., 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990). Although there is "no duty to seek credit from every possible lender before concluding that such credit is unavailable," the statute obligates a debtor to show "by a good faith effort that credit was not available without the senior lien." Bray v. Shenandoah Fed. Sav. and Loan Assoc. (In re Snowshoe Co., Inc.), 789 F.2d 1085, 1088 (4th Cir. 1986). Given the Debtors' current financial status, in the absence of financing from the DIP Lenders, the Debtors will face an imminent shutdown of their operations.

18. Against this statutory backdrop, courts will evaluate the facts and circumstances of a debtor's case, and will accord significant weight to the necessity for obtaining the financing. See, e.g., In re Snowshoe, 789 F.2d at 1088; In re Ames, 115 B.R. at 40. For example, the need for a swift injection of cash to preserve a debtor's business satisfies the requirements of Section 364(d) when coupled with unsuccessful attempts to locate alternative financing. See In re Ames Dep't Stores, Inc., 115 B.R. at 40. See also In re Snowshoe, 789 F.2d at 1088 (primary facts supporting priming liens included lack of alternative financing sources and need to obtain prompt cash infusion to preserve value of debtor's business).

19. Bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including the decision to borrow money. See Group of Institutional Investors v. Chicago Mil. St. P. & Pac. Ry., 318 U.S. 523, 550 (1943); In re Simasko Prod. Co., 47 B.R. 444, 449 (D. Cob. 1985) ("Business judgment should be left to the board room and not to this Court."); In re Lifeguard Indus., Inc., 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same); In re Hamilton Square Associates, No. 91-14720S, 1992 WL 98294, at \*1 (Bankr. E.D. Pa. May 51992) (holding that a "debtor in possession's business judgment must be accepted if reasonable.").

20. Without the DIP Loans, the Debtors will not be able to fund the continued operation of their business in a manner that will avoid irreparable harm to the Debtors and their estates. Pursuant to the Approved Budget, the Debtors will have insufficient liquidity to pay employees for the week of May 20, 2013 without approval of incremental liquidity. At this time, the ability of the Debtors to finance their operations and the availability to the Debtors of sufficient working capital and liquidity through the incurrence of new indebtedness and other financial accommodations are necessary to the confidence of the Debtors' vendors and suppliers of other goods and services, to their customers and employees and to the preservation and maintenance of the going-concern value of the Debtors' estates. For these reasons, access to credit under the DIP Financing is critical to the Debtors' continued operations and necessary to preserve the Debtors' estates for the benefit of their creditors.

**C. Background Leading to Bankruptcy**

21. At the time the Prepetition First Lien Credit Agreement was entered into in the summer of 2012, the Debtor's business operations were in a healthier state than

they are today. Even so, despite soliciting over a [dozen] potential lenders to provide financing in connection with the Debtors' search for financing last year, only [one lender] provided a term sheet to the Debtors that provided sufficient liquidity to fund the Debtors' business plan at the time. The culmination of that process was the execution of the Prepetition First Lien Credit Agreement and related documents on August 29, 2012.

22. By January 31, 2013, the Debtors had negative adjusted EBITDA of approximately \$5,800,000 compared to budgeted adjusted EBITDA of approximately \$650,000 resulting in the Prior Prepetition First Lien Lender having concerns regarding the Debtors' financial condition and therefor expressed an unwillingness to advance loans to the Debtors in excess of \$8 million.

23. The Debtors forecasted that by March 2013 cumulative borrowings under the Prepetition First Lien Credit Agreement would far exceed the \$8 million cap and forecasted borrowings through April 2013 would exceeded \$16 million. As such, the Debtors determined that an \$8 million cap on their borrowing availability would create severe liquidity issues for the Debtors, making it challenging to continue as a going concern. In order to create additional liquidity to allow the Debtors to continue their operations, the Sponsor provided credit support to induce the Prior Prepetition First Lien Lender to extend additional credit to the Debtors in the form of a guaranty of up to \$6.5 million in borrowings under the Prepetition First Lien Credit Agreement. The sponsor guaranty was backstopped by a letter of credit in favor of the Prior Prepetition First Lien Lender. The guaranty is a collection guaranty, not a payment guaranty: the Prior Prepetition First Lien Lender was required to liquidate substantially all the Debtors'

collateral or make a good faith effort for 90 days following acceleration of the obligations to do so prior to seeking payment under the guaranty.

24. As a result of the first amendment to the Prepetition First Lien Credit Agreement, which included the Sponsor guaranty, the Debtors were able to maintain their operations as a going concern. Without the first amendment to the Prepetition First Lien Credit Agreement, a key ingredient of which was the Sponsor guaranty, the Debtors would have been in a far worse financial predicament than they currently find themselves.

25. The Debtors, however, continued to lose money on an ongoing basis after the execution of the first amendment to the Prepetition First Lien Credit Agreement.

26. The Prior Prepetition First Lien Lender expressed an unwillingness to continue to fund the Debtors in the face of ongoing losses on a continuing basis.

27. At the same time, the Debtors were exploring strategic alternatives for their business, principally a sale of the Debtors' assets to a third party who would recapitalize the Debtors and allow them to proceed as a going concern.

28. In April 2013, it became apparent that the Debtors would need to engage in a sale transaction and due to the Debtors' financial performance and outstanding liabilities such sale would need to be a Section 363 sale under the Bankruptcy Code.

29. Accordingly, the Debtors continued their efforts both to reach an agreement with a potential buyer to serve as a stalking horse bidder in a Section 363 sale process and to find a lender willing to provide debtor-in-possession financing sufficient to allow the Debtors to complete the sale process.



30. The process to reach an agreement with a stalking horse bidder and the process to find a lender willing to provide debtor-in-possession financing put great strains on the resources of the Debtors. Since April 1, 2013, the Debtors have lost several key members of their management team including their CEO, General Counsel, Chief Financial Officer, Chief Marketing Officer, Vice President of Manufacturing, Vice President of Sourcing and Logistics, Chief Information Officer, Vice President of Direct Sales and Marketing, General Counsel and Vice President of Large Retail.

31. Notwithstanding the precarious nature of the Debtors' ability to operate as a going concern resulting from the financial strain the Debtors have undergone to date and the loss of key management personnel, the Debtors reached an agreement, after considerable discussion and negotiation, with the Agent with respect to providing the DIP Facility. Accordingly, on May 6, 2013, the Debtors filed that certain initial Motion (the "Initial DIP Motion") (1) approving postpetition financing, (2) granting liens and providing superpriority administrative expense status pursuant to 11 U.S.C. §§ 363 and 364(c) and (d), (3) authorizing use of cash collateral and providing adequate protection pursuant to 11 U.S.C. §§ 361 and 363, (4) modifying automatic stay in limited circumstances, (5) setting final hearing, and (6) granting related relief pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure.

32. At a hearing before the Court on May 8, 2013 (the "First Day Hearing"), the Court denied the Initial DIP Motion, without prejudice.

**D. The Search for the Best DIP Available**

33. Since the First Day Hearing, the Debtors have reached out to several lenders seeking a new proposed debtor-in-possession facility. Specifically, the Debtors

again inquired of the Prior Prepetition First Lien Lender whether it would be willing to provide a debtor-in-possession facility. The Prior Prepetition First Lien Lender indicated to the Debtors that it would not be willing to provide a debtor-in-possession facility. In addition, the Debtors also contacted the Prepetition Second Lien Lenders and Regions Bank. These entities also declined to extend a debtor-in-possession facility to the Debtors.

34. Given the nature of the Debtors' capital structure, finding an alternative lender for postpetition financing is challenging. The Prepetition First Lien Lender and the Prior Prepetition First Lien Lender would not agree to be primed by a third party and no financial institution approached would provide postpetition financing on a junior basis. The Prepetition First Lien Lender would not agree to be primed unless Cash Collateral is used to make the Roll-Up Payments. Furthermore, the Debtors project they will need incremental liquidity to finance their operations in the ordinary course as they seek a buyer for substantially all their assets.<sup>6</sup>

35. The Debtors did consider a potential offer for DIP Financing from Oreck Acquisition on terms more favorable than the Initial DIP Motion. This potential offer did not involve the payment of the Prepetition First Lien Credit Agreement Obligations, however, and accordingly, a priming fight would have been necessary. After further discussion with the DIP Lenders, the DIP Lenders agreed to match many of the terms in the potential offer from Oreck Acquisition. Furthermore, the potential offer proposed from Oreck Acquisition had a very short maturity that would significantly hinder the

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<sup>6</sup> Prospective lenders are also aware that if a going-concern sale is not consummated there is a significantly high probability that the Debtors' assets will need to be liquidated.

Debtors attempts to market their businesses as a going concern. The DIP Facility provides for a longer maturity, which will give the Debtors more time to market their businesses and work with potential buyers on due diligence and sale related matters in order to maximize value for the Debtors' estates.

36. In light of the foregoing, the Debtors, in the exercise of their prudent business judgment and consistent with their fiduciary duties, have concluded that the terms and conditions of the DIP Facility and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances and are supported by reasonably equivalent value and consideration.

37. The Prepetition First Lien Lender consents to being primed, with the adequate protection provided for in the DIP Interim Order, with the DIP Facility proposed by this Motion.

38. The new proposed DIP Lenders are still the same DIP lenders as set forth in the Initial DIP Motion, one of which, GSC Recovery III, L.P., is an affiliate of the Sponsor. The Agent is also majority-owned by entities that are affiliated with the management company for the Sponsor. After negotiation between the Debtors and the Agent, the revised debtor-in-possession financing proposal has been improved in several material ways. First, the Agent Fee has been reduced by 57%, the default interest rate has been decreased, and a grant of the original issue discount (OID) to the DIP Lenders have been removed.

39. In addition, the DIP Interim Order has been modified in several material ways to accommodate the changes to the revised debtor-in-possession financing proposal, certain requests made by the U.S. Trustee, certain requests made by the Prepetition

Second Lien Lender and certain requests made by landlords. These changes include, but are not limited to: (a) carving out Avoidance Actions from the assets subject to the DIP Liens, (b) clarifying in paragraph 4 of the DIP Interim Order that the Debtors' admissions regarding the prepetition debt are not Court findings, (c) inserting Debtors' admissions with respect to the validity and perfection of the Prepetition Second Lien Obligations, (d) providing advance notice to the U.S. Trustee and Committee counsel with respect to material amendments to the Approved Budget, (e) waiver of section 506(c) benefits until entry of the Final Order approving the DIP Facility, (f) deferring payment of certain fees until entry of the Final Order approving the DIP Facility, including payment of the Unused Line Fee; (g) granting the Prepetition Second Lien Lenders a junior section 507(b) claim, which shall also be junior to the First Lien Lender Replacement Claim, (h) striking paragraph 17(d) of the DIP Interim Order with respect to restrictive lease provisions becoming invalid, (i) modifying the Challenge Period by increasing the time within which to bring a challenge to the Claims and Defenses by thirty (30) days to a period of sixty (60) or seventy-five (75) days as applicable, (j) striking paragraph 25 of the DIP Interim Order with respect to limiting liability of the DIP Lenders, (k) removing field examination fees from the DIP Credit Agreement and (l) and removing certain sale milestones. The Debtors made these changes to accommodate the objections the U.S. Trustee, Prepetition Second Lien Lenders and landlords had to the Initial DIP Motion and it is the Debtors' expectation that, based on these changes, any remaining objections to the DIP Facility by the U.S. Trustee, Prepetition Second Lien Lenders and landlords will be limited.

40. The Debtors submit that the DIP Documents were negotiated in good faith and at arms' length by all parties involved and, accordingly, the Debtors believe that any credit extended and loans made to the Debtors under the DIP Documents should be deemed to have been extended in good faith, within the meaning of section 364(e) of the Bankruptcy Code. The board members affiliated with the Sponsor resigned prior to the board's approval of the Proposed DIP Facility.

41. The Debtors further submit that the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lenders are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

42. As examples of the reasonableness of the proposed DIP Facility, as set forth in detail herein, the DIP Documents provide generally that the security interests in the assets of the Debtors and administrative expense claim in these Chapter 11 cases granted to the DIP lenders are subject to a Carve Out, as discussed in detail herein. In Ames Dep't Stores, the bankruptcy court found that such "carve-outs" are not only reasonable, but are necessary to ensure that the debtors' estates will be assured of the assistance of counsel and other professionals. See Ames Dep't Stores, 116 B.R. at 40.

43. Furthermore, the proposed collateral covering the proposed DIP Facility is virtually identical to the collateral securing the liens of the Prepetition Secured Parties. Specifically, the borrowers under the proposed DIP Facility are identical to the borrowers under the loan facilities arising under the Prepetition Secured Credit Documents, and the DIP Facility is secured by substantially all the assets of such Debtors, which is also the

case with respect to the loan facilities arising under the Prepetition Secured Credit Documents.

**D. Need for Postpetition Financing**

44. An immediate need exists for the Debtors to obtain funds from the DIP Facility on an interim, and ultimately on a final, basis in order to continue operations and to administer and preserve the value of their estates. As stated above, the Debtors have suffered from a serious exodus of management, and without the ability to use the DIP Facility to function and retain the remaining management, the Debtors' ability to continue as a going concern would become untenable.

45. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and to maximize a return for all creditors requires the availability of working capital from the DIP Facility, the absence of which would immediately and irreparably harm the Debtors, their estates, and their creditors; the possibility for a successful reorganization or sale of the Debtors' assets as a going concern; and would otherwise be to the material detriment of the Debtors' creditors, customers, vendors, employees and other parties in interest. Indeed, as set forth above, on an interim basis and pending the Final Hearing, the Debtors need the proceeds from the DIP Facility in order to continue to pay all necessary expenses.

46. On a more long-term basis, and for many of the same reasons, it is essential to the operation of the Debtors' assets that the Debtors obtain authority to incur postpetition financing to continue ordinary course operations pending a sale of the business. Here the situation is particularly tenuous. While the Debtors believe they will reach agreement on a proposed stalking horse bid for substantially all of their assets in

the next several days, there is no certainty that such a deal will be reached. If a deal is not reached it is possible that a liquidation and wind down of the Debtors may ensue. Finding a party willing to lend into such a precarious situation is not routine, and further justifies that granting of the relief requested in this Motion. Only through the DIP Facility can the Debtors be assured of sufficient liquidity to maximize the value of their assets for the benefit of their creditors.

47. Although the proposed DIP Facility is being offered by the Sponsor, an insider of the Debtors, the financing should still be approved. The Sponsor is providing this DIP Facility in order to provide the company sufficient liquidity to complete the ongoing Section 363 sale process. Given the level of secured and unsecured claims against the Debtors, it is extremely unlikely that the Sponsor will receive any sale proceeds from the sale process on account of its equity interest in the Debtors. While the proposed DIP Facility benefits the Sponsor in so far as it will receive economic benefits from the DIP Facility for accepting the risks associated with these Debtors' estates - especially if a sale is not consummated - it does provide a significant benefit to the Debtors' estates as it provides liquidity to bridge to a potential going-concern sale that should maximize the value of the Debtors' estates for stakeholders.<sup>7</sup>

48. In light of these economic realities, the proposed DIP Facility cannot be viewed as being offered or intended to provide the sponsor any benefits on account of its equity ownership of the Debtors, as there does not seem to be a realistic chance that the intended sale process will yield a distribution to equity holders. Hence, the DIP Facility

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<sup>7</sup> In any event, if there were sale proceeds to distribute on account of the Sponsor's equity interest, that would, necessarily, mean that all claims of creditors of the Debtors had been paid in full.

should be viewed through the prism of simply a DIP Facility, and not an effort for equity to improve its recovery on account of its equity interests in the Debtors, as is sometimes the case where an insider offers a financing with an eye toward acquiring the assets or other similar motives.

49. For the reasons stated herein, among others, interim approval of the proposed financing pending the Final Hearing is in the best interests of the Debtors, their estates and their creditors.

50. As stated above, without the ability to use the DIP Facility, the Debtors will not be able to successfully operate during these Chapter 11 Cases and sell their assets. Without cash to pay their bills, their utilities and employees, the Debtors will have no way to maintain their operations. Thus, without authorization to use the DIP Facility on an immediate basis, the Debtors might not have sufficient liquidity to maintain their business operations and could conceivably be forced to close their manufacturing plants and convert these cases to cases under Chapter 7 of the Bankruptcy Code, which would cause irreparable harm to the Debtors' estates.

51. In these cases, the Debtors' ability to survive and continue to maintain operations until the Debtors' assets can be sold depends on being able to use the DIP Facility to continue their operations. Accordingly, the Debtors seek Court authority to use advances under the DIP Documents during the period commencing immediately after the entry of the DIP Interim Order and terminating upon the occurrence of an Event of Default and the termination of the DIP Documents in accordance with their terms.



### **The Lenders' Interests Are Adequately Protected**

52. When a debtor has proposed to use cash collateral, the Court pursuant to Section 363(c) of the Bankruptcy Code, may permit the use of cash collateral so long as the debtor provides “adequate protection of such interest” in accordance with Section 361 of the Bankruptcy Code. Section 361 of the Bankruptcy Code sets forth three non-exclusive examples of adequate protection. In re Nashua Trust Co., 73 B.R. 423, 430 (Bankr. D.N.J. 1987). Adequate protection “is left to the vagaries of each case . . . but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process.” In re Mosello, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996) (quoting In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986)).

53. Provision of a replacement lien in property equal to the value of the cash collateral used specifically complies with Section 361(2) and provides adequate protection within the meaning of Section 363(e) of the Bankruptcy Code. See, e.g., MBank Dallas, N.A. v. O'Connor (In re O'Connor), 808 F.2d 1393, 1398 (10th Cir. 1987); In re T.H.B. Corp., 85 B.R. 192, 195 (Bankr. D. Mass. 1988). The focus of the requirement of adequate protection is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See In re Club Associates, 107 B.R. 385, 394 (Bankr. N.D. Ga. 1989); Ridgemont Apartment Associates Ltd. v. Atlanta English Village Ltd., 110 B.R. 77, 82 (Bankr. N.D. Ga. 1989).

54. As adequate protection, the Prepetition First Lien Lender shall receive from the Debtors the Roll-Up Payments and a replacement security interest in and junior lien upon all of the Collateral of the same type and category in which they had Prepetition Liens and a section 507(b) claim, each of which shall be junior only to the liens and

claims granted to the Agent and the Carve-Out. In addition, the DIP Interim Order grants the Prepetition Second Lien Lenders a replacement security interest in and junior lien upon all of the Collateral of the same type and category in which they had Prepetition Liens and a section 507(b) claim, each of which shall be junior only to the liens and claims granted to the Agent, Prepetition First Lien Lender and the Carve-Out.

55. The Debtors respectfully submit that pursuant to Section 361(2) of the Bankruptcy Code, the adequate protection proposed in the Interim DIP Order constitutes adequate protection for the Debtors' use of Cash Collateral.

30. For the reasons set forth herein, the Debtors submit that, under all of the circumstances of these cases, the interests of the Prepetition First Lien Lender and Prepetition Second Lien Lenders are adequately protected. Thus, approval of the relief requested herein will allow the Debtors to fund their Chapter 11 cases, thereby maximizing value for their creditors without harming or prejudicing the rights or interests of the Lienholders.

### **RELIEF REQUESTED**

56. The Debtors respectfully request that this Court enter the DIP Interim Order authorizing the Debtors to obtain postpetition financing on the terms provided therein. Bankruptcy Rule 4001(c) provides that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, this Court is empowered to conduct a preliminary expedited hearing on this Motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtors and their estates.

57. Pursuant to Bankruptcy Rule 4001(c), the Debtors request that this Court conduct an emergency interim hearing (“Interim Hearing”) and then a Final Hearing. The Debtors submit that entry of the DIP Interim Order and the permissions granted therein to consummate the DIP Facility and incur indebtedness and other financial accommodations thereunder and use the Cash Collateral are necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing on the Motion. In the Debtors’ sound business judgment, entry of the DIP Interim Order is in the best interest of the Debtors and their estate and creditors as its implementation will, among other things, allow for the continued operation and ultimate preservation of the Debtors’ existing businesses while providing the greatest recovery possible to all of the Debtors’ creditors.

58. By this Motion and pursuant to Sections 361, 362, 363 and 364 of the United States Bankruptcy Code (the “Bankruptcy Code”), as supplemented by Bankruptcy Rules 4001 and 9014, the Debtors seek entry of an order, approving on an interim basis (pending a Final Hearing) the terms and conditions of the DIP Facility set forth in the DIP Interim Order authorizing (a) the debtors to obtain postpetition financing on a senior secured superpriority basis pursuant to §§ 105, 361, 362, 363, and 364; (b) to utilize cash collateral pursuant to § 363; (ii) granting adequate protection to prepetition secured lenders pursuant to §§ 361, 363 and 364; (iii) scheduling final hearing pursuant to bankruptcy rules 4001(b) and (c); and (iv) granting related relief (the “DIP Interim Order”), a copy of which is annexed hereto as Exhibit “C,” subject to modifications, if any, disclosed at the Interim Hearing.

59. For the reasons set forth herein and the testimony on behalf of the Debtors at the Interim Hearing, the Debtors request that the Court enter the DIP Interim Order and request that, pending the Final Hearing on the Motion, the DIP Interim Order be approved in all respects and that the terms and provisions of the DIP Interim Order be implemented and be deemed binding, and schedule a Final Hearing on the Motion, consistent with Bankruptcy Rule 4001, as soon as possible following fourteen (14) days notice and that, after the Final Hearing, the Final Order on the Motion be approved in all respects and the terms and provisions of the Final Order on the Motion be implemented and be deemed binding.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim DIP Order attached hereto as Exhibit C.

Dated: May 17, 2013

Respectfully Submitted:

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**EXHIBIT A**

**DIP CREDIT AGREEMENT**

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**EXHIBIT B**

**BUDGET**

- 2 -

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**EXHIBIT C**  
**INTERIM DIP ORDER**

- 3 -

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**DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT**

**by and among**

**BLACK DIAMOND COMMERCIAL FINANCE, L.L.C.**

**as Administrative Agent,**

**THE LENDERS THAT ARE PARTIES HERETO**

**as the Lenders,**

**ORECK CORPORATION, ORECK DIRECT, LLC, ORECK MERCHANDISING, LLC,  
ORECK HOMECARE, LLC, VECTEUR, LLC, ORECK HOLDINGS, LLC, ORECK  
FRANCHISE SERVICES, LLC, ORECK MANUFACTURING COMPANY,**

**and**

**ORECK SALES, LLC**

**as Borrowers**

**Dated as of May [\_\_], 2013**

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Schedule P-2	Permitted Liens
Schedule P-3	Pledged Companies
Schedule R-1	Real Property Collateral

## DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

THIS DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (this "Agreement"), is entered into as of May [\_\_\_], 2013, by and among the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "Lender", as that term is hereinafter further defined), **BLACK DIAMOND COMMERCIAL FINANCE, L.L.C.**, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), **ORECK CORPORATION**, a Delaware corporation ("Oreck"), **ORECK DIRECT, LLC**, a Delaware limited liability company ("Oreck Direct"), **ORECK MERCHANDISING, LLC**, a Delaware limited liability company ("Oreck Merchandising"), **ORECK HOMECARE, LLC**, a Delaware limited liability company ("Oreck Homecare"), **VECTEUR, LLC**, a Delaware limited liability company ("Vecteur"), **ORECK HOLDINGS, LLC**, a Delaware limited liability company ("Oreck Holdings"), **ORECK FRANCHISE SERVICES, LLC**, a Delaware limited liability company ("Oreck Franchise"), **ORECK MANUFACTURING COMPANY**, a Delaware corporation ("Oreck Manufacturing"), **ORECK SALES, LLC**, a Delaware limited liability company ("Oreck Sales") and together with Oreck, Oreck Direct, Oreck Merchandising, Oreck Homecare, Vecteur, Oreck Holdings, Oreck Franchise and Oreck Manufacturing, each a "Borrower" and collectively, the "Borrowers"), and **ASP ORECK INC.**, a Delaware corporation ("Parent").

WHEREAS, on May 6, 2013 (the "Filing Date"), Borrowers and Guarantors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (as hereinafter defined) in the United States Bankruptcy Court for the Middle District of Tennessee (the "Bankruptcy Court");

WHEREAS, Borrowers are continuing to operate their businesses and manage their properties as debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Borrowers have requested that Lenders provide a secured revolving credit facility to Borrowers in order to fund the continued operation of Borrowers' businesses as debtor and debtor-in-possession under the Bankruptcy Code; and

WHEREAS, the Lenders are willing to make available to Borrowers such postpetition loans, other extensions of credit and financial accommodations upon the terms and subject to the conditions set forth herein.

The parties agree as follows:

### 1. DEFINITIONS AND CONSTRUCTION.

1.1. **Definitions.** Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2. **Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Administrative Borrower notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the



operation of such provision (or if Agent notifies Administrative Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions prior to such Accounting Change and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term “financial statements” shall include the notes and schedules thereto. Whenever the term “Parent” is used in respect of a financial covenant or a related definition, it shall be understood to mean Parent and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof, and (b) the term “unqualified opinion” as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, and (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit.

1.3. **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4. **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). 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. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of

any premium applicable to the repayment of the Loans, (ii) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, (iii) all fees or charges that have accrued hereunder or under any other Loan Document and are unpaid, (b) the receipt by Agent of cash collateral in order to secure any contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, and (c) the termination of all of the Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5. **Time References.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Central standard time or Central daylight saving time, as in effect in Chicago, Illinois on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided that, with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

1.6. **Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

## **2. LOANS AND TERMS OF PAYMENT.**

### **2.1. Revolving Loans.**

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Lender agrees (severally, not jointly or jointly and severally) to make revolving loans ("Revolving Loans") to Borrowers in an amount at any one time outstanding not to exceed the lesser of:

- (i) such Lender's Commitment, and
- (ii) such Lender's Pro Rata Share of an amount equal to (A) the Maximum Revolver Amount less (B) the amount of any Reinstated Existing First Lien Obligations less (C) the Existing First Lien Obligations then outstanding less (D) any Reserves.

Notwithstanding the foregoing, (x) the aggregate, cumulative Revolving Loans made hereunder from the Closing Date through any period shall not exceed 110% of the aggregate, cumulative uses of cash set forth in the Budget for the corresponding period, and (y) the Revolving Loans shall be used by Borrowers solely as set forth in Section 7.13.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation), in the exercise of its Permitted Discretion, to establish and increase or decrease or eliminate Reserves to address the results of any audit or appraisal performed by or on behalf of Agent from time to time after the Closing Date, Reserves with respect to the Carveout, Reserves with respect to other potential costs and expenses pertaining to the Bankruptcy Cases, Reserves with respect to Other Statutory Liabilities and other Reserves against the Maximum Revolver Amount. The amount of any such Reserve established by Agent shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such reserve and shall not be duplicative of any other reserve established and currently maintained.

2.2. **[Reserved].**

2.3. **Borrowing Procedures and Settlements.**

(a) **Procedure for Borrowing Revolving Loans.** Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent and received by Agent no later than 10:30 a.m. on the Business Day that is 1 Business Day prior to the requested Funding Date, specifying (A) the amount of such Borrowing, and (B) the requested Funding Date; provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 10:30 a.m. on the applicable Business Day; provided further that no more than two Borrowings may be made in any calendar week without Agent's consent (in its sole discretion). At Agent's election, in lieu of delivering the above-described written request, any Authorized Person may give Agent notice by e-mail of such request by the required time. In such circumstances, Borrowers agree that any such e-mailed notice will be confirmed in writing within 24 hours of the giving of such e-mailed notice, but the failure to provide such written confirmation shall not affect the validity of the request.

(b) **Making of Revolving Loans.** On the Closing Date, each Lender shall make the amount of such Lender's Commitment available to Agent in immediately available funds, to Agent's Account. After Agent's receipt of a request for Borrowing pursuant to Section 2.3(a), Agent shall make the amount of such requested Borrowing available to Borrowers on the applicable Funding Date by transferring immediately available funds equal to such amount received by Agent to the Designated Account; provided, that, Agent shall not have an obligation to make any Revolving Loan, if (1) one or more of the applicable conditions precedent set forth in Section 4 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(c) **[Reserved].**

(d) **Notation.** Agent, as a non-fiduciary agent for Borrowers, shall maintain a register showing the principal amount of the Revolving Loans owing to each Lender, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(e) **Independent Obligations.** All Loans shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Loan (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4. **Payments; Reductions of Commitments; Prepayments.**

(a) **Payments by Borrowers.** Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 1:30 p.m. on the date specified herein. Any payment received by Agent later than 1:30 p.m. shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(b) **Apportionment and Application.**

(i) So long as no Application Event has occurred and is continuing and, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates. All payments to be made hereunder by Borrowers shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied, first, to reduce the balance of the Existing First Lien Obligations in the manner set forth in the Existing First Lien Loan Documents, second, to reduce the balance of the Revolving Loans outstanding, and third, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(ii) At any time that an Application Event has occurred and is continuing, all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(A) first, to reduce the balance of the Existing First Lien Obligations in the manner set forth in the Existing First Lien Loan Documents,

(B) second, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents, until paid in full,

(C) third, to pay any fees or premiums then due to Agent under the Loan Documents until paid in full,

(D) fourth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(E) fifth, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents until paid in full,

(F) sixth, ratably, to pay interest accrued in respect of the Revolving Loans until paid in full,

(G) seventh, ratably, to pay the principal of all Revolving Loans until paid in full,

(H) eighth, ratably, to pay any other Obligations; and

(I) ninth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive; provided, however, so long as no Application Event has occurred and is continuing, any funds that a Lender may be entitled to receive shall be held by the Agent for the account of such Lender.

(iv) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(i) shall not apply to any payment made by Borrowers to Agent and specified by Borrowers to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(v) For purposes of Section 2.4(b)(ii), “paid in full” of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vi) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other.

(c) **Payments.** The Commitments shall terminate and the Revolving Loans shall be payable in full on the Maturity Date.

(d) **Optional Prepayments.** With not less than 5 Business Days written notice to Agent, Borrowers may prepay the principal of any Revolving Loan at any time in whole or in part.

(e) **Mandatory Prepayments.**

(i) **[Reserved].**

(ii) **Dispositions.** Upon receipt by any Loan Party of the Net Cash Proceeds of any voluntary or involuntary sale or disposition by such Loan Party of Collateral (including casualty losses or condemnations but excluding sales or dispositions which qualify as Permitted Dispositions under clauses (b), (c), (d), or (f) of the definition of Permitted Dispositions), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f) in an amount equal to 100% of such Net Cash Proceeds (including condemnation awards and payments in lieu thereof) received by such Person in connection with such sales or dispositions. Nothing contained in this Section 2.4(e)(ii) shall permit Parent or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 7.4.

(iii) **Extraordinary Receipts.** Upon receipt by any Loan Party of any Extraordinary Receipts constituting Collateral, Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f) in an amount equal to 100% of such Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts.

(iv) **Indebtedness.** Within 1 Business Day of the date of incurrence by Parent or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such incurrence. The provisions of this Section 2.4(e)(iv) shall not be deemed to be implied consent to any such incurrence otherwise prohibited by the terms of this Agreement.

(v) **Equity.** Within 1 Business Day of the date of the issuance by Parent or any of its Subsidiaries of any Equity Interests (other than the issuance of Equity Interest by a Subsidiary of Parent to a Loan Party), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such issuance. The provisions of this Section 2.4(e)(v) shall not be deemed to be implied consent to any such issuance otherwise prohibited by the terms of this Agreement.

(vi) **Business Interruption Insurance.** Upon the receipt by Parent or any of its Subsidiaries of any proceeds of business interruption insurance, Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f) in an amount equal to 100% of the proceeds received by such Person in connection with such of business interruption insurance.

(vii) **Excess Liquidity.** If Parent and its Subsidiaries hold cash and Cash Equivalents exceeding \$5,000,000 in the aggregate at any time, Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f) in an amount equal to such excess.

(viii) **Disgorgement.** In the event that the Lenders are required to repay or disgorge to Borrowers or any representatives of the Borrowers' estate (as agents, with derivative standing or otherwise) all or any portion of the Existing First Lien Obligations authorized and directed to be repaid pursuant to the Financing Order, or any payment on account of the Existing First Lien Obligations made to any Lender is rescinded for any reason whatsoever, including, but not limited to, as a result of any Avoidance Action, or any other action, suit, proceeding or claim brought under any other provision of any applicable Bankruptcy Code or any applicable state or provincial law, or any other similar provisions under any other state, federal or provincial statutory or common law (all such amounts being hereafter referred to as the "Avoided Payments"), then, in such event, Borrowers shall prepay the outstanding principal amount of the Revolving Loans in an amount equal to 100% of such Avoided Payments immediately upon receipt of the Avoided Payments by Borrowers or any representative of the Borrowers' estate.

(f) **Application of Payments.** Each prepayment pursuant to Section 2.4(e) shall be applied in the manner set forth in Section 2.4(b)(i).

2.5. **Promise to Pay.** Borrowers agree to pay the Lender Group Expenses on the earlier of (a) the first day of the calendar month following the date on which the applicable Lender Group Expenses were first incurred or (b) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of Section 2.6(c) shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (b)). Borrowers promise to pay all of the Obligations (including principal, interest, premiums, if any, fees, costs, and expenses (including Lender Group Expenses)) in full on the Maturity Date or, if earlier, on the date on which the Obligations become due and payable pursuant to the terms of this Agreement. Borrowers agree that their obligations contained in the first sentence of this Section 2.5 shall survive payment or satisfaction in full of all other Obligations.

2.6. **Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations.**

(a) **Interest Rates.** Except as provided in Section 2.6(b), all Revolving Loans and all other Obligations that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a per annum rate equal to five and one-half percent (5.5%).

(b) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at the election of Agent or the Required Lenders, all Revolving Loans and all other Obligations that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a per annum rate equal to two percentage points above the per annum rate otherwise applicable thereunder.

(c) **Payment.** Except to the extent provided to the contrary in Section 2.10, (i) all interest and fees payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first Business Day of each month, and (ii) all costs and expenses payable hereunder or under any of the other Loan Documents, and all Lender Group Expenses shall be due and payable on the earlier of (x) the first Business Day

of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred or (y) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)). Borrowers hereby authorize Agent, from time to time without prior notice to Borrowers and at Agent's option in its sole discretion, to charge to the Loan Account (A) on the first day of each month, all interest accrued during the prior month on the Revolving Loans hereunder, (B) as and when incurred or accrued, all audit, appraisal, valuation, or other charges or fees payable hereunder, including pursuant to Section 2.10(a) and (c), (C) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (D) as and when incurred or accrued, all other Lender Group Expenses, and (E) as and when due and payable all other payment obligations payable under any Loan Document. All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document) charged to the Loan Account shall thereupon constitute Loans hereunder, shall constitute Obligations hereunder, and shall initially accrue interest at the rate then applicable to Loans.

(d) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue..

(e) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, that, anything contained herein to the contrary notwithstanding, if such rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, ipso facto, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7. **Crediting Payments.** The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 1:30 p.m. If any payment item is received into Agent's Account on a non-Business Day or after 1:30 p.m. on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.



2.8. **Designated Account.** Agent is authorized to make the Revolving Loans under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(c). Borrowers agree to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Revolving Loans requested by Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrowers, any Revolving Loan requested by Borrowers and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.9. **Maintenance of Loan Account; Statements of Obligations.** Agent shall maintain an account on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged with all Revolving Loans made by Agent or the Lenders to Borrowers or for Borrowers' account and with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account. Agent shall make available to Borrowers monthly statements regarding the Loan Account, including the principal amount the Revolving Loans, interest accrued hereunder, fees accrued or charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within 30 days after Agent first makes such a statement available to Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10. **Fees.** Borrowers shall pay to Agent, for the account of Agent, as and when due and payable under the terms of the Fee Letter, the agent fee set forth in the Fee Letter.

2.11. **Joint and Several Liability of Borrowers.**

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.11), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligation.

(d) The Obligations of each Borrower under the provisions of this Section 2.11 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Revolving Loans, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.11 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.11, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.11 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.11 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower or any Agent or Lender.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition, the financial condition of other guarantors, if any, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) Each Borrower waives all rights and defenses arising out of an election of remedies by Agent or any Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Agent's or such Lender's rights of subrogation and reimbursement against such Borrower by the operation of Section 580(d) of the California Code of Civil Procedure or any other similar laws or otherwise.

(h) The provisions of this Section 2.11 are made for the benefit of Agent, Lenders and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, Lender, successor or assign first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.11 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.11 will forthwith be reinstated in effect, as though such payment had not been made.

(i) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Loan Party with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to Agent or Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Loan Party with respect to any payments to any Agent or Lender hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Loan Party, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Loan Party therefor.

### **3. SECURITY INTEREST.**

3.1. **Grant of Security Interest.** Each Loan Party hereby unconditionally grants, assigns, and pledges to Agent for the benefit of itself and the Lenders, to secure payment and performance of the Obligations, a continuing security interest (hereinafter referred to as the "Security Interest") in all of such Loan Party's right, title, and interest in and to the Collateral, as security for the payment and performance of all Obligations. Following request by Agent, each Loan Party shall grant Agent a Lien and security interest in all Commercial Tort Claims (other than the Specified Claim as long as the Specified Claim constitutes an Excluded Asset) that it may have against any Person. The Security Interest created hereby secures the payment and performance of the Obligations, whether now existing or arising hereafter. Without limiting the

generality of the foregoing, this Agreement secures the payment of all amounts which constitute part of the Obligations and would be owed by any Loan Party to Agent or each Lender, but for the fact that they are unenforceable or not allowable (in whole or in part) as a claim in an Insolvency Proceeding involving any Borrower due to the existence of such Insolvency Proceeding. Notwithstanding anything contained in this Agreement to the contrary, the term "Collateral" shall not include the following (the "Excluded Assets"): (i) voting Equity Interests of any CFC, solely to the extent that such Equity Interests represent more than 65% of the outstanding voting Equity Interests of such CFC; (ii) any rights or interest in any contract, lease, permit, license, or license agreement covering real or personal property of any Loan Party if under the terms of such contract, lease, permit, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein is prohibited as a matter of law or under the terms of such contract, lease, permit, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained (provided, that, (A) the foregoing exclusions of this clause (ii) shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is unenforceable under Section 9-406, 9-407, 9-408, or 9-409 of the Code or other applicable law, or (2) to apply to the extent that any consent or waiver has been obtained that would permit Agent's security interest or lien notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement and (B) the foregoing exclusions of clauses (i) and (ii) shall in no way be construed to limit, impair, or otherwise affect any of Agent's continuing security interests in and liens upon any rights or interests of any Loan Party in or to (1) monies due or to become due under or in connection with any described contract, lease, permit, license, license agreement, or Equity Interests (including any Accounts or Equity Interests), or (2) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, license agreement, or Equity Interests); (iii) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law, provided that upon submission and acceptance by the PTO of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral; (iv) any Equipment subject to a Lien permitted under clauses (d) or (f) of the definition of Permitted Liens if the grant to Agent of a security interest or lien therein is prohibited under the terms of the Capital Lease, security agreement, or other contract providing for such Permitted Lien (provided, however, that such Equipment shall become Collateral upon the subsequent release or termination of such Permitted Lien or if such restriction has been waived or the consent of the other party has been obtained); (v) the Specified Claim to the extent the Specified Claim is subject to a Lien permitted under clause (p) of the definition of "Permitted Liens" if the grant to Agent of a security interest or lien therein is prohibited under the terms of the contract providing for such Permitted Lien (provided, however, that the Specified Claim shall become Collateral upon the subsequent release or termination of such Permitted Lien or if such restriction has been waived or the consent of the other party has been obtained); and (vi) all Real Property leased by any Borrower other than the Real Property Collateral located in Cookeville, Tennessee.

3.2. **Borrowers Remain Liable.** Anything herein to the contrary notwithstanding, (a) each Loan Party shall remain liable under the contracts and agreements included in the Collateral, including the Pledged Operating Agreements and the Pledged Partnership

Agreements, to perform all of the duties and obligations thereunder to the same extent as if this Agreement had not been executed; provided, however, that nothing in this Section shall be construed as requiring the renewal or extension of any contract or agreement by a Loan Party to the extent such non-renewal or extension is permitted by Section 6.13 of this Agreement, (b) the exercise by Agent of any of the rights hereunder shall not release any Loan Party from any of its duties or obligations under such contracts and agreements included in the Collateral, and (c) Agent shall not have any obligation or liability under such contracts and agreements included in the Collateral by reason of this Agreement, nor shall Agent be obligated to perform any of the obligations or duties of any Loan Party thereunder or to take any action to collect or enforce any claim for payment assigned hereunder. Unless an Event of Default shall occur and be continuing, except as otherwise provided in this Agreement or any other Loan Document, the Loan Parties shall have the right to possession and enjoyment of the Collateral for the purpose of conducting the ordinary course of their respective businesses, subject to and upon the terms hereof and of this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, it is the intention of the parties hereto that record and beneficial ownership of the Pledged Interests, including all voting, consensual, dividend, and distribution rights, shall remain in the Loan Parties until (i) the occurrence and continuance of an Event of Default and (ii) Agent has notified Loan Parties of Agent's election to exercise such rights with respect to the Pledged Interests pursuant to Section 10.9.

3.3. **Assignment of Insurance.** As additional security for the Obligations, each Borrower and each other Loan Party hereby assigns to Agent for the benefit of itself and each Lender all rights of such Borrower and such Loan Party under every policy of insurance covering the Collateral and all other assets and property of each Borrower and each other Loan Party (including, without limitation business interruption insurance and proceeds thereof), but excluding the Specified Claim to the extent that the Specified Claim constitutes an Excluded Asset) and all business records and other documents relating to it, and all monies (including proceeds and refunds) that may be payable under any policy, and each Borrower and each other Loan Party hereby directs the issuer of each such policy to pay all such monies directly and solely to Agent, except proceeds of the Specified Claim to the extent that the Specified Claim constitutes an Excluded Asset. At any time, whether or not a Default or Event of Default shall have occurred, Agent may (but need not), in its Permitted Discretion, in Agent's or any Loan Party's name, execute and deliver proofs of claim, receive payment of proceeds and endorse checks and other instruments representing payment of the policy of insurance, and adjust, litigate, compromise or release claims against the issuer of any policy. Any monies received under any insurance policy assigned to Agent, other than liability insurance policies, directors' and officers' insurance policies to the extent that the proceeds thereof are for indemnification or reimbursement of out-of-pocket fees and expenses of any director or officer of any Loan Party, or received as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid to Agent and, as determined by Agent in its sole discretion, either be applied to prepayment of the Obligations or disbursed to Borrowers under payment terms reasonably satisfactory to Agent for application to the cost of repairs, replacements, or restorations of the affected Collateral which shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed.

3.4. **Financing Statements.** Each Borrower and each other Loan Party authorizes Agent to file financing statements describing Collateral to perfect Agent's and the Lenders'

Security Interest in the Collateral, and Agent may describe the Collateral as “all personal property” or “all assets” or describe specific items of Collateral including without limitation any Commercial Tort Claims. All financing statements filed before the date of this Agreement to perfect the Security Interest were authorized by such Borrower and each other Loan Party and are hereby ratified.

#### **4. CONDITIONS; TERM OF AGREEMENT.**

4.1. **Conditions Precedent to the Initial Extension of Credit.** The obligation of each Lender to make the initial extensions of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Agent and each Lender, of each of the conditions precedent set forth on Schedule 4.1 (the making of such initial extensions of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent ).

4.2. **Conditions Precedent to all Extensions of Credit.** The obligation of the Lender Group (or any member thereof) to make any Revolving Loans hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

(a) the representations and warranties of each Borrower contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date);

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof;

(c) the Interim Order or the Final Order, as the case may be, shall be in full force and effect, and shall not (in whole or in part) have been reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal, in each case, without the consent of the Agent;

(d) all First Day Orders and any “*second day*” orders shall be in form and substance reasonably satisfactory to the Agent;

(e) the Agent and the Lenders shall have received when due (and after giving effect to any applicable grace periods) all periodic updates required with respect to the Budget, including any variance reports;

(f) other than proceedings relating to the approval of this Agreement and the transactions contemplated hereby and under the Loan Documents, there shall exist no action, litigation or proceeding, pending before any arbitrator or governmental

instrumentality which relates to the Loan Documents or the transactions contemplated thereby that could reasonably be expected to have a Material Adverse Effect; and

(g) on or after the entry of the Final Order, the obligation of each Lender to make a Revolver Loan shall be subject to the satisfaction or waiver in writing by the Required Lenders of the following conditions precedent:

(i) the Final Order in form and substance satisfactory to the Agent shall have been entered within 30 days following the Interim Order Entry Date, which order shall not have been reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal;

(ii) the Loan Parties shall be in compliance with the Final Order in all respects;

(iii) the Budget shall have been approved by the Required Lenders.

4.3. **Maturity**. This Agreement shall continue in full force and effect for a term ending on the Maturity Date.

4.4. **Effect of Maturity**. On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations immediately shall become due and payable without notice or demand and Borrowers shall be required to repay all of the Obligations in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full and the Commitments have been terminated. When all of the Obligations have been paid in full and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

## **5. REPRESENTATIONS AND WARRANTIES.**

In order to induce the Lender Group to enter into this Agreement, each Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Revolving Loan (or other extension of credit) made thereafter, as though made on and as of the date of such Revolving Loan (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier

date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

**5.1. Due Organization and Qualification; Subsidiaries.**

(a) Each Loan Party and each Subsidiary of each Loan Party (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization, (ii) is qualified to do business in any jurisdiction where the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect, and (iii) has all requisite entity power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 5.1(b) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement) is a complete and accurate description of the authorized Equity Interest of each Loan Party, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding. Other than as described on Schedule 5.1(b), there are no subscriptions, options, warrants, or calls relating to any shares of any Loan Party's Equity Interest, including any right of conversion or exchange under any outstanding security or other instrument. No Loan Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interest or any security convertible into or exchangeable for any of its Equity Interest.

(c) Set forth on Schedule 5.1(c) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of each Loan Party's direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Equity Interests authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by each Loan Party. All of the outstanding Equity Interest of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 5.1(c), there are no subscriptions, options, warrants, or calls relating to any Equity Interests of any Loan Party or its Subsidiaries, including any right of conversion or exchange under any outstanding security or other instrument. No Loan Party nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of such Loan Party's Subsidiaries' Equity Interests or any security convertible into or exchangeable for any such Equity Interests.

**5.2. Due Authorization; No Conflict.**



(a) Subject to the approval of the Bankruptcy Court pursuant to the Financing Order, as to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) Subject to the approval of the Bankruptcy Court pursuant to the Financing Order, as to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, or local law or regulation applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contract of any Loan Party or its Subsidiaries except to the extent that any such conflict, breach or default could not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any Loan Party's interest holders or any approval or consent of any Person under any Material Contract of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of Material Contracts, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

5.3. **Governmental and Other Consents.** Subject to approval of the Bankruptcy Court pursuant to the Financing Order, no consent, approval, authorization, or other order or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required (a) for the grant of a Lien by such Loan Party in and to the Collateral pursuant to this Agreement or the other Loan Documents or for the execution, delivery, or performance of this Agreement by such Loan Party, or (b) for the exercise by Agent of the voting or other rights provided for in this Agreement with respect to the Investment Related Property or the remedies in respect of the Collateral pursuant to this Agreement, except as may be required in connection with such disposition of Investment Related Property by laws affecting the offering and sale of securities generally and other than consents or approvals that have been obtained and that are still in force and effect. No Intellectual Property License of any Loan Party that is material to the conduct of the Loan Parties' business requires any consent of any other Person in order for such Loan Party to grant the security interest granted hereunder in such Loan Party's right, title or interest in or to such Intellectual Property License.

5.4. **Binding Obligations; Perfected Liens.**

(a) Subject to the approval of the Bankruptcy Court and pursuant to the Financing Order, each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms.

(b) Subject to the approval of the Bankruptcy Court and pursuant to the Financing Order, Agent's Liens are validly created, perfected (other than (i) in respect of

motor vehicles that are subject to a certificate of title, (ii) money, (iii) letter-of-credit rights (other than supporting obligations), (iv) commercial tort claims (other than those that, by the terms hereof that are required to be perfected), and (v) any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by the terms hereof, and subject only to the filing of financing statements, and the recordation of the Mortgages, in each case, in the appropriate filing offices), and first priority Liens.

5.5. **Title to Assets; No Encumbrances.** Each of the Loan Parties and its Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 6.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

5.6. **Jurisdiction of Organization; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims.**

(a) The exact legal name of (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of each Loan Party and each of its Subsidiaries is set forth on Schedule 5.6(a) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(b) The chief executive office of each Loan Party and each of its Subsidiaries is located at the address indicated on Schedule 5.6(b) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(c) The tax identification number and organizational identification number, if any, of each Loan Party and each of its Subsidiaries are identified on Schedule 5.6(c) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(d) As of the Closing Date, no Loan Party and no Subsidiary of a Loan Party holds any Commercial Tort Claims that exceed \$200,000 in amount, except as set forth on Schedule 5.6(d).

5.7. **Litigation.**

(a) Other than the Bankruptcy Cases or as set forth on Schedule 5.7(a), there are no actions, suits, or proceedings pending or, to the knowledge of any Loan Party, after due inquiry, threatened in writing against a Loan Party or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect.

(b) Schedule 5.7(b) sets forth a complete and accurate description, with respect to each of the actions, suits, or proceedings that, as of the Closing Date, is

pending or, to the knowledge of any Loan Party, after reasonable inquiry, threatened (other than by trade creditors or landlords for late payment of accounts) against a Loan Party or any of its Subsidiaries, of (i) the parties to such actions, suits, or proceedings, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings, (iii) the status, as of the Closing Date, with respect to such actions, suits, or proceedings, and (iv) whether any liability of any Loan Party or any Subsidiary thereof in connection with such actions, suits, or proceedings is covered by insurance.

5.8. **Compliance with Laws.** Except as otherwise permitted by the Bankruptcy Code or pursuant to any order of the Bankruptcy Court, which order shall be in form and substance acceptable to the Agent, no Loan Party nor any of its Subsidiaries (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

5.9. **No Material Adverse Effect.** All historical financial statements relating to the Loan Parties and their Subsidiaries that have been delivered by the Loan Parties to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Loan Parties' and their Subsidiaries' consolidated financial condition as the date thereof and results of operations for the period then ended. Since the date of the most recent audited financial statement delivered to Agent, other than the Bankruptcy Cases, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Effect with respect to the Loan Parties and their Subsidiaries.

5.10. **No Fraudulent Conveyance.** No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

5.11. **Employee Benefits.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the IRC and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the IRC has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the IRC and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the IRC, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) No ERISA Event has occurred, and neither the Loan Parties nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Loan Parties and each ERISA Affiliate has met all material requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the IRC) is 60% or higher and neither the Loan Parties nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) neither the Loan Parties nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Loan Parties nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC and no event or circumstance has occurred or exists that could, in each case, reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan

5.12. **Environmental Condition.** Except as set forth on Schedule 5.12, (a) to each Loan Party's knowledge, no properties or assets of any Loan Party have ever been used by a Loan Party or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to each Loan Party's knowledge, after due inquiry, no Loan Party's properties or assets have ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

5.13. **Intellectual Property.** Each Loan Party and each of its Subsidiaries owns or holds licenses in, all trademarks, trade names, copyrights, patents, and licenses that are material to the conduct of its business as currently conducted.

5.14. **Leases.** Each Loan Party and each of its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which it is a party or

under which it is operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Loan Party or the applicable Subsidiary exists under any of them.

5.15. **Deposit Accounts and Securities Accounts.** Set forth on Schedule 5.15 (as updated pursuant to Section 6.12(j)) is a listing of all of the Deposit Accounts and Securities Accounts of each Loan Party and each of its Subsidiaries, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

5.16. **Complete Disclosure.** All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of a Loan Party or any of its Subsidiaries) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of a Loan Party or any of its Subsidiaries) hereafter furnished by or on behalf of a Loan Party or any of its Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided.

5.17. **Material Contracts.** Set forth on Schedule 5.17 (as such Schedule may be updated from time to time in accordance herewith) is a reasonably detailed list of the Material Contracts of each Loan Party and each of its Subsidiaries; provided, however, that the Loan Parties may amend Schedule 5.17 to add additional Material Contracts so long as such amendment occurs by written notice to Agent. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party or the applicable Subsidiary and, to such Loan Party's knowledge, after due inquiry, each other Person that is a party thereto in accordance with its terms, (b) has not been otherwise amended or modified (other than amendments or modifications permitted by Section 7.7(b)), and (c) is not in default due to the action or inaction of the applicable Loan Party or the applicable Subsidiary (other than late payment of accounts).

5.18. **Patriot Act.** To the extent applicable, each Loan Party and each of its Subsidiaries is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of its Subsidiaries or any of their Affiliates, directly or indirectly, for any payments

to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.19. **Indebtedness.** Set forth on Schedule 5.19 is a true and complete list of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

5.20. **Payment of Taxes.** Except to the extent subject to the automatic stay and as otherwise permitted under Section 6.5, all tax returns and reports of each Loan Party and each of its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all taxes not yet due and payable. No Loan Party knows of any proposed tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

5.21. **Margin Stock.** No Loan Party nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrowers will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors.

5.22. **Governmental Regulation.** No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

5.23. **OFAC.** No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

5.24. **Employee and Labor Matters.** There is (a) no unfair labor practice complaint pending or, to the knowledge of the senior officers of the Loan Parties, threatened against any Loan Party or any of its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party or any of its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a Material Adverse Effect, (b) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against any Loan Party or any of its Subsidiaries that could reasonably be expected to result in a Material Adverse Effect, or (c) to the knowledge of the senior officers of the Loan Parties, no union representation question existing with respect to the employees of any Loan Party or any of its Subsidiaries and no union organizing activity taking place with respect to any of the employees of any Loan Party or any of its Subsidiaries. No Loan Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of each Loan Party and each of its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from any Loan Party or any of its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

5.25. **Holding Company.** Parent is a holding company and does not have any material liabilities (other than liabilities arising under the Loan Documents, the Existing First Lien Loan Documents and the Existing Second Lien Loan Documents), own any material assets (other than the Equity Interests of Oreck) or engage in any operations or business (other than the ownership of Oreck and its Subsidiaries).

5.26. **Collateral.**

(a) **Real Property.** Schedule 5.26(a) sets forth all Real Property owned by any of the Loan Parties as of the Closing Date.

(b) **Intellectual Property.**

(i) As of the Closing Date, Schedule 5.26(b) provides a complete and correct list of: (A) all registered Copyrights owned by any Loan Party and, all applications for registration of Copyrights owned by any Loan Party; (B) all Intellectual Property Licenses entered into by any Loan Party pursuant to which (x) any Loan Party has provided any license or other rights in Intellectual Property owned or controlled by such Loan Party to any other Person or (y) any Person has granted to any Loan Party any license or other rights in Intellectual Property owned or controlled by such Person that, in each case, is material to the business of such Loan Party, including any Intellectual Property that is incorporated in any Inventory, software, or other product marketed, sold, licensed, or distributed by such Loan Party; (C) all Patents owned by any Loan Party and all applications for Patents owned by any Loan Party; and (D) all registered Trademarks owned by any Loan Party and all applications for registration of Trademarks owned by any Loan Party;

(ii) all employees and contractors of each Loan Party who were involved in the creation or development of any material Intellectual Property for such Loan Party have signed agreements containing assignment of Intellectual Property rights to such Loan Party and obligations of confidentiality;

(iii) to each Loan Party's actual knowledge, no Person has infringed or misappropriated or is currently infringing or misappropriating any Intellectual Property rights owned by such Loan Party, in each case, that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect;

(iv) to each Loan Party's actual knowledge, all registered Copyrights, registered Trademarks, and issued Patents that are owned by such Loan Party and material to the conduct of its business are valid, subsisting and enforceable and in compliance, in all material respects, with all legal requirements, filings, and payments and other actions that are required to maintain such Intellectual Property in full force and effect; and

(v) each Loan Party has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all trade secrets owned by such Loan Party that are material to the business of such Loan Party;

(c) **Pledged Notes.** There is no default, breach, violation, or event of acceleration existing under any promissory note (as defined in the Code), if any, constituting Collateral and pledged hereunder (each a "Pledged Note") and no event has occurred or circumstance exists which, with the passage of time or the giving of notice, or both, would constitute a default, breach, violation, or event of acceleration under any Pledged Note, in each case that could reasonably be expected to result in a Material Adverse Effect. No Loan Party that is an obligee under a Pledged Note has waived any default, breach, violation, or event of acceleration under such Pledged Note that could reasonably be expected to result in a Material Adverse Effect.

(d) **Pledged Interests.** (i) Except for the Security Interest created hereby, each Loan Party is and will at all times be the sole holder of record and the legal and beneficial owner, free and clear of all Liens other than Permitted Liens, of the Pledged Interests indicated on Schedule P-3 to this Agreement as being owned by such Loan Party and, when acquired by such Loan Party, any Pledged Interests acquired after the Closing Date; (ii) all of the Pledged Interests are duly authorized, validly issued, fully paid and non-assessable and the Pledged Interests constitute or will constitute the stated percentage of the issued and outstanding Equity Interests of the Pledged Companies; (iii) such Loan Party has the right and requisite authority to pledge, the Investment Related Property pledged by such Loan Party to Agent as provided herein; (iv) all actions necessary or desirable to perfect and establish the first priority of, or otherwise protect, Agent's Liens in the Investment Related Property, and the proceeds thereof, have been duly taken, upon (A) the execution and delivery of this Agreement; (B) the taking of possession by Agent (or its designee) of any certificates representing the Pledged Interests, together with undated powers (or other documents of transfer reasonably acceptable to Agent) endorsed in blank by the applicable Loan Party; (C) the filing of financing statements in the applicable jurisdiction set forth on Schedule 5.6(a) for such Loan Party with respect to the Pledged Interests of such Loan Party



that are not represented by certificates, and (D) with respect to any Securities Accounts, the delivery of Control Agreements with respect thereto; and (v) each Loan Party has delivered to (or has made arrangements reasonably satisfactory to Agent for the Existing First Lien Lender to deliver such certificates after the Closing Date) and deposited with Agent all certificates representing the Pledged Interests owned by such Loan Party to the extent such Pledged Interests are represented by certificates, and undated powers (or other documents of transfer reasonably acceptable to Agent) endorsed in blank with respect to such certificates. None of the Pledged Interests owned or held by such Loan Party has been issued or transferred in violation of any securities registration, securities disclosure, or similar laws of any jurisdiction to which such issuance or transfer may be subject. As to all limited liability company or partnership interests, issued under any Pledged Operating Agreement or Pledged Partnership Agreement, each Loan Party hereby represents and warrants that the Pledged Interests issued pursuant to such agreement (A) are not dealt in or traded on securities exchanges or in securities markets, (B) do not constitute investment company securities, and (C) are not held by such Loan Party in a securities account. In addition, none of the Pledged Operating Agreements, the Pledged Partnership Agreements, or any other agreements governing any of the Pledged Interests issued under any Pledged Operating Agreement or Pledged Partnership Agreement, provide that such Pledged Interests are securities governed by Article 8 of the Uniform Commercial Code as in effect in any relevant jurisdiction.

(e) **Valid Security Interest.** This Agreement creates a valid security interest in the Collateral of each Loan Party, to the extent a security interest therein can be created under the Code, securing the payment of the Obligations. Except to the extent a security interest in the Collateral cannot be perfected by the filing of a financing statement under the Code, all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken or will have been taken upon the filing of financing statements listing each applicable Loan Party, as a debtor, and Agent, as secured party, in the jurisdictions listed next to such Loan Party's name on Schedule 5.6(a). Upon the making of such filings, Agent shall have a first priority perfected security interest in the Collateral of each Loan Party to the extent such security interest can be perfected by the filing of a financing statement, subject to Permitted Liens which are purchase money Liens and Liens having priority by operation of law. Upon the filing of appropriate financing statements in the jurisdictions listed on Schedule 5.6(a), all action necessary to perfect the Security Interest in and to on each Loan Party's Patents, Trademarks, or Copyrights has been taken and such perfected Security Interest is enforceable as such as against any and all creditors of and purchasers from any Loan Party.

5.27. **[Reserved]**.

5.28. **[Reserved]**.

5.29. **Location of Inventory.** The Inventory and Equipment (other than vehicles or Equipment out for repair) of the Loan Parties and their Subsidiaries are not stored with a bailee, warehouseman, or similar party and are located only at, or in-transit between or to, the locations identified on Schedule 5.29 (as such Schedule may be updated pursuant to Section 6.14).

5.30. **Inventory Records.** Each Loan Party keeps correct and accurate records, in all material respects, itemizing and describing the type, quality, and quantity of its Inventory and of the Inventory of its Subsidiaries and the book value thereof.

5.31. **Existing First Lien Loan Documents; Existing Second Lien Loan Documents.** The incurrence of Indebtedness by the Loan Parties pursuant to this Agreement, including through the Loans made by Lenders to Borrowers on and after the Closing Date, subject to the limitations set forth in this Agreement, does not and will not conflict with or result in a default under any Existing First Lien Loan Documents or Existing Second Lien Loan Documents.

5.32. **Matters Relating to Liens and Property Rights.** The entry of the Financing Order is effective to create in favor of Agent, for the benefit of Lenders, as security for the Obligations, (i) a valid first priority (other than with respect to the Permitted Priority Liens and the Carveout) Lien on all of the Collateral pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code and (ii) an allowed administrative expense in each of the Bankruptcy Cases having priority under Section 364(c)(1) of the Bankruptcy Code over all other administrative expenses (including, without limitation, such expenses specified in Sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code), subject only to the Permitted Priority Liens and the Carveout (the “Superpriority Claims”). Except for the Financing Order, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (x) the pledge or grant by Borrower or any of its Subsidiaries of the Liens purported to be created in favor of Agent pursuant to this Agreement or any of the Loan Documents or (y) the exercise by Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to this Agreement, any of the Loan Documents or created or provided for by applicable law), except as may be required in connection with the disposition of any pledged Collateral by laws generally affecting the offering and sale of securities.

5.33. **Budget.** The Budget was prepared by Borrowers’ financial personnel and represents the good faith belief of such Persons at such time as to the probable course of Borrowers’ business and financial affairs, over the periods shown therein, subject to the assumptions stated therein.

5.34. **Financing Order.** The Financing Order is in full force and effect, is not subject to a pending appeal or motion for leave to appeal or other proceeding to set aside such order and has not been reversed, modified, amended, stayed or vacated absent Agent’s written consent.

## **6. AFFIRMATIVE COVENANTS.**

Each Borrower and each other Loan Party covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, each Borrower and each other Loan Party shall and shall cause each of the Loan Parties and shall cause their respective Subsidiaries to comply with each of the following:

6.1. **Financial Statements, Reports, Certificates.** Borrowers (a) will deliver to Agent, with copies to each Lender, the following financial reports: (i) concurrently with each delivery thereof to the Bankruptcy Court, copies of all operating reports submitted to the

Bankruptcy Court, and (ii) not later than the close of business on the Wednesday of each week commencing with the week of the Closing Date, (A) the collections and disbursement results for the prior week, and (b) a written narrative explanation of any variance in excess of 10% on a cumulative basis of actual results from those reflected in the Budget.

6.2. **[Reserved.]**

6.3. **Existence.** Except as otherwise permitted under Section 7.3 or Section 7.4, at all times maintain and preserve in full force and effect (a) its existence (including being in good standing in its jurisdiction of organization) and (b) all rights and franchises, licenses and permits material to its business; provided, however, that no Loan Party nor any of its Subsidiaries shall be required to preserve any such right or franchise, licenses or permits if either: (a) it is immaterial to the Loan Parties' and their Subsidiaries' business when taken as a whole or (b) such Person's Board of Directors (or similar governing body or Person) or a senior officer thereof shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Agent or the Lenders; provided that in the case of subsection (b) the Loan Parties deliver at least ten (10) days prior written notice to Agent of the election of such Person not to preserve any such right or franchise, license or permit.

6.4. **Maintenance of Properties.** Maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear and casualty excepted and Permitted Dispositions excepted (and except where the failure to so maintain and preserve such assets could not reasonably be expected to result in a Material Adverse Effect), and comply with the material provisions of all material leases to which it is a party as lessee, so as to prevent the loss or forfeiture thereof, unless such provisions are the subject of a Permitted Protest.

6.5. **Taxes.**

(a) Cause all assessments and taxes in excess of \$200,000 in the aggregate imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period (including any extension by virtue of the Bankruptcy Cases), except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest and so long as, in the case of an assessment or tax that has or may become a Lien against any of the Collateral, (i) such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax, and (ii) any such other Lien is at all times subordinate to Agent's Liens.

(b) Make timely payment or deposit of all tax payments and withholding taxes required of it and them by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Agent with proof reasonably satisfactory to Agent indicating that such Loan Party and its Subsidiaries have made such payments or deposits.

6.6. **Insurance.** At Borrowers' expense, maintain insurance with respect to the assets of each Loan Party and each of their Subsidiaries wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrowers also shall maintain, with respect to each Loan Party and each of their Subsidiaries, business interruption insurance, general liability insurance, flood insurance for Collateral located in a flood plain, product liability insurance, director's and officer's liability insurance, fiduciary liability insurance, and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies reasonably acceptable to Agent and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to Agent. All property insurance policies covering the Collateral are to be made payable to Agent for the benefit of Agent and the Lenders, as its interests may appear, in case of loss, pursuant to a lender loss payable endorsement reasonably acceptable to Agent and are to contain such other provisions as Agent may reasonably require to fully protect Agent's and the Lenders' interest in the Collateral and to any payments to be made under such policies. Such evidence of property and general liability insurance shall be delivered to Agent, with the lender loss payable endorsements (but only in respect of Collateral) and additional insured endorsements (with respect to general liability coverage) in favor of Agent and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If Borrowers fail to maintain such insurance, Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence of an Event of Default, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

6.7. **Inspections, Exams, Audits and Appraisals.**

(a) Each Loan Party will, and will cause each of its Subsidiaries to, permit Agent, any Lender, and each of their respective duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Agent or any Lender, as applicable, may designate and, so long as no Default or Event of Default has occurred and is continuing, with reasonable prior notice to Administrative Borrower and during regular business hours.

(b) Each Loan Party will, and will cause each of its Subsidiaries to, permit Agent and each of its duly authorized representatives or agents to conduct appraisals and valuations at such reasonable times and intervals and in such manner as Agent may designate.

6.8. **Account Verification.** Permit Agent, in Agent's name or in the name of a nominee of Agent, to verify the validity, amount or any other matter relating to any Account, by mail, telephone, facsimile transmission or otherwise. Further, at the request of Agent or any Lender, Borrowers shall send requests for verification of Accounts or send notices of assignment of Accounts to Account Debtors and other obligors.

6.9. **Compliance with Laws.** Comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

6.10. **Environmental.**

(a) Keep any property either owned or operated by any Borrower or any other Loan Party free of any Environmental Liens or post bonds or other financial assurances reasonably satisfactory to Agent and in an amount sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) Comply, in all material respects, with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests, and

(c) Promptly notify Agent of any release of which any Borrower or any other Loan Party has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Loan Party or any of its Subsidiaries and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law.

6.11. **[Reserved.]**

6.12. **Collateral Covenants.**

(a) **Possession of Collateral.** In the event that any Collateral, including Proceeds, is evidenced by or consists of Negotiable Collateral, Investment Related Property, or Chattel Paper, in each case, having an aggregate value or face amount of \$250,000 or more for all such Negotiable Collateral, Investment Related Property, or Chattel Paper which has not been perfected by possession, the Loan Parties shall promptly (and in any event within five (5) Business Days after receipt thereof), notify Agent thereof, and if and to the extent that perfection or priority of Agent's Liens is dependent on or enhanced by possession, the applicable Loan Party, promptly (and in any event within five (5) Business Days) after request by Agent, shall execute such other documents and instruments as shall be reasonably requested by Agent or, if applicable, endorse and deliver physical possession of such Negotiable Collateral, Investment Related Property, or Chattel Paper to Agent, together with such undated powers (or other relevant document of assignment or transfer reasonably acceptable to Agent) endorsed in blank as shall be reasonably requested by Agent, and shall do such other acts or things deemed necessary or desirable by Agent, in its Permitted Discretion, to enhance, perfect and protect Agent's Liens therein.

(b) **Chattel Paper.**

(i) Promptly (and in any event within five (5) Business Days) after request by Agent, each Loan Party shall take all steps reasonably necessary to grant Agent control of all electronic Chattel Paper of any Loan Party in accordance with the Code and all “transferable records” as that term is defined in Section 16 of the Uniform Electronic Transaction Act and Section 201 of the federal Electronic Signatures in Global and National Commerce Act as in effect in any relevant jurisdiction, to the extent that the individual or aggregate value or face amount of such electronic Chattel Paper equals or exceeds \$200,000; and

(ii) If any Loan Party retains possession of any Chattel Paper or instruments (which retention of possession shall be subject to the extent permitted hereby), promptly upon the request of Agent, such Chattel Paper and instruments shall be marked with the following legend: “This writing and the obligations evidenced or secured hereby are subject to the Security Interest of Black Diamond Commercial Finance, L.L.C., as Agent”.

(c) **Controlled Agreements.** Within 30 days following the Closing Date (or such later date as Agent may agree in writing in its sole discretion), each Loan Party shall obtain a Control Agreement, from each bank maintaining a Deposit Account for such Loan Party.

(d) **Letter-of-Credit Rights.** If the Loan Parties (or any of them) are or become the beneficiary of letters of credit having a face amount or value of \$200,000 or more in the aggregate, then the applicable Loan Party or Loan Parties shall promptly (and in any event within five (5) Business Days after becoming a beneficiary), notify Agent thereof and, promptly (and in any event within five (5) Business Days) after request by Agent, enter into a tri-party agreement with Agent and the issuer or confirming bank with respect to letter-of-credit rights assigning such letter-of-credit rights to Agent and directing all payments thereunder to the Collection Account unless otherwise directed by Agent, all in form and substance reasonably satisfactory to Agent.

(e) **Commercial Tort Claims.** If the Loan Parties (or any of them) obtain Commercial Tort Claims having a value, or involving an asserted claim, in the amount of \$200,000 or more in the aggregate for all Commercial Tort Claims, then the applicable Loan Party or Loan Parties shall promptly (and in any event within five (5) Business Days of first making written demand on the party subject of such claim) notify Agent of such Commercial Tort Claims and, promptly (and in any event within five (5) Business Days) after request by Agent, amend Schedule 5.6(d) to describe such Commercial Tort Claims in a manner that reasonably identifies such Commercial Tort Claims and which is otherwise reasonably satisfactory to Agent, and hereby authorizes the filing of additional financing statements or amendments to existing financing statements describing such Commercial Tort Claims, and agrees to do such other acts or things deemed necessary or desirable by Agent, in its Permitted Discretion, to give Agent a first priority, perfected security interest in any such Commercial Tort Claim, which Commercial Tort Claim shall not be subject to any other Liens, other than Permitted Liens;

(f) **Government Contracts.** Other than Accounts and Chattel Paper the aggregate value of which does not at any one time exceed \$500,000, if any Account or Chattel Paper of any Loan Party arises out of a contract or contracts with the United States of America or any State or any department, agency, or instrumentality thereof, Loan Parties shall promptly (and in any event within five (5) Business Days of the creation thereof) notify Agent thereof and, promptly (and in any event within five (5) Business Days) after request by Agent, execute any instruments or take any steps reasonably required by Agent in order that all moneys due or to become due under such contract or contracts shall be assigned to Agent, for the benefit of Agent and the Lenders, and shall provide written notice thereof under the Assignment of Claims Act or other applicable law.

(g) **Intellectual Property.**

(i) Upon the request of Agent, in order to facilitate filings with the PTO and the United States Copyright Office, each Loan Party shall execute and deliver to Agent one or more Copyright Security Agreements or Patent and Trademark Security Agreements to further evidence Agent's Lien on such Loan Party's Patents, Trademarks, or Copyrights, and the General Intangibles of such Loan Party relating thereto or represented thereby;

(ii) Each Loan Party shall have the duty, with respect to Intellectual Property that is material in the conduct of such Loan Party's business, to protect and diligently enforce and defend at such Loan Party's expense its Intellectual Property, including (A) to use commercially reasonable efforts to prosecute any trademark application or service mark application that is material to the Loan Parties and their Subsidiaries taken as a whole and part of the Trademarks pending as of the date hereof or hereafter, (B) to use commercially reasonable efforts to prosecute any patent application that is material to the Loan Parties and their Subsidiaries taken as a whole and part of the Patents pending as of the date hereof or hereafter, (C) to take all reasonable and necessary action to preserve and maintain all of such Loan Party's material Trademarks, Patents, Copyrights, Intellectual Property Licenses, and its rights therein, including paying all maintenance fees and filing of applications for renewal, affidavits of use, and affidavits of noncontestability, and (D) to require all employees, consultants, and contractors of each Loan Party who were involved in the creation or development of such Intellectual Property to sign agreements containing assignment to such Loan Party of Intellectual Property rights created or developed and obligations of confidentiality. No Loan Party shall abandon any Intellectual Property or Intellectual Property License that is material in the conduct of such Loan Party's business. Each Loan Party shall take the steps described in this Section 6.12(g)(ii) with respect to all new or acquired Intellectual Property to which it or any of its Subsidiaries is now or later becomes entitled that is material in the conduct of such Loan Party's or Subsidiary's business;

(iii) Each Loan Party acknowledges and agrees that Agent shall have no duties with respect to any Intellectual Property or Intellectual Property Licenses of any Loan Party. Without limiting the generality of this Section 6.12(g)(iii), each Loan Party acknowledges and agrees that Agent shall not be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Intellectual Property Licenses against any other Person, but Agent may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all expenses incurred in connection therewith

(including reasonable fees and expenses of attorneys and other professionals) shall be for the sole account of Borrowers and shall be chargeable to the Loan Account;

(iv) Each Loan Party shall promptly file an application with the United States Copyright Office for any Copyright that has not been registered with the United States Copyright Office if such Copyright is material in connection with the conduct of such Loan Party's business. Any expenses incurred in connection with the foregoing shall be borne by the Loan Parties; and

(v) No Loan Party shall enter into any material Intellectual Property License to receive any license or rights in any Intellectual Property of any other Person unless such Loan Party has used commercially reasonable efforts to permit the assignment of or grant of a Lien in such Intellectual Property License (and all rights of such Loan Party thereunder) to Agent (and any transferees of Agent).

(h) **Investment Related Property.**

(i) Upon the occurrence and during the continuance of an Event of Default, following the request of Agent, all sums of money and property paid or distributed in respect of the Investment Related Property that are received by any Loan Party shall be held by such Loan Party in trust for the benefit of Agent segregated from such Loan Party's other property, and such Loan Party shall deliver it promptly to Agent in the exact form received; and

(ii) Each Loan Party shall cooperate with Agent in obtaining all necessary approvals and making all necessary filings under federal, state, local, or foreign law to effect the perfection of the Security Interest on the Investment Related Property or to effect any sale or transfer thereof.

(i) **Real Property; Fixtures.** Upon the acquisition by any Loan Party of any fee interest in Real Property, such Loan Party will promptly (and in any event within 2 Business Days of acquisition) notify Agent of the acquisition of such Real Property and will grant to Agent a first priority Mortgage on each fee interest in Real Property with a fair market value in excess of \$250,000 now or hereafter owned by such Loan Party, which Real Property shall not be subject to any other Liens except Permitted Liens, and shall deliver such other documentation and opinions, in form and substance satisfactory to Agent, in connection with the grant of such Mortgage as Agent shall request in its Permitted Discretion, including appraisals, title insurance policies and endorsements, surveys, financing statements, fixture filings, flood insurance, flood insurance certifications and environmental audits and such Loan Party shall pay all recording costs, mortgage registration taxes, intangible taxes and other fees and costs (including reasonable attorneys' fees and expenses) incurred in connection therewith. All such appraisals, title insurance policies and endorsements, environmental audits and surveys shall be prepared or issued by parties reasonably acceptable to Agent. To the extent permitted by applicable law, all of the Collateral shall remain personal property regardless of the manner of its attachment or affixation to real property.

(j) **Controlled Accounts.**



(i) Within 30 days following the Closing Date (or such later date as Agent may agree in writing in its sole discretion), each Loan Party shall maintain Cash Management Services of a type and on terms satisfactory to Agent at one or more banks identified on Schedule 5.15 or otherwise satisfactory to Agent (each a “Controlled Account Bank”) and shall ensure that all of the Account Debtors of each Loan Party forward payment of the amounts owed by them directly to such Controlled Account Bank, and deposit or cause to be deposited promptly, and in any event no later than the first Business Day after the date of receipt thereof, all of their Collections (including those sent directly by their Account Debtors to a Loan Party or to a Subsidiary of a Loan Party) into a bank account of such Loan Party (each, a “Controlled Account”) at one of the Controlled Account Banks, provided, however, the Loan Parties may deposit cash or checks received at their Homecare Store locations into any Deposit Accounts permitted under Sections 6.12(j); and

(ii) Within 30 days following the Closing Date (or such later date as Agent may agree in writing in its sole discretion), each Loan Party shall maintain Control Agreements with the applicable Controlled Account Bank, in form and substance reasonably acceptable to Agent. Each such Control Agreement shall provide, among other things, that (A) the Controlled Account Bank will comply with any instructions originated by Agent directing the disposition of the collected funds in such Controlled Account without further consent by the applicable Loan Party, (B) the Controlled Account Bank waives, subordinates, or agrees not to exercise any rights of setoff or recoupment or any other claim against the applicable Controlled Account other than for payment of its service fees and other charges directly related to the administration of such Controlled Account and for returned checks or other items of payment, and (C) the Controlled Account Bank will forward, by daily standing wire transfer, all amounts in the applicable Controlled Account to the Collection Account or such other account as directed by Agent to be applied to the Obligations as provided in this Agreement.

(k) **Bills of Lading and Other Documents of Title.** If any Inventory is in transit to the United States, then, with respect to such Inventory: (i) all bills of lading and other documents of title in respect of such In-Transit Inventory shall be Acceptable Bills of Lading, unless Agent directs otherwise in its Permitted Discretion; (ii) without limiting any other rights of Agent hereunder, after an Event of Default, Agent shall have the right to endorse and negotiate on behalf of, and as attorney-in-fact for, each Loan Party any bill of lading or other document of title with respect to such In-Transit Inventory; and (iii) each such bill of lading shall be delivered to such Customs Broker as such Borrower may specify (so long as Agent has received an Imported Goods Agreement duly executed and delivered by such Customs Broker).

(l) **Payments to Customs Brokers, etc.** Pay in a timely manner all applicable duties, freight, charges and like fees and charges of the United States Customs Service, Customs Brokers, shippers, freight forwarders, carriers and warehousemen.

(m) **Pledged Notes.** Loan Parties (i) without the prior written consent of Agent, will not (A) waive or release any obligation of any Person that is obligated under any of the Pledged Notes with an outstanding principal balance in excess of \$200,000, (B) take or omit to take any action or knowingly suffer or permit any action to be omitted or taken, the taking or omission of which would result in any right of offset against sums

payable under any such Pledged Note, or (C) other than Permitted Dispositions, assign or surrender their rights and interests under any such Pledged Note or terminate, cancel, modify, change, supplement or amend any such Pledged Note, and (ii) shall provide to Agent copies of all material written notices (including notices of default) given or received with respect to any such Pledged Notes promptly after giving or receiving such notice.

(n) **Pledged Interests.**

(i) If any Loan Party shall acquire, obtain, receive or become entitled to receive any Pledged Interests after the Closing Date, it shall promptly (and in any event within five (5) Business Days of acquiring or obtaining such Collateral) deliver to Agent a duly executed Pledged Interests Addendum identifying such Pledged Interests.

(ii) Each Loan Party shall promptly deliver to Agent a copy of each material notice or other material communication received by it in respect of any Pledged Interests.

(iii) No Loan Party shall make or consent to any amendment or other modification or waiver with respect to any Pledged Interests, Pledged Operating Agreement, or Pledged Partnership Agreement, or enter into any agreement or permit to exist any restriction with respect to any Pledged Interests if the same is prohibited pursuant to the Loan Documents.

(iv) As to all limited liability company or partnership interests, issued under any Pledged Operating Agreement or Pledged Partnership Agreement, each Loan Party hereby covenants that the Pledged Interests issued pursuant to such agreement (A) are not and shall not be dealt in or traded on securities exchanges or in securities markets, (B) do not and will not constitute investment company securities, and (C) are not and will not be held by such Loan Party in a securities account. In addition, none of the Pledged Operating Agreements, the Pledged Partnership Agreements, or any other agreements governing any of the Pledged Interests issued under any Pledged Operating Agreement or Pledged Partnership Agreement, provide or shall provide that such Pledged Interests are securities governed by Section 8 of the Uniform Commercial Code as in effect in any relevant jurisdiction.

6.13. **Material Contracts.** Parent and its Subsidiaries shall maintain all Material Contracts in full force and effect and shall not default in the payment or performance of any obligations thereunder, unless the termination or nonperformance thereof is not reasonably likely to result in a Material Adverse Effect.

6.14. **Location of Inventory, Equipment and Books.** Keep the Inventory and Equipment (other than vehicles and Equipment out for repair and other Equipment with an aggregate fair market value not to exceed \$200,000 at any time) and Books of each Loan Party and each of its Subsidiaries only at the locations identified on Schedule 5.29 and keep the chief executive office of each Loan Party and each of its Subsidiaries only at the locations identified on Schedule 5.6(b); provided, however, that Borrowers may amend Schedule 5.29 so long as such amendment occurs by written notice to Agent not less than 10 days prior to the date on which such Inventory, Equipment or Books are moved to such new location, and so long as, at the time of such written notification, the applicable Loan Party or Subsidiary provides Agent a

Collateral Access Agreement with respect thereto if such location is not owned by such Loan Party and such location is a Homecare Store location located in any state other than a state that grants a landlord a lien on any assets of a tenant by statute or other operation of law.

**6.15. Further Assurances.**

(a) At any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, mortgages, deeds of trust, opinions of counsel, and all other documents (the “Additional Documents”) that Agent may reasonably request and in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfection or to better perfect Agent’s Liens in all of the assets of each Loan Party (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal, but excluding the Excluded Assets), to create and perfect Liens in favor of Agent in any Real Property acquired by any Loan Party after the Closing Date with a fair market value in excess of \$250,000, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided that the foregoing shall not apply to any Loan Party or Subsidiary that is a CFC. To the maximum extent permitted by applicable law, if a Borrower or any other Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time, not to exceed 30 days following the request to do so, such Borrower and such other Loan Party hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party’s name, as applicable, and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of each Borrower and each other Loan Party and all of the outstanding Equity Interests of each Loan Party (subject to exceptions and limitations contained in the Loan Documents with respect to CFCs).

(b) At the time that any Loan Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Closing Date, such Loan Party shall (a) within 10 days of such formation or acquisition (or such later date as permitted by Agent in its Permitted Discretion) cause any such new Subsidiary to provide to Agent a joinder to this Agreement, together with such other security documents (including mortgages with respect to any Real Property owned in fee simple by such new Subsidiary with a fair market value of at least \$250,000), as well as appropriate financing statements (and with respect to all property subject to a mortgage, fixture filings), all in form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary (other than Excluded Assets)); provided that the joinder and such other security documents shall not be required to be provided to Agent with respect to any Subsidiary of Borrower that is a CFC, (b) within 10 days of such formation or acquisition (or such later date as permitted by Agent in its Permitted Discretion) provide to Agent a pledge agreement and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary reasonably satisfactory to Agent; provided that only 65% of the total outstanding voting Equity

Interests of any first tier Subsidiary of a Borrower that is a CFC (and none of the Equity Interests of any Subsidiary of such CFC) shall be required to be pledged (which pledge, if reasonably requested by Agent, shall be governed by the laws of the jurisdiction of such Subsidiary), and (c) within 10 days of such formation or acquisition (or such later date as permitted by Agent in its Permitted Discretion) provide to Agent all other documentation, including one or more opinions of counsel reasonably satisfactory to Agent, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance or other documentation with respect to all Real Property owned in fee and subject to a mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 6.15 shall be a Loan Document.

(c) Each Borrower and each other Loan Party authorizes the filing by Agent of financing or continuation statements, or amendments thereto, and such Loan Party will execute and deliver to Agent such other instruments or notices, as Agent may reasonably request, in order to perfect and preserve the Security Interest granted or purported to be granted hereby.

(d) Each Borrower and each other Loan Party authorizes Agent at any time and from time to time to file, transmit, or communicate, as applicable, financing statements and amendments (i) describing the Collateral as “all personal property of debtor” or “all assets of debtor” or words of similar effect, (ii) describing the Collateral as being of equal or lesser scope or with greater detail, or (iii) that contain any information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of such financing statement. Each Borrower and each other Loan Party also hereby ratifies any and all financing statements or amendments previously filed by Agent in any jurisdiction.

(e) Each Borrower and each other Loan Party acknowledges that no Loan Party is authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection with this Agreement without the prior written consent of Agent, subject to such Loan Party’s rights under Section 9-509(d)(2) of the Code.

6.16. **Chief Restructuring Officer.** Borrowers will continue to appoint, retain and engage the Chief Restructuring Officer on terms and conditions acceptable to Agent, which will include, without limitation, assisting Borrowers in the management of their businesses, preparation of forecasts and projections, and the formulation and implementation of strategic initiatives in connection with the Case. Borrowers hereby and will continue to authorize and instruct the Chief Restructuring Officer to (a) share with Agent and Lenders all budgets, records, projections, financial information, reports and other information relating to the Collateral, the financial condition, operations and the sale, marketing or reorganization process of the Borrowers’ businesses and assets as requested from time to time, except to the extent access to such information would compromise the Borrowers’ attorney-client privilege, and (b) make himself available to the Agent and the Lenders as reasonably requested by the Agent and the Lenders. Borrowers will provide the Chief Restructuring Officer, complete access to all of the Borrowers’ books and records, all of Borrowers’ premises and to Borrowers’ management as and when deemed necessary by the Chief Restructuring officer or the Agent.

6.17. **Guarantor Reports.** Each Loan Party will, and will cause each of its Subsidiaries to, cause each Guarantor to deliver its annual financial statements at the time when Borrowers provide their financial statements to Agent, but only to the extent such Guarantor's financial statements are not consolidated with Borrowers' financial statements.

6.18. **[Reserved].**

6.19. **Post-Closing Obligations.**

(a) Within 30 days following the Closing Date (or such later date as Agent may agree in writing in its sole discretion), Borrowers shall deliver to Agent a deed of trust (or other form of security), in form and substance satisfactory to Agent, with respect to the real estate, its Equipment and related property located or installed on the land located at 1400 Salem Road, Cookeville, TN 38506, and any other documentation Agent reasonably requires with respect thereto.

(b) Within 30 days following the Closing Date (or such later date as Agent may agree in writing in its sole discretion), Borrowers shall deliver to Agent insurance endorsements to the insurance policies required to be carried by the Loan Parties under the Loan Documents (i) naming Agent as lender's loss payee and additional insured and (ii) providing Agent with 30 days' notice of cancellation, each in form and substance satisfactory to Agent.

6.20. **Chief Financial Officer.** As soon as reasonably practicable, but in any event no later than May 31, 2013, Borrowers will appoint, retain and engage a chief financial officer acceptable to Agent on terms and conditions acceptable to Agent.

## **7. NEGATIVE COVENANTS.**

Each Borrower and each Loan Party covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, no Borrower and no other Loan Party will do, nor will any Borrower or any other Loan Party permit any of its Subsidiaries to do any of the following:

7.1. **Indebtedness.** Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

7.2. **Liens.** Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens. Notwithstanding anything to the contrary in this Agreement or other Loan Documents, no Loan Party will, nor permit any of its Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien with priority over the Liens created by the Loan Documents, except the Carveout.

7.3. **Restrictions on Fundamental Changes.**

(a) Enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Equity Interests, except for (i) any merger between Loan

Parties, provided that a Borrower must be the surviving entity of any such merger to which it is a party, and (ii) any merger between Subsidiaries of a Borrower that are not Loan Parties.

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries of any Borrower with nominal assets and nominal liabilities, (ii) the liquidation or dissolution of a Loan Party (other than a Borrower) or any of its wholly-owned Subsidiaries so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party that is not liquidating or dissolving, or (iii) the liquidation or dissolution of a Subsidiary of a Borrower that is not a Loan Party (other than any such Subsidiary the Equity Interests of which (or any portion thereof) is subject to a Lien in favor of Agent) so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary of a Borrower that is not liquidating or dissolving.

(c) Suspend or cease operation of a substantial portion of its or their business, except as permitted pursuant to Sections 7.3(a) or (b) above or in connection with the transactions permitted pursuant to Section 7.4.

(d) Form or acquire any direct or indirect Subsidiary.

7.4. **Disposal of Assets.** Other than Permitted Dispositions or transactions expressly permitted by Sections 7.3 or 7.12, sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Collateral or any other asset except as expressly permitted by this Agreement. Agent shall not be deemed to have consented to any sale or other disposition of any of the Collateral or any other asset except as expressly permitted in this Agreement or the other Loan Documents.

7.5. **Change of Name.** Change the name, organizational identification number, state of organization, organizational identity or "location" for purposes of Section 9-307 of the Code of any Loan Party or any of its Subsidiaries.

7.6. **Nature of Business.** Make any change in the nature of its or their business as conducted on the date of this Agreement or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, however, that the foregoing shall not prevent any Loan Party or any of its Subsidiaries from engaging in any business that is reasonably related or ancillary to its or their business.

7.7. **Payments and Amendments.**

(a) Except in connection with Refinancing Indebtedness permitted by Section 7.1,

(i) optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of any Loan Party or any of its Subsidiaries, other than (A) the Obligations in accordance with this Agreement, (B) Permitted Intercompany Advances and (C) other Permitted Indebtedness (other than Indebtedness that has been contractually subordinated in right of

payment to the Obligations) so long as in each case (x) after giving effect thereto, no Default or Event of Default exists and (y) such prepay, redemption, defeasance, purchase or acquisition is in accordance with the Budget, or

(ii) make any payment on account of Indebtedness that has been contractually subordinated in right of payment to the Obligations if such payment is not permitted at such time under the subordination terms and conditions (including, without limitation, the Management Debt), or

(b) Directly or indirectly, amend, modify, or change any of the terms or provisions of, in any manner that could reasonably be expected to be adverse to the interests of Agent or the Lenders:

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness other than (A) the Obligations in accordance with this Agreement, (B) Permitted Intercompany Advances, (C) Indebtedness permitted under clauses (c), (e) and (f) of the definition of Permitted Indebtedness, or (D) the Existing Second Lien Obligations, to the extent such amendment, modification or change would be permitted under the Existing Intercreditor Agreement;

(ii) any Material Contract except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; or

(iii) the Governing Documents of any Loan Party or any of its Subsidiaries if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of the Lenders.

7.8. **Change in Control.** Cause, permit, or suffer, directly or indirectly, any Change in Control.

7.9. **[Reserved].**

7.10. **Accounting Methods.** Modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP).

7.11. **Investments.** Except for Permitted Investments in accordance with the Budget, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment.

7.12. **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any transaction with any Affiliate of any Borrower, any other Loan Party or any of their Subsidiaries except for the following transactions so long as such transactions are in accordance with the Budget:

(a) transactions contemplated by the Loan Documents, the Existing First Lien Loan Documents or the Existing Second Lien Loan Documents or transactions (other than the payment of management, consulting, monitoring, or advisory fees which

shall not be permitted) with any Affiliates of any Borrower or any Loan Party in the ordinary course of business of such Borrower or Loan Party, consistent with past practices and undertaken in good faith, upon fair and reasonable terms no less favorable than would be obtained in a comparable arm's length transaction with a non-Affiliate (and fully disclosed to Agent if such transactions involve one or more payments in excess of \$250,000 for any single transaction or series of transactions);

(b) so long as it has been approved by a Loan Party's Board of Directors (or comparable governing body) in accordance with applicable law, any customary indemnities provided for the benefit of officers and directors (or comparable managers) of such Loan Party;

(c) so long as it has been approved by a Loan Party's Board of Directors (or comparable governing body) in accordance with applicable law, the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of a Loan Party in the ordinary course of business and consistent with industry practice;

(d) so long as no Default or Event of Default has occurred and is continuing, the payment, pursuant to the Management Agreement, of reasonable out-of-pocket expenses of the Equity Sponsors in an aggregate amount not to exceed \$100,000 in any fiscal year;

(e) transactions solely among Borrowers;

(f) transactions with Affiliates that were consummated prior to the Closing Date, as shown on Schedule 7.12;

(g) transactions described in that Business Cooperation Agreement by and between Oreck Corporation and Oreck (Shenzhen) Management Consulting Co. Ltd. in an aggregate amount not to exceed \$1,000,000 in any fiscal year (provided that such amount may be increased to \$1,200,000 with Agent's written consent),

(h) transaction involving certain Affiliates of the Loan Parties providing consulting services to the Loan Parties with respect to the Loan Parties' development of business in China in an aggregate amount not to exceed \$250,000 in any fiscal year; and

(i) transactions permitted by Section 7.3 or Section 7.9, or any Permitted Intercompany Advance.

7.13. **Use of Proceeds.** Use the proceeds of any loan made hereunder for any purpose other than (a) to pay the fees, costs, and expenses, including Lender Group Expenses, incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, (b) to fund working capital needs and general corporate purposes of Borrowers (including, without limitation, payments with respect to the Carveout), and (c) consistent with the terms and conditions hereof, as permitted by, and consistent in all respects with, the Budget and the Financing Order.



Without limiting the generality of the foregoing, no Loan Party will, nor permit any of its Subsidiaries to, use the proceeds of any loan made hereunder or any proceeds of Collateral to be applied to (i) repay or prepay any of the Existing First Lien Obligations or Existing Second Lien Obligations (including any interest, fees, costs and expenses, tax or indemnification obligations), (ii) to affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent enforceability or priority of the Liens, claims or rights in favor of Agent, any Lender, Existing First Lien Lender or Existing Second Lien Agent.

7.14. **Limitation on Issuance of Equity Interests.** Except for the issuance or sale of common stock or Permitted Preferred Stock by a Borrower or other Loan Party, issue or sell or enter into any agreement or arrangement for the issuance and sale of any of their Equity Interests.

7.15. **Consignments.** Consign any of its Inventory or sell any of its Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale, except as set forth on Schedule 7.15.

7.16. **Inventory and Equipment with Bailees.** Store the Inventory or Equipment of any Loan Party or any of its Subsidiaries at any time now or hereafter with a bailee, warehouseman, or similar party, except as set forth on Schedule 7.16.

7.17. **Parent as Holding Company.** Permit Parent to incur any liabilities (other than liabilities arising under the Loan Documents, the Existing First Lien Loan Documents and the Existing Second Lien Loan Documents), own or acquire any assets (other than the Equity Interests of Oreck) or engage itself in any operations or business, except in connection with its ownership of Oreck and its rights and obligations under the Loan Documents.

7.18. **Financing Order; Administrative Expense Priority; Payments.**

(a) Seek, consent to or suffer to exist at any time any modification, stay, vacation or amendment of the Financing Order, except for modifications and amendments joined in or agreed to in writing by Agent; and Borrowers will not permit the percentage variance of any line item in any Budget, as such percentage variances are reflected in the Variance Reports, to exceed the budgeted receipt or disbursement amount by more than 10%.

(b) Seek the use of "Cash Collateral" (as defined in the Financing Order) in a manner inconsistent with the terms of the Financing Order without the prior written consent of Agent.

(c) Suffer to exist at any time a priority for any administrative expense or unsecured claim against any Borrower (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in Sections 105, 326, 328, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code) or any super priority claim which is equal or superior to

the priority of the Lender Group in respect of the Obligations, except for the amounts having a priority over the Obligations to the extent set forth in the definition of Carveout.

(d) Suffer to exist at any time any Lien on any properties, assets or rights (including, without limitation, Accounts, Inventory and all other Collateral) except for Permitted Liens.

(e) Prior to the date on which the Obligations have been indefeasibly paid in full in cash and this Agreement has been terminated, pay any administrative expenses, except administrative expenses incurred in the ordinary course of the business of Borrowers, in each case subject to the extent and having the order of priority set forth in the definition of Carveout.

(f) Notwithstanding the foregoing, the Borrowers shall be permitted to pay as the same may become due and payable (i) administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code incurred in the ordinary course of business and to the extent otherwise authorized under the Financing Order and this Agreement and (ii) compensation and reimbursement of expenses to professionals allowed and payable under Sections 330 and 331 of the Bankruptcy Code to the extent permitted by the Financing Order.

**8. [RESERVED.]**

**9. EVENTS OF DEFAULT.**

Any one or more of the following events shall constitute an event of default (each, an “Event of Default”) under this Agreement:

9.1. **Payments.** If any Borrower fails to pay when due and payable, or when declared due and payable, all or any portion of the Obligations consisting of principal, interest, fees, charges or other amounts due the Lender Group, any portion of the Existing First Lien Obligations, reimbursement of Lender Group Expenses, or other amounts constituting Obligations (including any portion thereof that accrues after the commencement of the Case), and such failure continues for a period of 3 Business Days.

9.2. **Covenants.** If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 4.3, 6.1, 6.3 (solely if any Loan Party or any of its Subsidiaries is not in good standing in its jurisdiction of organization), 6.5(a) (solely with respect to F.I.C.A., F.U.T.A., federal income taxes and any other taxes or assessments the non-payment of which may result in a Lien having priority over Lender’s Liens), 6.5(b), 6.6, 6.7 (solely if any Loan Party or any of its Subsidiaries refuses to allow Lender or its representatives or agents to visit its properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss its affairs, finances, and accounts with its officers and employees), 6.8, 6.12, 6.14, 6.16, 6.17, 6.19 or 6.20 or (ii) Section 7;

(b) [Reserved];

(c) [Reserved];

(d) fails to perform or observe any covenant or other agreement contained in any of Sections 6.3 (other than if a Loan Party is not in good standing in its jurisdiction of organization), 6.4, 6.5(a) (other than F.I.C.A., F.U.T.A., federal income taxes and any other taxes or assessments the non-payment of which may result in a Lien having priority over Agent's Liens), 6.7 (other than if any Loan Party or any of its Subsidiaries refuses to allow Agent, any Lender or its representatives or agents to visit its properties, inspect its assets or books or records, examine and make copies of its books or records or disclose its affairs, finances and accounts with its officers and employees), 6.9, 6.10, 6.13 or 6.15 and such failure continues for a period of 15 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party or (ii) the date on which written notice thereof is given to any Loan Party by Agent; or

(e) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is unable to be cured or is the subject of another provision of this Section 9 (in which event such other provision of this Section 9 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party or (ii) the date on which written notice thereof is given to any Loan Party by Agent.

9.3. **Judgments.** If, after the Filing Date, one or more judgments, orders, or awards for the payment of money involving an aggregate amount of \$500,000, or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of 30 consecutive days at any time after the entry of any such judgment, order, or award during which (1) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award; or if any Loan Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of such Loan Party and its Subsidiaries, taken as a whole.

9.4. **Intentionally Omitted.**

9.5. **Intentionally Omitted.**

9.6. **Default Under Other Agreements.** If, first arising after the Filing Date, there is (a) a "Default" or an "Event of Default" (each as defined in the Existing First Lien Credit Agreement), (b) a "Default" or an "Event of Default" (each as defined in the Existing Second Lien Credit Agreement) or (c) a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of \$500,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by

such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder.

9.7. **Representations, etc.** If any warranty, representation, or certificate made herein, in any other Loan Document or other writing delivered to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

9.8. **Liens.** If this Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, except to the extent of Permitted Liens that are permitted purchase money Liens, interests of lessors under Capital Leases or Liens having priority by operation of law, first priority Lien on the Collateral covered thereby, except as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement or action of Agent;

9.9. **Material Adverse Effect; Etc.** (a) If any event or circumstance occurs directly to the Loan Parties that Agent in its Permitted Discretion believes is reasonably likely to impair the prospect of payment of all or part of the Obligations or there occurs any Material Adverse Effect; (b) Agent determines in its Permitted Discretion exercised in good faith that any Loan Party has engaged in fraudulent activity with respect to the Collateral or other matters; or (c) any director, senior officer or owner of at least 20% of the issued and outstanding ownership interests of a Loan Party is indicted for a felony offense under state or federal law, or a Loan Party hires a senior officer or appoints a director who has been convicted of any such felony offense, or a Person becomes an owner of at least 20% of the issued and outstanding ownership interests of a Loan Party who has been convicted of any such felony offense, and, in the case of a director or senior officer, such director or senior officer is not replaced or removed (consistent with applicable law) to Agent's reasonable satisfaction within five (5) Business Days after any Loan Party first becomes aware of such conviction or indictment;

9.10. **Other Indebtedness.** If any Loan Party fails to pay any indebtedness or obligation owed to Agent or any Lender or its respective Affiliates which is unrelated to the credit facility provided hereunder or this Agreement as it becomes due and payable or the occurrence of any default or event of default under any agreement between any Loan Party and Agent, such Lender or its respective Affiliates unrelated to the Loan Documents;

9.11. **ERISA Event.** (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$500,000, or (b) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$500,000;

9.12. **Loan Documents.** The validity or enforceability of any Loan Document shall at any time for any reason be declared to be null and void, or a proceeding shall be commenced by

a Loan Party or any of its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or any of its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or any of its Subsidiaries shall deny that such Loan Party or such Subsidiary has any liability or obligation purported to be created under any Loan Document;

9.13. **Bankruptcy Matters.**

(a) If any Loan Party or its Subsidiary makes any payment on account of any Indebtedness existing as of the Filing Date, except for any payments expressly authorized by the Financing Order and this Agreement or pursuant to any other order of the Bankruptcy Court consented to in writing by Agent;

(b) If the Final Order is not entered within thirty (30) days (or such other period as Agent and Required Lenders may agree to in writing) following entry of the Interim Order; or any Financing Order is stayed, revised, revoked, remanded, rescinded, amended, reversed, vacated, or modified in any manner not acceptable to the Agent;

(c) If an order with respect to any of the Bankruptcy Cases shall be entered by the Bankruptcy Court (i) appointing a trustee under Section 1104, or an examiner with enlarged powers relating to the operation of the business of the Loan Parties under Section 1106(b) of the Bankruptcy Code (ii) terminating any Loan Party's exclusive rights to file and solicit acceptances for its plan;

(d) If any Person other than a Borrower shall assert any claim in any of the Bankruptcy Cases arising under Section 506(c) of the Bankruptcy Code against Agent, any Lender or the Collateral, and either (i) the same shall remain unopposed by the Borrower for more than 5 Business Days, or (ii) in any event, any such claim shall not be disallowed, dismissed or withdrawn, with prejudice, within 60 days after the assertion thereof;

(e) If (i) any Person other than the Borrower shall commence any action in any of the Bankruptcy Cases adverse to any member of the Lender Group or any of their rights and remedies under the Loan Documents, the Financing Order or any other order of the Bankruptcy Court and (ii) either (x) the same shall remain unopposed by the Borrower for more than 5 Business Days, or (y) in any event, any such claim shall not be dismissed or withdrawn, with prejudice, within 10 days after the assertion thereof;

(f) If (i) any Borrower or any of its Subsidiaries shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of Agent and the Lenders, claims or rights against Borrower or any of its Subsidiaries or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) any Lien or security interest created by this Agreement or the Financing Order shall, for any reason, cease to be valid or (iii) any action is commenced by Borrower or any of its Subsidiaries which contests the validity, perfection or enforceability of any of the Liens and security interests of Agent and the Lenders created by this Agreement or the Financing Order;

(g) If an order with respect to any of the Bankruptcy Cases shall be entered by the Bankruptcy Court converting any of the Bankruptcy Cases (or any case comprising part of any of the Bankruptcy Cases) to a case under chapter 7 of the Bankruptcy Code;

(h) If any plan of reorganization is filed that, or an order shall be entered by the Bankruptcy Court confirming a reorganization plan in any of the Bankruptcy Cases which, does not (i) contain a provision for termination of this Agreement, the cash collateralization of all contingent obligations hereunder and the indefeasible payment in full in cash of all Obligations and all Existing First Lien Obligations (“Paid in Full”) in a manner satisfactory to the Agent on or before the effective date, or substantial consummation, of such plan and (ii) provide for the continuation of the Liens and security interests granted to Agent and priorities until such plan effective date all Obligations and all Existing First Lien Obligations are Paid in Full;

(i) If an order shall be entered by the Bankruptcy Court dismissing any of the Bankruptcy Cases which does not contain a provision for termination of this Agreement and the Obligations and the Existing First Lien Obligations are not Paid in Full on or before such dismissal;

(j) If an order with respect to any of the Bankruptcy Cases shall be entered without the express prior written consent of Agent, (i) to revoke, vacate, reverse, stay, modify, supplement or amend this Agreement and the transactions contemplated hereby, any Loan Document or the Financing Order, or (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to Borrowers equal or superior to the priority of the Lender Group in respect of the Obligations, except for the amounts having a priority over the Obligations to the extent set forth in the definition of Carveout;

(k) If an order shall be entered by the Bankruptcy Court granting relief from the automatic stay to any creditor(s) of Parent or any Subsidiary of Parent with respect to any claim in an amount equal to or exceeding \$500,000 in the aggregate; provided, however, that it shall not be an Event of Default if relief from the automatic stay is granted (i) solely for the purpose of allowing such creditor to determine the liquidated amount of its claim against any such Person or (ii) to permit the commencement of or prosecution of a proceeding to collect solely against an insurance company;

(l) If a motion shall be filed seeking authority, or an order shall be entered in any of the Bankruptcy Cases, that (a) permits any Loan Party or any Subsidiary of any Loan Party to incur Indebtedness secured by any claim under Bankruptcy Code Section 364(c)(1) or by a Lien *pari passu* with or superior to the Lien granted under the Loan Documents and Bankruptcy Code Sections 364(c)(2) or (d), unless (i) all of the Obligations and the Existing First Lien Obligations have been Paid in Full at the time of the entry of any such order, or (ii) the Obligations and the Existing First Lien Obligations are Paid in Full with such debt, or (b) permits any Loan Party or any Subsidiary of any Loan Party the right to use Collateral other than in accordance with the terms of the Financing Order, unless all of the Obligations and the Existing First Lien Obligations shall have been Paid in Full;

(m) Proceeds of any sale of all or substantially all assets of Borrowers are not directly remitted to Agent at the closing thereof, and the Obligations and the Secured Debt are not Paid in Full in accordance with the terms of this Agreement from such proceeds;

(n) Any motions to sell Collateral or approve procedures regarding the same, any plan or disclosure statement or supplements or amendments thereto, or any orders approving or amending any of the foregoing, are not in form and substance reasonably acceptable to Agent;

(o) If the automatic stay terminates or expires unless all of the Obligations shall have been Paid in Full;

(p) If any Loan Party or any Subsidiary of any Loan Party challenges the extent, validity or priority of the Obligations and the Existing First Lien Obligations or the application of any payments or collections received by Agent or Lenders to the Obligations and the Existing First Lien Obligations as provided for herein; or any Loan Party or any Subsidiary of any Loan Party challenges the validity, extent, perfection or priority of any Liens granted in the Collateral to secure the Obligations;

(q) If Lenders or the Collateral are surcharged pursuant to Sections 105, 506(c), 552 or any other section of the Bankruptcy Code;

(r) If the Chief Restructuring Officer is terminated or disqualified for any reason, and Borrowers have not appointed a replacement Chief Restructuring Officer reasonably acceptable to Agent within 7 days thereafter;

(s) Any application for any of the order described in this Section 9.13 shall be made by any Person other than Agent and such application is not contested in good faith by each applicable Loan Party, or if such relief is granted, such applicable Loan Party does not obtain a stay pending appeal of the entry of such order; or

## **10. RIGHTS AND REMEDIES.**

10.1. **Rights and Remedies.** Notwithstanding the provisions of Section 362 of the Bankruptcy Code, upon the occurrence and during the continuation of an Event of Default, the Required Lenders (at their election but without notice of their election and without demand) may authorize and instruct Agent to do any one or more of the following on behalf of the Lender Group (and Agent, acting upon the instructions of the Required Lenders, shall do the same on behalf of the Lender Group), all of which are authorized by Borrowers:

(a) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations, whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrowers;

(b) cease advancing money or extending credit to or for the benefit of Borrowers under this Agreement, under any of the Loan Documents, or under any other agreement between Borrowers and the Lender Group;

(c) subject to the applicable terms, if any, of the Financing Order, terminate this Agreement and any of the other Loan Documents as to any future liability or obligation of the Lender Group, but without affecting any of the Agent's Liens in the Collateral and without affecting the Obligations;

(d) subject to the applicable terms, if any, of the Financing Order, the Lender Group shall have all other rights and remedies available at law or in equity or pursuant to any other Loan Document; and

(e) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents, under applicable law, or in equity.

10.2. **Additional Rights and Remedies.** Notwithstanding the provisions of Section 362 of the Bankruptcy Code, upon the occurrence and during the continuation of an Event of Default, the Required Lenders (at their election but without notice of their election and without demand) may authorize and instruct Agent to do any one or more of the following on behalf of the Lender Group (and Agent, acting upon the instructions of the Required Lenders, shall do the same on behalf of the Lender Group), all of which are authorized by Borrowers:

(a) Agent, without demand of performance or other demand, advertisement or notice of any kind (except a notice specified below of time and place of public or private sale) to or upon any Borrower, any other Loan Party or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), may take immediate possession of all or any portion of the Collateral and (i) require Loan Parties to, and each Loan Party hereby agrees that it will at its own expense and upon request of Agent forthwith, assemble all or part of the Collateral as directed by Agent and make it available to Agent at one or more locations designated by Agent where such Borrower or other Loan Party conducts business, and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Agent's or Loan Party's offices or elsewhere, for cash, on credit, and upon such other terms as Agent may deem commercially reasonable. Each Loan Party agrees that, to the extent notice of sale shall be required by law, at least 10 days' notice to such Loan Party of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification and such notice shall constitute a reasonable "authenticated notification of disposition" within the meaning of Section 9-611 of the Code. Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Agent may adjourn any public or private sale from time to time, and such sale may be made at the time and place to which it was so adjourned. Each Loan Party agrees that the internet shall constitute a "place" for purposes of Section 9-610(b) of the Code. Each Loan Party agrees that any sale of Collateral to a licensor pursuant to the terms of a license agreement between such licensor and such Loan Party is sufficient to constitute a



commercially reasonable sale (including as to method, terms, manner, and time) within the meaning of Section 9-610 of the Code;

(b) Agent may, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it under applicable law and without the requirement of notice to or upon any Loan Party or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), (i) with respect to any Loan Party's Deposit Accounts in which Agent's Liens are perfected by control under Section 9-104 of the Code, instruct the bank maintaining such Deposit Account for the applicable Loan Party to pay the balance of such Deposit Account to or for the benefit of Agent, and (ii) with respect to any Loan Party's Securities Accounts in which Agent's Liens are perfected by control under Section 9-106 of the Code, instruct the securities intermediary maintaining such Securities Account for the applicable Loan Party to (A) transfer any cash in such Securities Account to or for the benefit of Agent, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of Agent;

(c) any cash held by Agent as Collateral and all cash proceeds received by Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied against the Obligations in the order set forth in Section 10.5. In the event the proceeds of Collateral are insufficient to satisfy all of the Obligations in full, each Borrower and each other Loan Party shall remain jointly and severally liable for any such deficiency; and

(d) the Obligations arise out of a commercial transaction, and that if an Event of Default shall occur and be continuing Agent shall have the right to an immediate writ of possession without notice of a hearing. Agent shall have the right to the appointment of a receiver for each Loan Party or for the properties and assets of each Loan Party, and each Borrower and each other Loan Party hereby consents to such rights and such appointment and hereby waives any objection such Borrower or such Loan Party may have thereto or the right to have a bond or other security posted by Agent.

10.3. **Agent Appointed Attorney in Fact.** Each Borrower and each other Loan Party hereby irrevocably appoints Agent its attorney-in-fact, with full authority in the place and stead of such Borrower and such Loan Party and in the name of such Borrower or such Loan Party or otherwise, at such time as an Event of Default has occurred and is continuing, to take any action and to execute any instrument which Agent may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Accounts or any other Collateral of such Borrower or such other Loan Party;

(b) to receive, indorse, and collect any drafts or other instruments, documents, Negotiable Collateral or Chattel Paper;

(c) to file any claims or take any action or institute any proceedings which Agent may deem necessary or desirable for the collection of any of the Collateral of such Borrower or such other Loan Party or otherwise to enforce the rights of Agent with respect to any of the Collateral;

(d) to repair, alter, or supply Goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to Borrower or such other Loan Party in respect of any Account of such Borrower or such other Loan Party;

(e) to use any Intellectual Property or Intellectual Property Licenses of such Borrower or such other Loan Party including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Accounts, contracts or Negotiable Collateral of such Borrower or such other Loan Party;

(f) to take exclusive possession of all locations where each Borrower or other Loan Party conducts its business or has rights of possession, without notice to or consent of any Borrower or any Loan Party and to use such locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, without obligation to pay rent or other compensation for the possession or use of any location;

(g) Agent shall have the right, but shall not be obligated, to bring suit in its own name or in the applicable Loan Party's name, to enforce the Intellectual Property and Intellectual Property Licenses and, if Agent shall commence any such suit, the appropriate Borrower or such other Loan Party shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents reasonably required by Agent in aid of such enforcement; and

(h) to the extent permitted by law, such Borrower and each other Loan Party hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all Commitments under this Agreement to provide extensions of credit are terminated and all Obligations have been paid in full in cash.

10.4. **Remedies Cumulative.** The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10.5. **Crediting of Payments and Proceeds.** In the event that the Obligations have been accelerated pursuant to Section 10.1 or Agent has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received by Agent upon the Obligations

and all net proceeds from the enforcement of the Obligations shall be applied in accordance with Section 2.4(b).

10.6. **Marshaling**. Agent shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies under this Agreement and under the other Loan Documents and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, each Borrower and each other Loan Party hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of Agent's rights and remedies under this Agreement or under any other Loan Document or instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Borrower hereby irrevocably waives the benefits of all such laws.

10.7. **License**. Each Borrower and each other Loan Party hereby grants to Agent a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property rights of such Borrower and such Loan Party for the purpose of: (a) completing the manufacture of any in-process materials during the continuance of any Event of Default so that such materials become saleable Inventory, all in accordance with the same quality standards previously adopted by such Borrower or such other Loan Party for its own manufacturing; and (b) selling, leasing or otherwise disposing of any or all Collateral during the continuance of any Event of Default.

10.8. **Disposition of Pledged Interests by Agent**. None of the Pledged Interests existing as of the date of this Agreement are, and none of the Pledged Interests hereafter acquired on the date of acquisition thereof will be, registered or qualified under the various federal or state securities laws of the United States and disposition thereof after an Event of Default may be restricted to one or more private (instead of public) sales in view of the lack of such registration. Each Loan Party understands that in connection with such disposition, Agent may approach only a restricted number of potential purchasers and further understands that a sale under such circumstances may yield a lower price for the Pledged Interests than if the Pledged Interests were registered and qualified pursuant to federal and state securities laws and sold on the open market. Each Loan Party, therefore, agrees that: (a) if Agent shall, pursuant to the terms of this Agreement, sell or cause the Pledged Interests or any portion thereof to be sold at a private sale, Agent shall have the right to rely upon the advice and opinion of any nationally recognized brokerage or investment firm (but shall not be obligated to seek such advice and the failure to do so shall not be considered in determining the commercial reasonableness of such action) as to the best manner in which to offer the Pledged Interest or any portion thereof for sale and as to the best price reasonably obtainable at the private sale thereof; and (b) such reliance (absent manifest error) shall be conclusive evidence that Agent has handled the disposition in a commercially reasonable manner.

10.9. **Voting and Other Rights in Respect of Pledged Interests**.

(a) Upon the occurrence and during the continuation of an Event of Default, (i) Agent may, at its option, and with two (2) Business Days' prior notice to such Borrower or such other Loan Party, and in addition to all rights and remedies available to Agent under any other agreement, at law, in equity, or otherwise, exercise all voting rights, or any other ownership or consensual rights (including any dividend or distribution rights) in respect of the Pledged Interests owned by any Borrower or any other Loan Party, but under no circumstances is Agent obligated by the terms of this Agreement to exercise such rights, and (ii) if Agent duly exercises its right to vote any of such Pledged Interests, each Borrower and each other Loan Party hereby appoints Agent, such Borrower's and such Loan Party's true and lawful attorney-in-fact and irrevocable proxy to vote such Pledged Interests in any manner Agent deems advisable for or against all matters submitted or which may be submitted to a vote of shareholders, partners or members, as the case may be. The power-of-attorney and proxy granted hereby is coupled with an interest and shall be irrevocable.

(b) For so long as such Borrower or such other Loan Party shall have the right to vote the Pledged Interests owned by it, such Borrower and such other Loan Party covenants and agrees that it will not, without the prior written consent of Agent, vote or take any consensual action with respect to such Pledged Interests which would materially adversely affect the rights of Agent or the Lenders.

## **11. WAIVERS; INDEMNIFICATION.**

11.1. **Demand; Protest; etc.** Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which any Borrower may in any way be liable.

11.2. **The Lender Group's Liability for Collateral.** Each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrowers.

11.3. **Indemnification.** Borrowers shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or

thereby or the monitoring of the Loan Parties' compliance with the terms of the Loan Documents (provided, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders, (ii) disputes solely between or among the Lenders and their respective Affiliates; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any Taxes or any costs attributable to Taxes, which shall be governed by Section 17), (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Loan Party or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Loan Party (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing notwithstanding, Borrowers shall have no obligation to any Indemnified Person under this Section 11.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

## 12. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to any Borrower or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to any Borrower: **ORECK CORPORATION**  
565 Marriott Drive, Suite 300  
Nashville, TN 37214  
Attn: Chief Restructuring Officer  
Fax No. 615-316-5842

and

**ORECK CORPORATION**  
565 Marriott Drive, Suite 300  
Nashville, TN 37214  
Attn: General Counsel  
Fax No. 615-316-5836

with copies to: **BRADLEY ARANT BOULT CUMMINGS LLP**  
1600 Division Street, Suite 700  
Nashville, TN 37221  
Attn: Bill Norton  
Fax No. (615)252-6397  
Email: bnorton@babbc.com

If to Agent: **BLACK DIAMOND COMMERCIAL FINANCE,  
L.L.C.**  
100 Field Drive  
Lake Forest, Illinois 60045-2596  
Attn: Hugo H. Gravenhorst  
Fax No. (847) 615-9064  
Email: hgravenhorst@bdcf.com

with copies to: **WINSTON & STRAWN LLP**  
35 West Wacker Drive  
Chicago, Illinois 60601  
Attn: Timothy J. Dable and Daniel J. McGuire  
Fax No. (312) 558-5700  
Email: tdable@winston.com; dmcguire@winston.com

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 12, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

**13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.**

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) IF THE BANKRUPTCY COURT ABSTAINS FROM HEARING OR REFUSES TO EXERCISE JURISDICTION OVER ANY OF THE FOLLOWING, THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 13(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, ANY OTHER LENDER, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

#### 14. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

##### 14.1. Assignments and Participations.

(a) (i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees so long as such prospective assignee is an Eligible Transferee (each, an “Assignee”), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(A) Administrative Borrower (not to be unreasonably withheld or delayed); provided, that no consent of Administrative Borrower shall be required (1) if an Event of Default has occurred and is continuing, or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender or a Related Fund; provided further, that Administrative Borrower shall be deemed to have consented to a proposed assignment unless it objects thereto by written notice to Agent within 5 Business Days after having received notice thereof; and



(B) Agent; provided, that no consent of Agent shall be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender or a Related Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) no assignment may be made to a natural person,

(B) no assignment may be made to a Loan Party,

(C) the amount of the Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in a minimum amount (unless waived by Agent) of \$1,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender or (II) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$1,000,000);

(D) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that Borrowers and Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Administrative Borrower and Agent by such Lender and the Assignee.

(E) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of \$3,500 (for the avoidance of doubt, neither the assigning Lender nor Assignee may seek reimbursement of such fee from a Credit Party); provided, that, with respect to any assignment pursuant to Section 15.2, such fee, if applicable, shall not be paid by assigning Lender; and

(F) the assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent (the "Administrative Questionnaire").

(b) From and after the date that Agent receives the executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 11.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning

Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 16 and Section 18.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 14.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to

deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 18.9, disclose all documents and information which it now or hereafter may have relating to Parent and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(h) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of the Commitments (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its

portion of the Commitments to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Commitments to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrowers, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the “Participant Register”). A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register.

(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register in the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

14.2. **Successors.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that no Borrower may assign this Agreement or any rights or duties hereunder without the Lenders’ prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 14.1 and, except as expressly required pursuant to Section 14.1, no consent or approval by any Loan Party is required in connection with any such assignment.

## **15. AMENDMENTS; WAIVERS.**

### **15.1. Amendments and Waivers.**

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent with respect to any departure by Borrowers therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that:

(i) no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(A) increase the amount of or extend the expiration date of any Commitment of any Lender or amend, modify, or eliminate the last sentence of Section 2.4(c),

(B) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document, and

(C) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except in connection with the waiver of applicability of Section 2.6(b) (which waiver shall be effective with the written consent of the Required Lenders),

(ii) no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders and all of the Loan Parties that are party thereto, do any of the following:

(A) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(B) amend, modify, or eliminate Section 4.1 or 4.2,

(C) amend, modify, or eliminate Section 16.11,

(D) other than as permitted by Section 16.11, release Agent's Lien in and to any of the Collateral,

(E) amend, modify, supplement, alter or eliminate the definitions of "Required Lenders" or "Pro Rata Share",

(F) contractually subordinate any of Agent's Liens,

(G) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(H) amend, modify, supplement, alter or eliminate any of the provisions of Section 2.4(b)(i) or (ii),

(I) amend, modify, supplement, alter or eliminate any of the provisions of Section 14.1 with respect to assignments to, or participations with, Persons who are Loan Parties or Affiliates of Loan Parties, or

(J) amend, modify, supplement, alter or eliminate the definition of “Budget”.

(b) No amendment, waiver, modification, or consent shall amend, modify, waive, or eliminate,

(i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the written consent of any of the Lenders), or

(ii) any provision of Section 16 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders,

(c) No amendment, waiver, modification, elimination, or consent shall, without written consent of Borrowers and each Lender (i) modify the definition of Maximum Revolver Amount or (ii) amend, modify or waive Section 2.1(c),

(d) Anything in this Section 15.1 to the contrary notwithstanding, any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Borrower, shall not require consent by or the agreement of any Loan Party.

#### **15.2. Replacement of Certain Lenders.**

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 17, then Borrowers or Agent, upon at least 5 Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a “Non-Consenting Lender”) or any Lender that made a claim for compensation (a “Tax Lender”) with one or more financial institutions as new Lenders (each such new Lender, a “Replacement Lender”), and the Non-Consenting Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including all interest, fees and other amounts that may be due in payable in respect thereof. If the Non-Consenting Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Non-Consenting Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 14.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender or Tax Lender, as applicable, shall remain obligated to make the Non-Consenting Lender's or Tax Lender's, as applicable, Pro Rata Share of Revolving Loans.

15.3. **No Waivers; Cumulative Remedies.** No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

## **16. AGENT; THE LENDER GROUP.**

16.1. **Appointment and Authorization of Agent.** Each Lender hereby designates and appoints BDCF as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders on the conditions contained in this Section 16. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall have no duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in

this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of the Loan Parties as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrowers or their Subsidiaries, the Obligations, the Collateral, the Collections of the Loan Parties, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

16.2. **Delegation of Duties.** Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

16.3. **Liability of Agent.** None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by any Loan Party or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or



conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party or its Subsidiaries.

16.4. **Reliance by Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

16.5. **Notice of Default or Event of Default.** Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except, in the case of Agent, with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Administrative Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a “notice of default.” Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 16.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 10; provided, however, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

16.6. **Credit Decision.** Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Parent and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend

credit to Borrowers. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges that Agent has no duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender with any credit or other information with respect to Borrowers, their Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its respective Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement.

16.7. **Costs and Expenses; Indemnification.** Agent may incur and pay Lender Group Expenses to the extent it reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses by Parent or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

16.8. **Agent in Individual Capacity.** BDCF and its Affiliates may make loans to, acquire equity interests in, and generally engage in any kind of financial advisory, underwriting, or other business with Parent and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though BDCF were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, BDCF or its Affiliates may receive information regarding Parent or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms “Lender” and “Lenders” include BDCF in its individual capacity.

16.9. **Successor Agent.** Agent may resign as Agent upon 30 days (10 days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Administrative Borrower (unless such notice is waived by Administrative Borrower or an Event of Default exists). If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Administrative Borrower (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Administrative Borrower, a successor Agent. In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term “Agent” shall mean such successor Agent and the retiring Agent’s appointment, powers, and duties as Agent shall be terminated. After any retiring Agent’s resignation hereunder as Agent, the provisions of this Section 16 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent’s notice of resignation, the retiring Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

16.10. **Lender in Individual Capacity.** Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Parent or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

**16.11. Collateral Matters.**

(a) The Lenders hereby irrevocably authorize Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrowers of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Administrative Borrower certifies to Agent that the sale or disposition is permitted under Section 7.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which Parent or its Subsidiaries owned no interest at the time Agent's Lien was granted nor at any time thereafter, or (iv) constituting property leased to any Loan Party under a lease that has expired or is terminated in a transaction permitted under this Agreement. The Loan Parties and the Lenders hereby irrevocably authorize Agent, based upon the instruction of the Required Lenders, to (a) consent to, credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by Agent (whether by judicial action or otherwise) in accordance with applicable law. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Lenders whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by such acquisition vehicle or vehicles and in connection therewith Agent may reduce the Obligations owed to the Lenders and (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders, or (z) otherwise, the Required Lenders. Upon request by Agent or Administrative Borrower at any time, the Lenders will confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 16.11; provided, that (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of any Loan Party in respect of) all interests retained by any Loan Party,

including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. The Lenders further hereby irrevocably authorize Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted Purchase Money Indebtedness.

(b) Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by a Loan Party or is cared for, protected, or insured or has been encumbered, or that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise provided herein.

16.12. **Restrictions on Actions by Lenders; Sharing of Payments.**

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Parent or its Subsidiaries or any deposit accounts of Parent or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be

returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

16.13. **Agency for Perfection.** Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

16.14. **Payments by Agent to the Lenders.** All payments to be made by Agent to the Lenders shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

16.15. **Concerning the Collateral and Related Loan Documents.** Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

16.16. **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information.** By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting Parent or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any field examination will inspect only specific information regarding Loan Parties and will rely significantly upon Loan Parties' books and records, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Loan Parties and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 18.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing

a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

(f) In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Parent or its Subsidiaries to Agent that has not been contemporaneously provided by Parent or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Parent or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Administrative Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Parent or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

16.17. **Several Obligations; No Liability.** Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 16.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender to fulfill its obligations to make credit available hereunder, nor to advance for such Lender or on its behalf, nor to take any other action on behalf of such Lender hereunder or in connection with the financing contemplated herein.

## **17. WITHHOLDING TAXES.**

17.1. **Payments.** All payments made by Borrowers hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any

present or future Indemnified Taxes, and in the event any deduction or withholding of Indemnified Taxes is required, Borrowers shall comply with the next sentence of this Section 17.1. If any Indemnified Taxes are so levied or imposed, Borrowers agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 17.1 after withholding or deduction for or on account of any Indemnified Taxes, will not be less than the amount provided for herein; provided, that Borrowers shall not be required to increase any such amounts to the extent that the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrowers will furnish to Agent as promptly as possible after the date the payment of any Indemnified Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by Borrowers. Borrowers agree to pay any present or future stamp, value added or documentary taxes or any other excise or property taxes, charges, or similar levies that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document.

**17.2. Exemptions.**

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of any Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to any Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN or Form W-8IMY (with proper attachments);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments); or



(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

(b) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, provided, that nothing in this Section 17.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent will treat such Lender's or such Participant's documentation provided pursuant to Section 17.2(a) or 17.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 17.2(a) or 17.2(c), if applicable. Borrowers agree that each Participant shall be entitled to the benefits of this Section 17 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 17 with respect thereto.

### 17.3. Reductions.

(a) If a Lender or a Participant is entitled to a reduction in the applicable withholding tax, Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by Section 17.2(a) or 17.2(c) are

not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 17, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

17.4. **Refunds.** If Agent or a Lender determines, in its sole discretion in good faith, that it has received a refund of any Indemnified Taxes to which Borrowers have paid additional amounts pursuant to this Section 17, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Borrowers (but only to the extent of payments made, or additional amounts paid, by Borrowers under this Section 17 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that Borrowers, upon the request of Agent or such Lender, agrees to repay the amount paid over to Borrowers (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent hereunder) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 17 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to any Borrower or any other Person.

17.5. **Tax Indemnity.** The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 11.3) (collectively a "Tax Indemnitee") (but with respect to a Participant subject to the last sentence of Section 17.2(d)) for the full amount of Taxes or other taxes arising in connection with this Agreement or any other Loan Document (including, without limitation, any Taxes or other taxes imposed or asserted on or attributable to amounts payable under this Section 17) paid by such Tax Indemnitee and all reasonable fees and

disbursements of attorneys, experts, or consultants and all other out-of-pocket costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification, as and when they are incurred and irrespective of whether suit is brought, whether or not such Taxes or such other taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Taxes or such other taxes resulting from gross negligence or willful misconduct of such Tax Indemnitee as finally determined by a court of competent jurisdiction and any tax imposed on the net income or net profits of any Indemnified Person (including any branch profits taxes)). This Section 17.5 shall survive the termination of this Agreement and the repayment of the Obligations.

## **18. GENERAL PROVISIONS.**

18.1. **Effectiveness.** This Agreement shall be binding and deemed effective when executed by Borrowers, Agent and each Lender whose signature is provided for on the signature pages hereof.

18.2. **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

18.3. **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

18.4. **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

18.5. **Intentionally Omitted.** .

18.6. **Debtor-Creditor Relationship.** The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

18.7. **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure

to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

**18.8. Revival and Reinstatement of Obligations; Certain Waivers.**

If the incurrence or payment of the Obligations by any Loan Party or the transfer to the Lender Group of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the advice of counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of the Lender Group related thereto, the liability of Loan Parties automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

**18.9. Confidentiality.**

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Parent and its Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group, provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 18.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Administrative Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Administrative Borrower pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Administrative Borrower, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, provided, that, (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Administrative Borrower with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Administrative Borrower pursuant to the

terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement, provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information hereunder subject to the terms of this Section, (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Administrative Borrower with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent.

(c) The Loan Parties hereby acknowledge that Agent or its Affiliates may make available to the Lenders materials or information provided by or on behalf of Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, SyndTrak or another similar electronic system (the "Platform") and certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

18.10. **Survival.** All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent or any Lender may have had notice or knowledge of any Default or Event of 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 or unpaid and so long as the Commitments have not expired or been terminated.

18.11. **Patriot Act.** Each Lender that is subject to the requirements of the Patriot Act hereby notifies each Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender to identify Borrower in accordance with the Patriot Act. In addition, if Agent is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for the Loan Parties and (b) OFAC/PEP searches and customary individual background checks for the Loan Parties' senior management and key principals, and Borrowers agree to cooperate in respect of the conduct of such searches and further agree that the reasonable costs and charges for such searches shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

18.12. **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

18.13. **Oreck as Agent for Borrowers.** Each Borrower hereby irrevocably appoints Oreck as the borrowing agent and attorney-in-fact for all Borrowers ("Administrative Borrower") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes Administrative Borrower (i) to provide Agent with all notices with respect to Revolving Loans and all other notices and instructions under this Agreement and (ii) to take such action as Administrative Borrower deems appropriate on its behalf to obtain Revolving Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. Each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Credit Party or by any third party whosoever, arising from or incurred by reason of (a) the handling of the Loan Account and Collateral of Borrowers as herein provided, (b) the Lender Group's relying on any instructions of Administrative Borrower, or (c) any other action taken by the Lender Group hereunder or under the other Loan Documents, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 18.13 with respect to any liability that has been finally

determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

[Signature pages to follow.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

**BORROWERS:**

**ORECK CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ORECK DIRECT, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ORECK MERCHANDISING, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ORECK HOMECARE, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VECTEUR, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**ORECK HOLDINGS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ORECK FRANCHISE SERVICES, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ORECK MANUFACTURING COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ORECK SALES, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GUARANTOR:**

**ASP ORECK INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BLACK DIAMOND COMMERCIAL FINANCE,  
L.L.C, as Agent**

By: \_\_\_\_\_

Name:

Its Authorized Signatory

**GSC RECOVERY III, L.P. as a Lender**

By: GSC RECOVERY III GP, L.P.,  
in its capacity as General Partner

By: GSC RIII, LLC,  
in its capacity as General Partner

By: GSC Acquisition Holdings, L.L.C.,  
in its capacity as Managing Member

By: GSC Manager, LLC,  
in its capacity as Manager

By: Black Diamond Capital Management, L.L.C., in  
its capacity as Member

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Stephen H. Deckoff  
Managing Principal

## **Schedule 1.1**

As used in the Agreement, the following terms shall have the following definitions:

“Acceptable Bill of Lading” means with respect to In-Transit Inventory, a tangible, negotiable bill of lading that is either (i) in Borrower’s customary form for In-Transit Inventory that is already in transit and subject to a bill of lading on the Closing Date or subsequently shipped within sixty (60) days after the Closing Date, or (ii) that is (a) issued either by a common carrier which is not an Affiliate of the applicable Foreign Vendor or any Borrower and which is in actual possession of such Inventory; (b) covers only such In-Transit Inventory; (c) is issued to the order of a Borrower or, if so requested by Agent, to the order of Agent; (d) names Agent as a notify party and bears a conspicuous notation on its face of Agent’s security interest therein (unless such bill of lading is issued to the order of Agent); (e) is subject to Agent’s duly perfected, first priority security interest and no other Lien that is not a Permitted Lien; and (f) is otherwise in form and content reasonably acceptable to Agent.

“Account” means an account (as that term is defined in Article 9 of the Code).

“Account Debtor” means an account debtor (as that term is defined in the Code).

“Accounting Changes” means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

“Additional Documents” has the meaning specified therefor in Section 6.15 of the Agreement.

“Administrative Borrower” has the meaning specified therefor in Section 18.13.

“Administrative Questionnaire” has the meaning specified therefor in Section 14.1(a).

“Affiliate” means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Equity Interests, by contract, or otherwise; provided, however that, for purposes of Section 7.12: (a) any Person which owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of the Board of Directors or equivalent governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

“Agent” has the meaning specified therefor in the preamble to the Agreement.

“Agent-Related Persons” means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

“Agent’s Account” means the Deposit Account of Agent identified on Schedule A-1 (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Administrative Borrower and the Lenders).

“Agent’s Liens” means the Liens granted by Parent or its Subsidiaries to Agent under the Loan Documents and securing the Obligations.

“Agreement” means the Debtor-in-Possession Credit and Security Agreement to which this Schedule 1.1 is attached.

“Application Event” means the occurrence of (a) a failure by Borrowers to repay all of the Obligations in full on the Maturity Date, (b) an Event of Default, or (c) any disposition of Collateral other than a Permitted Disposition.

“Assignee” has the meaning specified therefor in Section 14.1(a) of the Agreement.

“Assignment and Acceptance” means an Assignment and Acceptance Agreement substantially in the form of Exhibit A to the Agreement.

“Authorized Person” means any one of the individuals identified on Schedule A-2 to the Agreement, as such schedule is updated from time to time by written notice from Administrative Borrower to Agent.

“Availability” means, as of any date of determination, the amount that Borrowers are entitled to borrow as Revolving Loans under Section 2.1 of the Agreement (after giving effect to the then outstanding Revolver Usage).

“Avoided Payments” has the meaning set forth in Section 2.4(e)(vii).

“Bankruptcy Cases” means the cases of Borrowers and Guarantors jointly administered under chapter 11 of the Bankruptcy Code pending before the Bankruptcy Court, bearing case number 13-04006 and any superseding chapter 7 case or cases.

“Bankruptcy Code” means the United States Code (11 U.S.C. §§ 101, *et seq.*), as amended, and any successor statute, as in effect from time to time.

“Bankruptcy Court” has the meaning set forth in the recitals to the Agreement.

“BDCF” means Black Diamond Commercial Finance, L.L.C., a Delaware limited liability company.

“Board of Directors” means, as to any Person, the board of directors (or comparable managers) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

“Board of Governors” means the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Books” means books and records (including a Borrower’s or any other Loan Party’s Records indicating, summarizing, or evidencing such Borrower’s or such other Loan Party’s assets (including the Collateral) or liabilities, such Borrower’s or such other Loan Party’s Records relating to such Borrower’s or such other Loan Party’s business operations or financial condition, or such Borrower’s or such other Loan Party’s Goods or General Intangibles related to such information).

“Borrower” has the meaning specified therefor in the preamble to the Agreement.

“Borrower Materials” has the meaning specified therefor in Section 18.9(c) of the Agreement.

“Borrowing” means a borrowing consisting of Revolving Loans made on the same day by the Lenders (or Agent on behalf thereof).

“Budget” means the thirteen (13) week consolidated weekly operating budget of Loan Parties setting forth the projected collections and disbursements for the Loan Parties for the periods described therein in substantially the same format as the initial budget delivered to Agent, a copy of which is attached as Exhibit B, as amended, modified or supplemented from time to time with Agent’s written consent; such thirteen-week Budget to be updated (in substantially the same format as the prior thirteen-week Budget) every four weeks by Borrowers, submitted to Agent and, upon acceptance in writing by Agent in its sole discretion, the prior approved Budget, as updated, forecast shall constitute the then approved Budget.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close pursuant to the rules and regulations of the Federal Reserve System.

“Capitalized Lease Obligation” means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

“Carveout” has the meaning set forth in the Interim Order or the Final Order, as applicable.

“Carveout Expense Reserve” means, as of any date of determination, a reserve established on account of the Carveout and Other Statutory Liabilities.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality

thereof maturing within 1 year from the date of acquisition thereof and having one of the two highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having combined capital and surplus of not less than \$250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than \$250,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant stored value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"CFC" means a controlled foreign corporation (as that term is defined in the IRC).

"Change in Control" means that (a) GSCP (NJ), LP or any Affiliate thereof fails to own and control, directly or indirectly, 50.1%, or more, of the Equity Interests of each Loan Party having the right to vote for the election of members of the Board of Directors, (b) any "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act), other than Permitted Holders, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 20%, or more, of the Equity Interests of a Loan Party having the right to vote for the election of members of the Board of Directors of such Loan Party, (c) a majority of the members of the Board of Directors do not constitute Continuing Directors, or (d) Borrowers or Parent fail to own and control, directly or indirectly, 100% of the Equity Interests of each other Loan Party and their Subsidiaries.

"Chattel Paper" means chattel paper (as that term is defined in the Code), and includes tangible chattel paper and electronic chattel paper.

"Chief Restructuring Officer" means W. Michael Robbins, in his capacity as Chief Restructuring Officer duly appointed and authorized by Borrowers, on terms and conditions reasonably acceptable to Agent and Lenders.



“Closing Date” means the date of the making of the initial Revolving Loan (or other extension of credit) under the Agreement.

“Code” means the New York Uniform Commercial Code, as in effect from time to time; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to Agent’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies. To the extent that defined terms set forth herein shall have different meanings under different Articles under the Uniform Commercial Code, the meaning assigned to such defined term under Article 9 of the Uniform Commercial Code shall control.

“Collateral” means all of each Borrower’s and each Guarantor’s now owned or hereafter acquired:

- (a) Accounts;
- (b) Books;
- (c) Chattel Paper;
- (d) Deposit Accounts;
- (e) Goods, including Equipment and Fixtures;
- (f) General Intangibles, including, without limitation, Intellectual Property and Intellectual Property Licenses;
- (g) Inventory;
- (h) Investment Related Property; Negotiable Collateral; Supporting Obligations;
- (k) Commercial Tort Claims;
- (l) money, Cash Equivalents, or other assets of such Loan Party that now or hereafter come into the possession, custody, or control of Agent (or its agent or designee); and
- (m) all of the proceeds (as such term is defined in the Code) and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, Fixtures, General Intangibles (including, without limitation, Intellectual Property and Intellectual Property Licenses), Inventory, Investment Related Property, Negotiable Collateral, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in

condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing (collectively, the “Proceeds”). Without limiting the generality of the foregoing, the term “Proceeds” includes whatever is receivable or received when Investment Related Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to such Loan Party or Agent from time to time with respect to any of the Investment Related Property.

All Real Property Collateral and other non-Code Collateral shall be deemed to be included as part of the Collateral, including without limitation all of the Loan Parties’ rights (including purchase options) under any lease of real or personal property from the Cookeville IDB. Those items identified as Excluded Assets in Section 3.1 shall be deemed to be excluded from the Collateral to the extent, and in accordance with the terms and conditions thereof.

“Collateral Access Agreement” means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Books, Equipment, Accounts or Inventory of any Loan Party or any of its Subsidiaries, in each case, in favor of Agent with respect to the Collateral at such premises or otherwise in the custody, control or possession of such lessor, warehouseman, processor, consignee or other Person and in form and substance reasonably satisfactory to Agent.

“Commitment” means, with respect to each Lender, its Commitment, and, with respect to all Lenders, their Commitments, in each case as such Dollar amounts are set forth beside such Lender’s name under the applicable heading on Schedule C-1 to the Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 14.1 of the Agreement. The Commitment of all Lenders on the Closing Date shall be \$9,500,000.

“Committees” means, collectively, the official committee of unsecured creditors and any other committee formed, appointed or approved in any Chapter 11 Case.

“Confidential Information” has the meaning specified therefor in Section 18.9(a) of the Agreement.

“Consumer Account” means an Account in which the Account Debtor is a retail consumer arising under Oreck’s standard Retail Installment Sales Agreement with such Account Debtor.

“Continuing Director” means (a) any member of the Board of Directors who was a director (or comparable manager) of Parent on the Closing Date, and (b) any individual who becomes a member of the Board of Directors of Parent after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by either GSCP

(NJ), LP or any Affiliate thereof or a majority of the Continuing Directors (regardless of whether such person is in addition to or in replacement of any member of the Board of Directors referenced in the immediately preceding subsection (a)), but excluding any such individual originally proposed for election in opposition to the Board of Directors in office at the Closing Date in an actual or threatened election contest relating to the election of the directors (or comparable managers) of Parent and whose initial assumption of office resulted from such contest or the settlement thereof.

“Control Agreement” means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by Parent or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account) or issuer, (with respect to uncertificated securities).

“Cookeville IDB” means the Industrial Development Board of the City of Cookeville, Tennessee.

“Copyrights” means any and all rights in any works of authorship, including (i) copyrights and moral rights, (ii) copyright registrations and recordings thereof and all applications in connection therewith including those listed on Schedule 5.26(b), (iii) income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of each Borrower’s and each other Loan Party’s rights corresponding thereto throughout the world.

“Copyright Security Agreement” means each Copyright Security Agreement executed and delivered by a Borrower or another Loan Party and Agent, in form and substance reasonably acceptable to Agent.

“Customs Broker” means a Person that is engaged by Agent to clear In-Transit Inventory through U.S. Customs.

“Default” means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

“Designated Account” means the Deposit Account of Administrative Borrower identified on Schedule D-1 to the Agreement (or such other Deposit Account of Administrative Borrower located at Designated Account Bank that has been designated as such, in writing, by Administrative Borrower to Agent).

“Designated Account Bank” has the meaning specified therefor in Schedule D-1 to the Agreement (or such other bank that is located within the United States that has been designated as such, in writing, by Administrative Borrower to Agent).

“Dollars” or “\$” means United States dollars.

“Eligible Transferee” means (a) any Lender, any Affiliate of any Lender and any Related Fund of any Lender; and (b) (i) a commercial bank organized under the laws of the

United States or any state thereof, and having total assets in excess of \$1,000,000,000; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof, and having total assets in excess of \$1,000,000,000; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof; provided that (A) (x) such bank is acting through a branch or agency located in the United States or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country, and (B) such bank has total assets in excess of \$1,000,000,000; (c) any other entity (other than a natural person) that is an “accredited investor” (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses including insurance companies, investment or mutual funds and lease financing companies, and having total assets in excess of \$1,000,000,000; (d) if no Event of Default exists, any Person (other than any natural Person); and (e) during the continuation of an Event of Default, any other Person approved by Agent.

“Environmental Action” means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Loan Party, any Subsidiary of a Loan Party, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Loan Party, any Subsidiary of a Loan Party, or any of their predecessors in interest.

“Environmental Law” means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party or any of its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

“Environmental Liabilities” means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

“Environmental Lien” means any Lien in favor of any Governmental Authority for Environmental Liabilities.

“Equipment” means equipment (as that term is defined in the Code).

“Equity Interest” means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit

interests or units), preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“Equity Sponsor” means, individually or collectively as the context may require, GSCP (NJ), LP and ASP Oreck Management, LLC and their Affiliates.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with a Loan Party within the meaning of Section 414(b) or (c) of the IRC (and Sections 414(m) and (o) of the IRC for purposes of provisions relating to Section 412 of the IRC).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the IRC or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

“Event of Default” has the meaning specified therefor in Section 9 of the Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time.

“Excluded Assets” has the meaning specified therefor in Section 3.1.

“Excluded Taxes” means (i) any tax imposed on the net income or net profits of any Lender or any Participant (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender’s or such Participant’s principal office is located in each case as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under the Agreement or

any other Loan Document); (ii) taxes resulting from a Lender's or a Participant's failure to comply with the requirements of Section 17.2 of the Agreement, and (iii) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), except that Taxes shall include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 17.1 of the Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority.

"Existing First Lien Lender" means GSC Recovery III, L.P., as successor in interest to Wells Fargo Bank, National Association, in its capacity as the lender under the Existing First Lien Loan Agreement, and each of its successors and assigns.

"Existing First Lien Loan Agreement" means that certain Credit Agreement dated as of August 29, 2012, by and among Borrowers, Parent and Existing First Lien Lender, as amended from time to time.

"Existing First Lien Loan Documents" means the "First Lien Loan Documents" as defined in the Existing Intercreditor Agreement (as in effect on the date hereof).

"Existing First Lien Obligations" means the "First Lien Obligations" as defined in the Existing Intercreditor Agreement.

"Existing Intercreditor Agreement" means that certain Intercreditor Agreement dated as of March 19, 2010, by and among the Existing First Lien Lender, the Existing Second Lien Agent, the Borrowers and the Parent, as amended or modified from time to time.

"Existing Second Lien Agent" means the "Second Lien Agent" as defined in the Existing Intercreditor Agreement.

"Existing Second Lien Credit Agreement" means that certain Credit Agreement dated as of March 19, 2010, by and among Borrowers, Parent, Existing Second Lien Agent and the lenders from time to time party thereto, as amended from time to time to the extent permitted under the Existing Intercreditor Agreement.

"Existing Second Lien Loan Documents" means the "Second Lien Loan Documents" as defined in the Existing Intercreditor Agreement (as in effect on the date hereof).

"Existing Second Lien Obligations" means the "Second Lien Obligations" as defined in the Existing Intercreditor Agreement.

"Extraordinary Receipts" means (a) so long as no Event of Default has occurred and is continuing, proceeds of judgments, proceeds of settlements, or other consideration of any kind received in connection with any cause of action or claim, and (b) if an Event of Default has

occurred and is continuing, any payments received by Parent or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.4(e)(ii) of the Agreement) consisting of (i) proceeds of judgments, proceeds of settlements, or other consideration of any kind received in connection with any cause of action or claim, (ii) indemnity payments (other than to the extent such indemnity payments are immediately payable to a Person that is not an Affiliate of Parent or any of its Subsidiaries, and (iii) any purchase price adjustment received in connection with any purchase agreement.

“Fee Letter” means that certain fee letter, dated as of even date with the Agreement, between Borrowers and Agent, in form and substance satisfactory to Agent.

“Filing Date” has the meaning set forth in the recitals hereto.

“Final Order” has the meaning ascribed thereto in the Interim Order.

“Financing Order” means, (i) until the entry of the Final Order, the Interim Order, and (ii) after the entry of the Final Order, the Final Order, together with all amendments, modifications and supplements to such Interim Order or Final Order, as applicable, which are acceptable to Agent and each Lender in their sole and absolute discretion.

“First Day Orders” means all orders entered or to be entered by the Bankruptcy Court granting the relief requested in the motions filed with the Bankruptcy Court on the Filing Date or within 5 days of the Filing Date or based on motions filed on or about the Filing Date, which shall be in form and substance reasonably satisfactory to the Agent.

“Fixtures” means fixtures (as that term is defined in the Code).

“Foreign Lender” means any Lender or Participant that is not a United States person within the meaning of IRC section 7701(a)(30).

“Foreign Vendor” means a Person that sells In-Transit Inventory to a Borrower.

“Funding Date” means the date on which a Borrowing occurs.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, consistently applied; provided, however, that all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159.

“General Intangibles” means general intangibles (as that term is defined in the Code), and includes payment intangibles, contract rights, rights to payment, rights under hedge agreements (including the right to receive payment on account of the termination (voluntarily or involuntarily) of any such hedge agreements), rights arising under common law, statutes, or regulations, choses or things in action, goodwill, Intellectual Property, Intellectual Property Licenses, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Licenses, infringement claims, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims, interests in a partnership

or limited liability company which do not constitute a security under Article 8 of the Code, and any other personal property other than Commercial Tort Claims, money, Accounts, Chattel Paper, Deposit Accounts, Goods, Investment Related Property, Negotiable Collateral, and oil, gas, or other minerals before extraction.

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

“Governmental Authority” means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

“Guarantors” means Parent and each Subsidiary of Parent (other than any Subsidiary that is a Borrower, a CFC on the Closing Date, or is not required to become a Guarantor pursuant to Section 6) and “Guarantor” means any of them.

“Guaranty” means that certain general continuing guaranty, dated as of even date with this Agreement, executed and delivered by each Guarantor in favor of Agent in form and substance reasonably satisfactory to Agent and any other guaranty agreement delivered at any time by a Guarantor in favor of Agent, and all of such guaranties are, collectively, the “Guaranties”; as each of the foregoing may be amended, restated, supplemented or otherwise modified from time to time.

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity”, (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

“Imported Goods Agreement” means an Imported Goods Agreement in the form and substance reasonably satisfactory to Agent.

“Indebtedness” as to any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with



customary trade practices), (f) all obligations of such Person owing under hedge agreements (which amount shall be calculated based on the amount that would be payable by such Person if the hedge agreement were terminated on the date of determination), (g) any Prohibited Preferred Stock of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation.

“Indemnified Liabilities” has the meaning specified therefor in Section 11.3 of the Agreement.

“Indemnified Person” has the meaning specified therefor in Section 11.3 of the Agreement.

“Indemnified Taxes” means, any Taxes other than Excluded Taxes.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief (including the Bankruptcy Cases).

“Intellectual Property” means any and all Patents, Copyrights, Trademarks, trade secrets, know-how, inventions (whether or not patentable), algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, customer lists, URLs and domain names, specifications, documentations, reports, catalogs, literature, and any other forms of technology or proprietary information of any kind, including all rights therein and all applications for registration or registrations thereof.

“Intellectual Property Licenses” means, with respect to any Person (the “Specified Party”), (i) any licenses or other similar rights provided to the Specified Party in or with respect to Intellectual Property owned or controlled by any other Person, and (ii) any licenses or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by the Specified Party, in each case, including (A) any software license agreements (other than license agreements for commercially available off-the-shelf software that is generally available to the public which have been licensed to the Specified Party pursuant to end-user licenses), (B) the license agreements listed on Schedule 5.26(b), and (C) the right to use any of the licenses or other similar rights described in this definition in connection with the enforcement of Agent’s rights under the Loan Documents.

“Interim Order” means collectively, the order of the Bankruptcy Court entered in the Bankruptcy 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 order is in effect and not stayed, together with all extension, modifications, and amendments thereto, in form and substance satisfactory to Agent and each Lender in their sole discretion, which, among other matters but not by way of limitation, authorizes, on an interim basis, Borrowers to execute and perform under the terms of this Agreement and the other Loan Documents.

“In-Transit Inventory” means Inventory of a Borrower that is in the possession of a common carrier and is in transit from a Foreign Vendor of a Borrower from a location outside the continental United States (or Canada) to a location of a Borrower (or a location designated by a Borrower) that is in the continental United States (or Canada).

“Inventory” means inventory (as that term is defined in the Code).

“Investment” means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business not to exceed \$100,000 outstanding at any one time, and (b) bona fide Accounts arising in the ordinary course of business), or acquisitions of Indebtedness, Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

“Investment Related Property” means (a) any and all investment property (as that term is defined in the Code), and (b) any and all of the following (regardless of whether classified as investment property under the Code): all Pledged Interests, Pledged Operating Agreements, and Pledged Partnership Agreements.

“IRC” means the Internal Revenue Code of 1986, as in effect from time to time.

“Lease” means a lease, license, concession, occupancy agreement or other agreement (written or oral, now or at any time in effect) which grants to any Person a possessory interest in, or the right to use, all or any part of a parcel of Real Property.

“Lender” has the meaning set forth in the preamble to the Agreement and shall include any Person made a party to the Agreement pursuant to the provisions of Section 14.1 of the Agreement and “Lenders” means each of the Lenders or any one or more of them.

“Lender Group” means each of the Lenders, Agent, or any one or more of them.

“Lender Group Expenses” means all (a) reasonable costs or expenses (including taxes, and insurance premiums) required to be paid by any Loan Party or any of its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) reasonable out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group’s transactions with any Loan Party or any of its Subsidiaries under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and

messengers, telecommunication, public record searches (including tax lien, judgment lien, litigation, bankruptcy and Code searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation contained in this Agreement or the Fee Letter), real estate surveys, real estate title insurance policies and endorsements, and environmental audits, (c) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrowers (whether by wire transfer or otherwise), together with any out of pocket costs and expenses incurred in connection therewith, (d) out-of-pocket charges paid or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (e) reasonable out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) fees and expenses to initiate electronic reporting by Borrowers to Agent, (g) reasonable out-of-pocket examination fees and expenses (including reasonable travel, meals, and lodging) of Agent related to any inspections, examinations, audits or appraisals to the extent of the fees and charges (and up to the amount of any limitation) contained in this Agreement, (h) reasonable out-of-pocket costs and expenses of third party claims or any other suit paid or incurred by Agent in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or the Lender Group's relationship with any Loan Party or any of its Subsidiaries, (i) Agent's reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred in advising, structuring, drafting, reviewing, administering (including reasonable travel, meals, and lodging), syndicating (including reasonable costs and expenses relative to CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities) or amending, waiving or modifying the Loan Documents, and (j) Agent and each Lender's reasonable costs and expenses (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with any of the Bankruptcy Cases or with such other "workout," a "restructuring," or an Insolvency Proceeding concerning any Loan Party or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral, including any such costs and expenses incurred in connection with any action to lift the automatic stay of Section 362 of the Bankruptcy Code, or any other action or participation by any member of the Lender Group in the Bankruptcy Cases, including without limitation any contested matters or adversary proceedings or any other actions otherwise in connection with the Bankruptcy Cases, to the extent related to any of the foregoing.

"Lender Group Representatives" has the meaning specified therefor in Section 18.9 of the Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing, including all “liens” as defined by Section 101(37) of the Bankruptcy Code.

“Loan” means any Revolving Loan made (or to be made) hereunder.

“Loan Account” has the meaning specified therefor in Section 2.9 of the Agreement.

“Loan Documents” means the Agreement, the Financing Order, the Control Agreements, the Fee Letter, the Guaranty, the Financing Order, the Mortgages, any note or notes executed by a Borrower in connection with the Agreement and payable to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by Parent or any of its Subsidiaries or the Cookeville IDB and any member of the Lender Group in connection with the Agreement.

“Loan Party” means any Borrower or any Guarantor.

“Management Agreement” means the Management Agreement, dated as of March 19, 2010, by and between Oreck, the Parent, and the Equity Sponsors.

“Management Debt” means the Indebtedness arising under that certain \$1,750,000 non-interest bearing unsecured subordinated promissory note issued by Oreck to ASP Oreck Management, LLC as in effect on the Closing Date.

“Margin Stock” as defined in Regulation U of the Board of Governors as in effect from time to time.

“Material Adverse Effect” means (a) a material adverse effect in the business, prospects, operations, results of operations, assets, liabilities or condition (financial or otherwise) of the Loan Parties and their Subsidiaries taken as a whole, except for the commencement of the Bankruptcy Cases and the events that customarily and reasonably result from the commencement of the Bankruptcy Cases, (b) a material impairment of the ability of any Loan Party to perform its obligations under the Loan Documents to which it is a party or of the Lender Group’s ability to enforce the Obligations or realize upon the Collateral (other than as a result of an action taken or not taken that is solely in the control of Agent), (c) a material impairment of the enforceability or priority of Agent’s Liens with respect to the Collateral as a result of an action or failure to act on the part of any Loan Party or its Subsidiaries, or (d) any claim against any Loan Party or its Subsidiaries or threat of litigation against any Loan Party or its Subsidiaries would be reasonably likely to result in the occurrence of an event described in clauses (a), (b) or (c) above.

“Material Contract” means, with respect to any Person, (a) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of \$500,000 or more in any fiscal

year ((other than (i) purchase orders in the ordinary course of the business of such Person, (ii) contracts with customers or vendors of such Person pursuant to which such purchase orders will be issued, and (iii) other contracts that by their terms may be terminated by such Person in the ordinary course of its business upon less than 60 days' notice without penalty or premium), (b) the Management Agreement, and (c) all other contracts or agreements, the loss of which could reasonably be expected to result in a Material Adverse Effect.

"Maturity Date" means the earliest of (i) the date that is four months from the Closing Date, (ii) the date which is thirty (30) days following the date of entry of the Interim Order if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, (iv) the date upon which the automatic stay expires, (iii) the date of the closing of a sale of all or substantially all of the Loan Parties' assets pursuant to Section 363 of the Bankruptcy Code, (iv) the date of entry of an order confirming a plan in any of the Bankruptcy Cases and (v) such earlier date on which all Revolving Loans and other extensions of credit shall become due and payable in accordance with the terms of this Agreement and the other Loan Documents.

"Maximum Revolver Amount" means \$9,500,000.

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Mortgages" means, individually and collectively, one or more mortgages (including, without limitation, leasehold mortgages), deeds of trust, or deeds to secure debt, executed and delivered by a Loan Party or its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including any Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Negotiable Collateral" means letters of credit, letter-of-credit rights, instruments, promissory notes, drafts and documents (as each such term is defined in the Code).

"Net Cash Proceeds" means:

(a) with respect to any sale or disposition by any Loan Party of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of any Loan Party, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on any asset (other than (A) Indebtedness owing to Agent or any Lender under the Agreement or the other Loan Documents, (B) Indebtedness under the Second Lien Documents and (C) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale

or disposition, (ii) reasonable fees, commissions, and expenses in the Budget related thereto and required to be paid by such Loan Party in connection with such sale or disposition, (iii) taxes paid or payable to any taxing authorities by such Loan Party in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party, and are properly attributable to such transaction; and (iv) all amounts that are set aside as a reserve (A) for adjustments in respect of the purchase price of such assets, (B) for any liabilities associated with such sale or casualty, to the extent such reserve is required by GAAP, and (C) for the payment of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within 30 days after, the date of such sale or other disposition, to the extent that in each case the funds described above in this clause (iv) are (x) consented to by Agent in advance in writing and deposited into escrow with a third party escrow agent or set aside in a separate Deposit Account that is subject to a Control Agreement in favor of Agent and (y) paid to Agent as a prepayment of the applicable Obligations in accordance with Section 2.4(e) of the Agreement at such time when such amounts are no longer required to be set aside as such a reserve; and

(b) with respect to the issuance or incurrence of any Indebtedness by any Loan Party, or the issuance by any Loan Party of any Equity Interests, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Loan Party in connection with such issuance or incurrence, after deducting therefrom only (i) reasonable fees, commissions, and expenses in the Budget related thereto and required to be paid by such Loan Party in connection with such issuance or incurrence, (ii) taxes paid or payable to any taxing authorities by such Loan Party in connection with such issuance or incurrence, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party, and are properly attributable to such transaction.

“Net Liquidation Percentage” means the percentage of the Value of a Borrower’s Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory as set forth in the most recent appraisal received by Agent and approved by Agent in its Permitted Discretion and upon which Agent may rely, net of all associated costs and expenses of such liquidation, such percentage to be as determined from time to time by an appraisal company selected or approved by Agent with such most recent acceptable appraisal to be in form, scope, methodology and content reasonably acceptable to Agent.

“Non-Consenting Lender” has the meaning specified therefor in Section 15.2(a) of the Agreement.

“Obligations” means all loans (including the Revolving Loans), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), premiums, liabilities (including all amounts charged to the Loan Account pursuant to the Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or

expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, and all covenants and duties of any other kind and description owing by any Loan Party arising out of, under, pursuant to, in connection with, or evidenced by the Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, liquidated or unliquidated, determined or undetermined, voluntary or involuntary, due, not due or to become due, sole, joint, several or joint and several, incurred in the past or now existing or hereafter arising, however arising, and including all interest not paid when due, and all other expenses or other amounts that any Borrower or any other Loan Party is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents. Without limiting the generality of the foregoing, the Obligations of Borrowers under the Loan Documents include the obligation to pay (i) the principal of the Revolving Loans, (ii) interest accrued on the Revolving Loans, (iii) Lender Group Expenses, (iv) fees payable under the Agreement or any of the other Loan Documents, and (v) indemnities and other amounts payable by any Loan Party under any Loan Document. Any reference in the Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Other Statutory Liabilities” means accrued and unpaid statutory liabilities of the Loan Parties which may result in claims that have lien priority or priority of payment over all or any portion of the Obligations, are a statutory trust and/or which are legally required to be paid prior to the repayment in full of such Obligations, other than the amount of those liabilities included in the Carveout.

“Originating Lender” has the meaning specified therefor in Section 14.1(e) of the Agreement.

“Parent” has the meaning specified therefor in the preamble to the Agreement.

“Participant” has the meaning specified therefor in Section 14.1(e) of the Agreement.

“Participant Register” has the meaning set forth in Section 14.1(i) of the Agreement.

“Patents” means patents and patent applications, including (a) the patents and patent applications listed on Schedule 5.26(b), (b) all continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and improvements thereon, (c) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (d) the right to sue for past, present, and future infringements thereof, and (e) all of each Loan Party’s rights corresponding thereto throughout the world.

“Patent and Trademark Security Agreement” means each Patent and Trademark Security Agreement executed and delivered by the applicable Loan Party in favor of Agent, in form and substance reasonably acceptable to Agent.

“Patriot Act” has the meaning specified therefor in Section 5.18 of the Agreement.

“PBGC” means the Pension Benefit Guaranty Corporation. “Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the IRC and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the IRC and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the IRC and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Loan Party and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the IRC.

“Permitted CFC Investments” means loans, advances and capital contributions made on or after the Closing Date by a Loan Party to any Subsidiary that is a CFC so long as, upon giving effect to the making of each such loan, advance or capital contribution, (a) no Default or Event of Default exists, and (b) the aggregate outstanding amount of all such loans, advances and capital contributions does not exceed \$300,000 at any one time (unless consented to in writing by Agent in its sole discretion).

“Permitted Discretion” means a determination made in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Dispositions” means:

(a) sales, abandonment, license, or other dispositions of (i) Equipment that is substantially worn, damaged, or obsolete (or is excess Equipment no longer used in the operations of any Loan Party) in the ordinary course of business, (ii) Inventory that is obsolete, unmerchantable, or otherwise unsalable in the ordinary course of business, or (iii) Intellectual Property or leasehold properties that are immaterial to the conduct of Borrowers’ business (other than any Real Property Collateral);

(b) sales of Inventory to buyers in the ordinary course of business;

(c) the granting of Permitted Liens;

(d) the making of a Restricted Junior Payment that is expressly permitted to be made pursuant to this Agreement;



- (e) the making of a Permitted Investment;
- (f) the use or transfer of money or Cash Equivalents in the ordinary course of business in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;
- (g) the sale or discount, in each case without recourse, of Accounts arising in the ordinary course of business, but only in connection with the compromise or collection thereof;
- (h) any involuntary loss, damage or destruction of property;
- (i) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;
- (j) the sale or issuance of Equity Interests to the extent permitted by Section 7.14 of this Agreement;
- (k) the termination or lapse of a lease of real or personal property (other than any Real Property Collateral) that is not necessary to the conduct of Borrowers' business and so long as such termination or lapse does not result in a Material Adverse Effect;
- (l) the non-exclusive license of Intellectual Property to franchisees in the ordinary course of business; and
- (m) dispositions of assets (other than Accounts, Intellectual Property, licenses, Equity Interests of Subsidiaries of Parent, or Material Contracts) not otherwise permitted in clauses (a) through (o) above so long as made at fair market value and the aggregate fair market value of all assets disposed of in all such dispositions (including the proposed disposition) would not exceed \$300,000 in any fiscal year.

All proceeds of Permitted Dispositions shall be delivered to Agent and applied in accordance with the terms and conditions of this Agreement.

"Permitted Holder" means the Equity Sponsors.

"Permitted Indebtedness" means, without duplication:

- (a) Indebtedness evidenced by the Agreement or the other Loan Documents,
- (b) Indebtedness set forth on Schedule 5.19 and any Refinancing Indebtedness in respect of such Indebtedness; provided that the Existing Second Lien Obligations and any obligations owed to the Permitted Holders under the Management Debt or otherwise may only be refinanced in accordance with the Existing Intercreditor Agreement and the Management Debt may not be refinanced;

(c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness;

(d) endorsement of instruments or other payment items for deposit;

(e) the incurrence by any Loan Party or its Subsidiaries of Indebtedness under hedge agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's and its Subsidiaries' operations and not for speculative purposes;

(f) Indebtedness constituting Permitted Investments;

(g) Indebtedness owed to (including obligations in respect of letters of credit for the benefit of) any Person providing worker's compensation, health, disability or other employee benefits or property, casualty or liability insurance to any Borrower, pursuant to reimbursement or indemnification obligations to such Person;

(h) Indebtedness of the Borrowers in respect of self-insurance obligations, completion guaranties, export or import indemnities or similar instruments in each case provided in the ordinary course of business, including health, safety and environmental obligations in the ordinary course of business;

(i) Indebtedness representing deferred compensation to employees of any Borrower and its Subsidiaries incurred in the ordinary course of business;

(j) Indebtedness consisting of the financing of insurance premiums;

(k) Indebtedness consisting of (i) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations, (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions, (iii) unsecured guarantees with respect to Indebtedness of any Loan Party or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness, and (iv) and unsecured guarantees arising with respect to indemnity obligations in favor of officers and directors of the Loan Parties and their Subsidiaries;

(l) Indebtedness consisting of the financing of the Specified Claims in an aggregate principal amount not to exceed \$1,500,000; provided that such Indebtedness is on terms (including maturity, interest, fees, repayment, collateral, and subordination) reasonably satisfactory to Agent;

(m) the Existing First Lien Obligations; provided that (i) in no event shall the principal amount of such Indebtedness exceed the amount of principal outstanding as of the Closing Date and (ii) such Indebtedness is subject to the terms of the Existing Intercreditor Agreement;

(n) the Existing Second Lien Obligations; provided that (i) in no event shall the principal amount of such Indebtedness exceed the amount of principal outstanding as of the Closing Date and (ii) such Indebtedness is subject to the terms of the Existing Intercreditor Agreement;

(o) Indebtedness consisting of reimbursements obligations owed to an issuer of a letter of credit issued in connection with the purchase of Inventory by a Loan Party, to the extent set forth in the Budget, and

(p) other unsecured Indebtedness, in addition to the other Indebtedness described above, in an aggregate outstanding amount not at any time to exceed \$300,000.

“Permitted Intercompany Advances” means loans made by (a) a Loan Party to another Loan Party other than Parent, (b) a Subsidiary of a Loan Party which is not a Loan Party to another Subsidiary of a Loan Party which is not a Loan Party, (c) a Subsidiary of a Loan Party which is not a Loan Party to a Loan Party and (d) Permitted CFC Investments.

“Permitted Investments” means:

(a) Investments in cash and Cash Equivalents;

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(c) advances made in connection with purchases of Goods or services in the ordinary course of business;

(d) Investments owned by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1;

(e) Permitted Intercompany Advances;

(f) [reserved];

(g) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(h) deposits of cash made in the ordinary course of business to secure performance of operating leases;

(i) guarantees permitted under the definition of Permitted Indebtedness;

(j) Investments described in Section 7.12(g) in an amount not to exceed the amounts specified therein; and

(k) so long as no Event of Default has occurred and is continuing or would result therefrom, any other Investments in an aggregate amount not to exceed \$300,000 outstanding at any one time.

“Permitted Liens” means

- (a) Liens granted to, or for the benefit of, Agent to secure the Obligations;
- (b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Agent’s Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests;
- (c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 9.3 of the Agreement;
- (d) Liens set forth on Schedule P-2; provided, however, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 shall only secure the Indebtedness that it secures on the Closing Date and any Refinancing Indebtedness in respect thereof;
- (e) the interests of lessors under operating leases and non-exclusive licensors under license agreements;
- (f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof;
- (g) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness;
- (h) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, or a carrier’s contractual lien for unpaid charges, in each case, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests;
- (i) Liens on amounts deposited to secure Loan Parties’ and their Subsidiaries’ obligations in connection with worker’s compensation or other unemployment insurance;
- (j) Liens on amounts deposited to secure Loan Parties’ and their Subsidiaries’ obligations in connection with the making or entering into of bids, tenders, leases, contracts and similar obligations in the ordinary course of business and not in connection with the borrowing of money;

(k) Liens on amounts deposited to secure Loan Parties' and their Subsidiaries' reimbursement obligations with respect to surety or appeal bonds obtained in the ordinary course of business;

(l) with respect to any Real Property, easements, rights of way, and zoning restrictions that do not materially interfere with or impair the use or operation thereof;

(m) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business;

(n) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(o) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness;

(p) Liens granted on the Specified Claim securing the financing thereof described in clause (m) of the definition of "Permitted Indebtedness" so long as such Lien attaches only to the Specified Claim and the proceeds thereof and not to any other property of any Loan Party or Subsidiary thereof;

(q) non-exclusive licenses of Patents, Trademarks, Copyrights, and other Intellectual Property rights in the ordinary course of business;

(r) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$100,000 at any one time;

(s) Liens granted or authorized by the Financing Orders;

(t) Liens on Collateral securing the Existing First Lien Obligations under the Existing First Lien Loan Documents;

(u) Liens on Collateral securing the Existing Second Lien Obligations under the Existing Second Lien Loan Documents subject to the Existing Intercreditor Agreement; and

(v) Liens on cash securing reimbursement obligations incurred as permitted by subsection (q) of the definition of Permitted Indebtedness, provided that the aggregate amount of such cash shall not exceed 105% of the face amount of the letters of credit giving rise to such reimbursement obligations.

"Permitted Preferred Stock" means and refers to any Preferred Stock issued by a Loan Party (and not by one or more of its Subsidiaries) that is not Prohibited Preferred Stock.

"Permitted Priority Liens" means all (a) (i) Permitted Liens securing purchase money Indebtedness permitted under Section 7.1, which Liens attach solely to the equipment

purchased with the proceeds of such Indebtedness, and (ii) Permitted Liens in respect of ad valorem taxes, in each case, that are finally determined by the Bankruptcy Court to be senior to the Liens in favor of Agent and Lenders under the Loan Document, and (b) Permitted Liens permitted to have priority over the Liens in favor of Agent and Lenders, solely to the extent that such Liens are valid, perfected and non-avoidable as of the Filing Date, subject to the terms of the Financing Order and otherwise agreed to by Agent.

“Permitted Protest” means the right of any Borrower or any other Loan Party or any of their respective Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on the books and records of such Borrower, such other Loan Party or such Subsidiary in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by such Borrower, Loan Party or Subsidiary, as applicable, in good faith, and (c) Agent is satisfied, in its Permitted Discretion, that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent’s Liens.

“Permitted Purchase Money Indebtedness” means, as of any date of determination, Purchase Money Indebtedness incurred after the Closing Date in an aggregate principal amount outstanding at any one time not in excess of \$1,000,000.

“Person” means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Loan Party or any ERISA Affiliate or any such Plan to which any Loan Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified therefor in Section 18.9(c) of the Agreement.

“Pledged Companies” means each Person listed on Schedule P-3 to this Agreement, together with each other Person, all or a portion of whose Equity Interests are acquired or otherwise owned by a Loan Party after the Closing Date.

“Pledged Interests” means all of each Loan Parties’ right, title and interest in and to all of the Equity Interests now owned or hereafter acquired by such Borrower, regardless of class or designation, including in each of the Pledged Companies, and all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, also including any certificates representing the Equity Interests, the right to receive any certificates representing any of the Equity Interests, all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof and the right to receive all dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and all cash, instruments, and other property from time to time received,

receivable, or otherwise distributed in respect of or in addition to, in substitution of, on account of, or in exchange for any or all of the foregoing, but shall include only 65% of the total outstanding voting Equity Interests of any first tier Subsidiary of a Borrower that is a CFC (and none of the Equity Interests of any Subsidiary of such CFC).

“Pledged Interests Addendum” means a Pledged Interests Addendum substantially in the form of Exhibit C to this Agreement.

“Pledged Notes” has the meaning specified therefor in Section 5.26 of this Agreement.

“Pledged Operating Agreements” means all of each Loan Parties’ rights, powers, and remedies under the limited liability company operating agreements of each of the Pledged Companies that are limited liability companies.

“Pledged Partnership Agreements” means all of each Loan Parties’ rights, powers, and remedies under the partnership agreements of each of the Pledged Companies that are partnerships.

“Preferred Stock” means, as applied to the Equity Interests of any Person, the Equity Interests of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Equity Interests of any other class of such Person.

“Proceeds” has the meaning specified therefor in the definition of “Collateral” set forth in Schedule 1.1.

“Prohibited Preferred Stock” means any Preferred Stock that by its terms is mandatorily redeemable or subject to any other payment obligation (including any obligation to pay dividends, other than dividends of shares of Preferred Stock of the same class and series payable in kind or dividends of shares of common stock) on or before a date that is less than 1 year after the Maturity Date, or, on or before the date that is less than 1 year after the Maturity Date, is redeemable at the option of the holder thereof for cash or assets or securities (other than distributions in kind of shares of Preferred Stock of the same class and series or of shares of common stock).

“Pro Rata Share” means, as of any date of determination:

(a) with respect to a Lender’s obligation to make all or a portion of the Revolving Loans, with respect to such Lender’s right to receive payments of interest, fees, and principal with respect to the Revolving Loans, and with respect to all other computations and other matters related to the Commitments or the Revolving Loans, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders,

(b) [intentionally omitted]

(c) with respect to all other matters and for all other matters as to a particular Lender (including the indemnification obligations arising under Section 16.7 of the Agreement), the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to Section 14.1; provided, that if all of the Loans have been repaid in full and all Commitments have been terminated, Pro Rata Share under this clause shall be determined as if the Revolving Loan Exposures had not been repaid, collateralized, or terminated and shall be based upon the Revolving Loan Exposures as they existed immediately prior to their repayment, collateralization, or termination.

“PTO” means the United States Patent and Trademark Office.

“Public Lender” has the meaning specified therefor in Section 18.9(c) of the Agreement.

“Purchase Money Indebtedness” means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 20 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof.

“Real Property” means any estates or interests in real property now owned or hereafter acquired by any Loan Party and the improvements thereto.

“Real Property Collateral” means the Real Property owned by a Loan Party identified on Schedule R-1 and any fee interest in Real Property hereafter acquired by any Loan Party with a fair market value in excess of \$250,000.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Refinancing Indebtedness” means refinancings, renewals, or extensions of Indebtedness (including loans entered into to purchase Equipment at the expiration of any Capital Lease) so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto,

(b) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of the Lenders,

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the



refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender Group as those that were applicable to the refinanced, renewed, or extended Indebtedness, and

(d) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

“Register” has the meaning set forth in Section 14.1(h) of the Agreement.

“Registered Loan” has the meaning set forth in Section 14.1(h) of the Agreement.

“Reinstated Existing First Lien Obligations” means any Existing First Lien Obligations constituting an Avoided Payment, to the extent such obligations have been reinstated, in each case, pursuant to, and subject to the requirements and terms of the Bankruptcy Court.

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

“Remedial Action” means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

“Replacement Lender” has the meaning specified therefor in Section 15.2 of the Agreement.

“Report” has the meaning specified therefor in Section 16.16 of the Agreement.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Required Lenders” means, at any date, any combination of Lenders holding more than two-thirds of the aggregate amount of the Revolving Loan Exposure.

“Reserves” means, as of any date of determination, the sum of (a) an amount or percent of a specified item or category of items that Agent establishes from time to time in its Permitted Discretion to reduce Availability under the Maximum Revolver Amount to reflect (i) such matters, events, conditions, contingencies or risks which affect or which may reasonably be expected to affect the assets, business or prospects of a Borrower, any other Loan Party or the

Collateral or its value or the enforceability, perfection or priority of Agent's Liens in the Collateral, or (ii) Agent's judgment in its Permitted Discretion that any collateral report or financial information relating to a Borrower or any other Loan Party delivered to Agent is incomplete, inaccurate or misleading in any material respect; *plus*, (b) an amount that Agent may establish from time to time in its Permitted Discretion approximately equal to the average daily cash collections in the Loan Parties' Homecare Stores, *plus* (c) an amount that Agent may establish from time to time in its Permitted Discretion equal to any amounts that Borrowers may be obligated to pay to any financing source that finances the Specified Claim (other than the proceeds of the Specified Claim), *plus* (d) the amount of the Carveout Expense Reserve. As long as no Default or Event of Default has occurred and is continuing, Agent agrees to use commercially reasonable efforts to provide Administrative Borrower with at least five (5) Business Days' notice of the implementation of any Reserve under clause (a) hereunder in excess of \$250,000, but the failure to give such notice shall not impair Agent's ability to implement such Reserve or result in any liability hereunder.

"Revolving Credit Facility" means the revolving line of credit facility described in Section 2.1 pursuant to which the Lenders provide Revolving Loans to Borrowers.

"Revolver Usage" means, as of any date of determination, the amount of outstanding Revolving Loans.

"Revolving Loan Exposure" means, with respect to any Lender, as of any date of determination (a) prior to the termination of the Commitments, the amount of such Lender's Commitment, and (b) after the termination of the Commitments, the aggregate outstanding principal amount of the Revolving Loans of such Lender.

"Revolving Loans" has the meaning specified therefor in Section 2.1(a) of the Agreement.

"Sanctioned Entity" means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means a person named on the list of Specially Designated Nationals maintained by OFAC.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Secured Debt" means (a) Indebtedness under the Existing First Lien Loan Documents, (b) Indebtedness under the Existing Second Lien Loan Documents and (c) the Obligations.

"Securities Account" means a securities account (as that term is defined in the Code).

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Security Interest” has the meaning specified therefor in Section 3.1.

“Solvent” means, with respect to any Person on a particular date, that, (a) at fair valuations, the sum of such Person’s assets (and including as assets for this purpose all rights of subrogation, contribution or indemnification arising pursuant to any guarantees given by such Person) is greater than all of such Person’s debts and including subordinated and contingent liabilities computed at the amount which, such Person has a reasonable basis to believe, represents an amount which can reasonably be expected to become an actual or matured liability (and including as to contingent liabilities arising pursuant to any guarantee the face amount of such liability as reduced to reflect the probability of it becoming a matured liability); and (b) such Person is able to pay its debts as they mature and has (and has a reasonable basis to believe it will continue to have) sufficient capital (and not unreasonably small capital) to carry on its business consistent with its practices as of the date hereof.

“Specified Claim” means the Loan Parties’ claims and causes of action against their respective insurance providers for failure to provide coverage with respect to the disputes arising in the pending litigation styled In re: Oreck Corporation Halo Vacuum and Air Purifiers Marketing and Sales Practices Litigation.

“Subsidiary” of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the Equity Interests having ordinary voting power to elect a majority of the Board of Directors of such corporation, partnership, limited liability company, or other entity.

“Supporting Obligations” means supporting obligations (as such term is defined in the Code), and includes letters of credit and guaranties issued in support of Accounts, Chattel Paper, documents, General Intangibles, instruments or Investment Related Property.

“Taxes” means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto.

“Tax Lender” has the meaning specified therefor in Section 15.2(a) of the Agreement.

“Third Party Accounts” means an Account (other than a Consumer Account) owed by a credit card issuer or credit card processor to a Borrower resulting from charges by a retail customer of a Borrower on credit or debit cards issued by such credit card issuer or credit card processor in connection with the sale of goods by a Borrower.

“Trademarks” means any and all trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including (a) the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule 5.26(b), (b) all renewals thereof, (c) all

income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (d) the right to sue for past, present and future infringements and dilutions thereof, (e) the goodwill of each Loan Party's business symbolized by the foregoing or connected therewith, and (f) all of each Loan Party's rights corresponding thereto throughout the world.

"United States" means the United States of America.

"URL" means "uniform resource locator," an internet web address.

"Value" means, as determined by Agent in its Permitted Discretion, with respect to Inventory, the lower of (a) cost computed on a first-in first-out basis in accordance with GAAP or (b) market value.

"Variance Report" means a weekly variance report to be provided by Borrowers to Agent reflecting actual cash receipts and disbursements for (i) each one week period and (ii) the period from the commencement of the Bankruptcy Cases to the date of such variance report; each such variance report to be provided to the Agent within one Business Day after the end of the period covered by such variance report, and reflecting the amount and the percentage variance of actual receipts and disbursements (on a line item basis) from those receipts and disbursements reflected in the Budget for such periods.

"Voidable Transfer" has the meaning specified therefor in Section 18.8 of the Agreement.

**Oreck Corp.**  
**DIP - 13 Week Cash Flow Forecast**  
**May 17, 2013**  
 (\$ in 000's)

	17-May	24-May	31-May	7-Jun	14-Jun	21-Jun	28-Jun	5-Jul	12-Jul	19-Jul	26-Jul	2-Aug	9-Aug	Total
Collections	1,522	1,877	2,512	1,686	4,702	1,767	1,767	1,762	1,762	1,762	1,562	1,564	1,564	25,808
Payroll & Taxes	1,005	91	865	91	865	91	865	91	865	91	1,080	91	865	6,956
401K	10	1	9	1	9	1	9	1	9	1	9	1	9	70
Group Health	50	50	50	140	50	50	50	140	50	50	50	140	50	920
Utilities		130	70	20	30	100	70	70	20	30	100	70	20	730
Rent														-
Plant & DC			32					64				32		128
Stores			500					683				500		1,683
Corporate			74					74				74		222
Operating Expenses														-
Plant & DC		60	20	20	20	20	20	20	20	20	20	20	20	280
Selling		90	30	30	30	30	30	30	30	30	30	30	30	420
Corporate		90	30	30	30	30	30	30	30	30	30	30	30	420
China payroll & exp.		60			60				60					180
Sales Tax		240	25		195	45	25		195	45	25			795
Corporate Insurance				85				85				85		255
OB Freight		330	110	110	110	110	110	110	110	110	110	110	110	1,540
COGS		1,878	1,231	1,229	1,229	629	629	629	629	629	629	629	629	10,600
Product Development		-	65	70	70	70	65	80	80	70	90			660
Other Media		250	250	285	375	250	375	125	125	125	125	125	125	2,535
Large Retail Media				-										-
Legal fees														-
Advisory Fee	-	-	590	100	100	100	290	125	125	125	265	125	125	2,070
Interest Expense		300		30				30				30		390
All Other		300	100	100	100	100	100	100	100	100	100	100	100	1,400
1st Day Motions/Critical		300												300
Total Disbursements	1,065	4,170	4,051	2,341	3,273	1,626	2,668	2,487	2,448	1,456	2,663	2,192	2,113	32,554

Cash flow	457	(2,294)	(1,539)	(655)	1,429	141	(901)	(725)	(686)	306	(1,101)	(628)	(549)	(6,746)
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*Revolver*

[illegible]

## Accounts Receivable

<b>Beg. Balance</b>	8,530	7,997	7,408	6,485	6,369	5,877	5,880	5,882	5,884	5,885	5,886	5,888	5,888
<b>+ Sales</b>	1,588	1,588	1,588	1,570	4,210	1,570	1,570	1,564	1,564	1,564	1,564	1,564	1,564
<b>- Collections</b>	2,122	2,177	2,512	1,686	4,702	1,567	1,567	1,562	1,562	1,562	1,562	1,564	1,564
<b>End. Balance</b>	7,997	7,408	6,485	6,369	5,877	5,880	5,882	5,884	5,885	5,886	5,888	5,888	5,888

## Inventory

[illegible]

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In re:	)	
	)	Chapter 11
<b>ORECK CORPORATION, ET AL.</b>	)	Case No. 13-04006
	)	
Debtors.	)	Judge Lundin
	)	(Jointly Consolidated)

**INTERIM ORDER (I) AUTHORIZING (A) THE DEBTORS TO OBTAIN  
POSTPETITION FINANCING ON A SENIOR SECURED SUPERPRIORITY BASIS  
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, AND 364; (B) TO UTILIZE CASH  
COLLATERAL PURSUANT TO 11 U.S.C. § 363; (II) GRANTING ADEQUATE  
PROTECTION TO PREPETITION SECURED LENDERS PURSUANT TO  
11 U.S.C. §§ 361, 363 AND 364; (III) SCHEDULING FINAL HEARING PURSUANT TO  
BANKRUPTCY RULES 4001(b) AND (c); AND (IV) GRANTING RELATED RELIEF**

Upon the second motion (the “**Motion**”)<sup>1</sup> dated May [ ], 2013 of Oreck Corporation (“**Oreck**”), and the above related Debtors, collectively, the “**Debtors**”),<sup>2</sup> in the above-captioned cases (the “**Cases**”) seeking, pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and this Court’s authorization:

(a) for the Debtors to obtain senior secured postpetition financing (the “**DIP Facility**”) pursuant to that certain Debtor-In-Possession Credit Agreement (as amended from time to time, collectively with all ancillary documents at any time executed in connection

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or DIP Facility, as applicable.

<sup>2</sup> The Debtors and their respective Tax ID numbers are as follows: Oreck Corporation, ASP Oreck, Inc., Oreck Direct, LLC, Oreck Merchandising, LLC, Oreck HomeCare, LLC, Vecteur, LLC, Oreck Holdings, LLC, Oreck Manufacturing Company, and Oreck Sales, LLC.

therewith (the “**DIP Credit Agreement**” including, without limitation, any loan agreement, notes, guaranties, security agreements, pledge agreements, control agreements, mortgages or other agreements or instruments executed by one or more Debtors in connection with the DIP Facility to evidence or govern the terms thereof), collectively, the “**DIP Documents**”), up to the aggregate principal amount of \$9,500,000 (the actual available principal amount at any time being subject to the conditions set forth in the DIP Documents) from Black Diamond Commercial Finance, L.L.C. (“**BDCF**”), acting as administrative agent (in such capacity, the “**Agent**”), for itself and lenders that are party from time to time thereto (the “**DIP Lenders**”), with such DIP Facility:

(i) having priority, pursuant to section 364(c)(1) of the Bankruptcy Code, over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, except for the Carve Out (as defined below);

(ii) being secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by perfected first priority senior priming liens on all present and after-acquired property of the Debtors that is subject to a lien on or after the Petition Date on the Debtors’ Assets<sup>3</sup>, which first priority priming liens shall also be senior in all respects to all of

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<sup>3</sup> For purposes of this Order, “Assets” of the Debtors refers to all assets of the Debtors, of any nature whatsoever and wherever located, whether first arising prior to or following the Petition Date, now owned or hereafter acquired, including all of the following: accounts; receivables; inventory; Documents (as defined in the Uniform Commercial Code) evidencing inventory; Deposit Accounts (as defined in the Uniform Commercial Code); cash; chattel paper; commercial tort claims; equipment; general intangibles; goods; instruments; investment property; real property, letter-of-credit rights; books and records; Supporting Obligations (as defined in the Uniform Commercial Code) in respect of any of the foregoing property; and all proceeds, rents, profits and offspring of any of the foregoing; provided, however, that, for purposes of this Order, “Assets” shall not include Avoidance Action Proceeds. “**Avoidance Action Proceeds**” means proceeds of all claims and causes of actions under Chapter 5 of the Bankruptcy Code, including, without limitation, those under sections 502(d), 544, 545, 547, 548, 549, 550, 552(b) and 553, and state laws of similar import.

such existing liens on the Debtors' Assets, subject only to the (i) Carve Out (defined below) and (ii) liens on Debtors' Assets that are in existence on the Petition Date, but only (A) to the extent a lien on any property is valid, perfected, and not avoidable, and (B) the lien on such property (or the proceeds of such property, as applicable) on the Petition Date was senior in priority to or *pari passu* with the liens arising under the Prepetition First Lien Credit Agreement (the items referenced in the foregoing clause (ii) being referred to collectively as the "**Permitted Prior Senior Liens**");

(iii) being secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by perfected first priority security interests in and liens upon all unencumbered prepetition and postpetition property of the Debtors including, but not limited to, cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, property, plants, equipment, general intangibles, instruments, interests in leasehold proceeds, real property, patents, copyrights, trademarks, trade names, other intellectual property and the proceeds of all the foregoing; and

(iv) being secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by perfected junior security interests in and liens upon all prepetition and postpetition property of the Debtors that is subject a Permitted Prior Senior Lien (in each case other than liens that secure the Prepetition Secured Obligations (as defined below));

(b) for the Debtors to use the Cash Collateral pursuant to sections 361, 362 and 363 of the Bankruptcy Code, and other collateral in which the Prepetition Secured Parties (as defined below) have an interest (together with the Cash Collateral, the "**Prepetition Collateral**") and provide adequate protection with respect to any diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral resulting from the use of the



Cash Collateral and the use, sale or lease of the Prepetition Collateral (other than the Cash Collateral) or imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code;

(c) to schedule, pursuant to Bankruptcy Rule 4001, a final hearing (the “**Final Hearing**”) for this Court to consider entry of a final order (the “**Final Order**”) authorizing the balance of the DIP Facility on a final basis, as set forth in this Motion and the DIP Facility attached to this Motion; and

(d) the granting of certain related relief.

An interim hearing having been held by this Court on May [ ], 2013 and upon the record made by the Debtors at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

Upon the record made by the Debtors at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED. BASED UPON THE RECORD BEFORE THE COURT AT THE INTERIM HEARING, that:

1. *Jurisdiction.* This Court has core jurisdiction over the Cases, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Debtors on the Master Service List approved by the Court by Order entered May 10, 2013. Under the circumstances, such notice is appropriate and constitutes due and sufficient notice thereof under the Bankruptcy Code, the Bankruptcy Rules and Local Rules and complies with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 4001(b) and (c), and Local Rule 9075-1.

3. *Objections.* All objections to the entry of this Order, if any, are resolved hereby or, to the extent not resolved, are overruled.

4. *Debtors' Stipulations.* Without prejudice to the rights of any other party, including without limitation any Official Committee of Unsecured Creditors appointed by the United States Trustee for the Middle District of Tennessee (the "**U.S. Trustee**") in the Cases (the "**Committee**"), (but subject to the limitations thereon contained in paragraph 19 below), the Debtors admit, stipulate and agree that:<sup>4</sup>

(a) as of the Petition Date, the Debtors were indebted and liable to:

(i) the Prepetition First Lien Lender, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$4,230,719.33 in respect of loans made by Prepetition First Lien Lender pursuant to, and in accordance with the terms of, the Debtors' indebtedness under or in connection with that certain Credit and Security Agreement, dated as of August 29, 2012 (as the same may be amended, supplemented or otherwise modified from time to time, the "**Prepetition First Lien Credit Agreement**"), among the Debtors<sup>5</sup>, as borrowers, GSC Recovery III, L.P. (as successor in interest to Wells Fargo Bank, National Association, the "**Prior Prepetition First Lien Lender**"), as lender (the "**Prepetition First Lien Lender**"), plus, in each case, interest thereon and other obligations incurred in connection therewith as provided in the Prepetition First Lien Credit Agreement and any ancillary and related documents thereto (the "**Prepetition First Lien Credit Agreement Obligations**"),

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<sup>4</sup> Notwithstanding anything herein to the contrary, nothing in this paragraph 4 shall be deemed to be a finding of the Court that the Debtors' admissions, stipulations and agreements in this paragraph 4 are accurate and/or binding on the Court.

<sup>5</sup> The Borrowers included Oreck Franchise Services, LLC, which is no longer an operating entity and thus is not a debtor in these cases.

(x) the Prepetition First Lien Credit Agreement Obligations constitute the legal, valid and binding obligations of the Debtors, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (y) no portion of the Prepetition First Lien Credit Agreement Obligations are subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (z) the Debtors do not have, and hereby forever release, any claims, counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against the Prepetition First Lien Lender and its affiliates, agents, officers, directors, employees and attorneys with respect to the Prepetition First Lien Credit Agreement Obligations; and

(ii) the Prepetition Second Lien Lenders (as defined below), without defense, counterclaim or offset of any kind, in the aggregate principal amount of \$5,467,897 in respect of the extensions of credit provided for pursuant to, and in accordance with the terms of, that certain Second Lien Credit Agreement, dated as of March 19, 2010 (as the same may be amended, supplemented or otherwise modified from time to time, the “**Prepetition Second Lien Agreement**”), among the Debtors, as borrowers, Gleacher Products Corp., as administrative agent, and certain institutions from time to time party thereto as lenders (the “**Prepetition Second Lien Lenders**” and, together with the Prepetition First Lien Lender, the “**Prepetition Secured Parties**”), plus, in each case, interest thereon and other obligations incurred in connection therewith as provided in the Prepetition Second Lien Agreement and any ancillary and related documents thereto (collectively, the “**Prepetition Second Lien Obligations**” and together with the Prepetition First Lien Credit Agreement Obligations, the “**Prepetition**

**Secured Obligations**”), (x) the Prepetition Second Lien Obligations constitute the legal, valid and binding obligations of the Debtors, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (y) no portion of the Prepetition Second Lien Obligations are subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (z) the Debtors do not have, and hereby forever release, any claims, counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against Prepetition Second Lien Lenders and their affiliates, agents, officers, directors, employees and attorneys with respect to the Prepetition Second Lien Obligations.

(b) the liens and security interests granted to the Prepetition Secured Parties pursuant to and in connection with the Prepetition Secured Obligations (including, without limitation, all security agreements, pledge agreements, deeds of trust and other security documents executed by the Debtors in favor of the Prepetition Secured Parties) are (i) valid, binding, perfected, enforceable, liens and security interests in the property and of the priority described in the Prepetition First Lien Credit Agreement, the Prepetition Second Lien Agreement and that certain Intercreditor Agreement dated March 19, 2010 (collectively, the “**Prepetition Secured Credit Documents**”), (ii) not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iii) subject and subordinate only to (x) the DIP Liens (as defined below), (y) the Carve Out (as defined below) and (z) Permitted Prior Senior Liens (together with the liens granted to the Prepetition Secured Parties under the Prepetition Secured Credit Documents, the “**Prepetition Liens**”); and

(c) the Prepetition First Lien Credit Agreement Obligations are fully secured by the Prepetition Collateral securing the Prepetition First Lien Credit Agreement Obligations.

5. *Findings Regarding the DIP Facility.*

(a) Good cause has been shown for the entry of this Order.

(b) The Debtors have an immediate need to obtain the DIP Facility and continue to use the Prepetition Collateral in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to satisfy other working capital and operational needs, to pay interest, fees and expenses in accordance with this Order, to pay amounts approved by other Order of this Court, to provide working capital for the Debtors and to fund an orderly sale process as set forth in the DIP Documents. The Debtors' use of the Prepetition Collateral in general and access to the proceeds of the DIP Facility specifically, is necessary in order to insure that the Debtors have sufficient working capital and liquidity and can preserve and maintain the going concern value of the Debtors.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Facility and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or unsecured credit with the enhanced priority afforded by section 364(c)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Lenders, subject to the Carve Out as provided for herein, the DIP

Liens (as defined below) and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Order and in the DIP Documents.

(d) The terms of the DIP Documents and the use of Cash Collateral are fair and reasonable under the circumstances of the Cases, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The DIP Documents and use of Cash Collateral have been negotiated in good faith and at arms' length between the Debtors, the Agent and the Prepetition First Lien Lender, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Facility, including without limitation, all loans made to the Debtors pursuant to the DIP Facility (together with any other obligation arising under this Order or the DIP Documents, collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Lenders in good faith, and the Prepetition First Lien Lender's consent to the DIP Facility and the Debtors' use of Cash Collateral shall be deemed to have been in good faith, as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by sections 363(m) and 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Order pursuant to Bankruptcy Rules 4001(b)(2), 4001(c)(2) and 4001(d) and the expedited procedures under Local Rule 9075-1. Absent granting the relief sought by this Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility and the use of Cash

Collateral in accordance with this Order and the DIP Documents is therefore in the best interest of the Debtors' estates.

6. *Authorization of the DIP Facility.*

(a) The DIP Facility is hereby approved as set forth in this Order and the Debtors are hereby authorized to borrow money pursuant to and in accordance with the terms of the DIP Documents and this Order, up to an aggregate principal or face amount of \$6,500,000 on an interim basis and, upon entry of the Final Order, up to an aggregate principal or face amount of \$9,500,000, subject to satisfaction or waiver of any conditions precedent set forth in the DIP Documents, which shall be used for all purposes permitted under the DIP Facility, including, without limitation, with respect to pay interest, fees and expenses in accordance with this Order, to pay amounts approved by other Order of this Court, to provide working capital for the Debtors, to pay amounts owing under the Carve-Out and to fund an orderly sale process of the Debtors' businesses, in each case in accordance with the Approved Budget (the most recent of which is attached as Exhibit C to the Motion). The Approved Budget may be amended, supplemented, extended or otherwise modified from time to time in any manner as to which the Debtors and the Agent mutually agree without further order of this Court or advance notice to any person other than the U.S. Trustee and counsel for the Committee, who shall receive three (3) business days advance notice for any modification or amendment to the Budget that increases the disbursements under the Budget by an amount greater than 10% of the aggregate weekly amount on the Budget. Notwithstanding the foregoing, the Debtors may take appropriate actions with respect to confidentiality of any portion of the Approved Budget.

(b) In furtherance of the foregoing and without further approval of this Court, the Debtors are 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, pledge agreements, mortgages, control agreements and financing statements), and to pay all fees and interest and/or grant an original issue discount that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility, including, without limitation:

(i) the execution, delivery and performance of the DIP Documents and any exhibits attached thereto, including, without limitation, the DIP Facility;

(ii) the execution, delivery and performance of one or more amendments to the DIP Documents, including without limitation an amendment to effectuate the terms of this Order, in each case in such form as the Debtors and the DIP Lenders may agree (it being understood that, *inter alia*, no further approval of the Court shall be required for non-material amendments to the DIP Documents that, do not shorten the maturity of the extensions of credit thereunder or increase the commitments, or the rate of interest payable thereunder; *provided, however*, that notice of any proposed non-material amendment to the DIP Documents shall be filed with this Court and served electronically upon counsel to the Prepetition Secured Parties, counsel to the Committee and the U.S. Trustee; provided further, that the aforementioned parties shall have three (3) business days from the date of electronic service to object to any such non-material amendment);

(iii) (a) the non-refundable payment to the DIP Agent of the fees referred to in the DIP Facility (and in any separate letter agreements between them in connection with the DIP Facility) and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals



retained as provided for in the DIP Documents; *provided, however*, that payment of the default rate provided for in Article 2.6(b) of the DIP Credit Agreement and the Unused Line Fee (as defined in the DIP Credit Agreement) shall be payable to the DIP Agent only upon entry of the Final Order; and

(iv) the performance of all other acts required under or in connection with the DIP Documents incident to the relief that has been authorized by this Court.

(c) The DIP Documents constitute the valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with its terms. No obligation, payment, transfer or grant of security of, by and/or between the DIP Lenders and/or the Debtors under the DIP Facility or this Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code, under section 548 of the Bankruptcy Code or under any applicable State Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

7. *Superpriority Claims.*

(a) 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 any and all administrative expenses, diminution claims (including all Adequate Protection Obligations (as defined below)) 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 any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a),

507(b), 726, 1113 or 1114 of the Bankruptcy Code (the “**Superpriority Claims**”), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre- and postpetition property of the Debtors and all proceeds thereof, subject only to the payment of the Carve Out to the extent specifically provided for herein.

(b) For purposes hereof, the “**Carve Out**” means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, (ii) the Success Fee (as such term is defined pursuant to that certain Application for Order of Employment and Retention of Sawaya Segalas & Co., LLC) and (iii) after the occurrence and during the continuance of a Default or Event of Default (each as defined in the DIP Documents and/or herein) an amount not exceeding \$400,000 in the aggregate, plus all unpaid professional fees and expenses allowed by this Court (whether allowed prior to or after the occurrence of a Default or Event of Default) that were incurred prior to the occurrence of a Default or Event of Default up to the amount allocated for such fees in the Approved Budget through the date of such Default or Event of Default (in each case without application of any retainers held by such professionals), which amount may be used subject to the terms of this Order, including, without limitation, paragraph 15 hereof, to pay any fees and expenses incurred by the Debtors’ professionals and the Committee’s professionals, in respect of (A) allowances of compensation for services rendered or reimbursement of expenses awarded by the Bankruptcy Court to the Debtors’ or any Committee’s professionals and (B) the reimbursement of expenses allowed by the Bankruptcy Court incurred by Committee members in the performance of their duties (but excluding fees and expenses of third party professionals employed by such members); *provided, however*, (x) that the dollar limitation in this clause

7(b)(ii) on fees and disbursements shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the occurrence of a Default or Event of Default in respect of which the Carve Out is invoked or by any fees, expenses, indemnities or other amounts paid to the Agent, any DIP Lender or their respective attorneys and agents under the DIP Documents or otherwise, and (y) that nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above.

8. *DIP Liens.*

As security for the DIP Obligations, effective and perfected upon the date of this Order and without the necessity of the execution, recordation or filing by the Debtors of security agreements, control agreements, pledge agreements, mortgages, financing statements or other similar documents, the following security interests and liens are hereby granted to the DIP Lenders (all property identified in clauses (a), (b) and (c) below being collectively referred to as the “**Collateral**”), subject, only in the event of the occurrence and during the continuance of an Default or Event of Default, to the payment of the Carve Out (all such liens and security interests granted to the DIP Lenders, pursuant to this Order and the DIP Documents, the “**DIP Liens**”):

(a) First Lien on Unencumbered Property. 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 all pre- and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to a Permitted Prior Senior Lien (collectively, “**Unencumbered Property**”), including, without limitation, any unencumbered cash, 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 leasehold proceeds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing; *provided, that* “Unencumbered Property” shall not include causes of action against the Prepetition First Lien Lender.

(b) Liens Priming Prepetition Secured Parties’ Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and postpetition Assets of the Debtors, whether now existing or hereafter acquired, that is subject to the existing liens presently securing Debtors’ obligations under the Prepetition Secured Credit Documents. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties (including, without limitation, adequate protection liens granted hereunder).

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected security interest in and liens upon all pre- and postpetition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 8, as to which the liens and security interests in favor of the DIP Lenders will be as described in such clauses), whether now existing or hereafter acquired, that is subject to Permitted Prior Senior Liens or to valid and unavoidable liens in existence immediately prior to the Petition Date, senior in priority to or *pari passu* with the liens arising under the Prepetition First Lien Credit Agreement, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which security interests and liens in favor of the DIP Lenders are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens and, subject to paragraph 19 of this Order, the Adequate Protection Liens (as defined below) shall not be (i) subject or subordinate to (A) 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 (B) 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 any Debtor, or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 364 of the Bankruptcy Code or otherwise.

9. *Protection of DIP Lenders' Rights.*

(a) So long as there are any borrowings or other amounts outstanding, or the DIP Lenders have a lending commitment outstanding under the DIP Facility, each of the Prepetition Secured Parties shall take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to, as appropriate, the Prepetition Secured Obligations or this Order, or otherwise exercise remedies against any Collateral, except to the extent authorized by an order of this Court; *provided, however*, that if the DIP Lenders take any action to foreclose upon or recover in connection with the liens granted in connection with the DIP Documents, the Prepetition Secured Parties may be permitted upon further order of this Court to take action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Prepetition Secured Obligations or this Order.

(b) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Lenders to exercise, upon the occurrence of a Default or Event of Default and the giving of three (3) business days' written notice provided for in the DIP Documents and to the Committee, all rights and remedies under

the DIP Documents (including, without limitation, drawing of the Sponsor L/C); *provided, however*, with respect to Permitted Prior Senior Liens, any exercise of such rights and remedies shall be in accordance with applicable non-bankruptcy law in respect of Permitted Prior Senior Liens; *provided, further*, during the three (3) day notice period, the Debtors, the Committee or any other party in interest may seek an order of the Court staying the DIP Lender's exercise of such remedies against the DIP Collateral and, if no such stay is obtained, then the DIP Lender may exercise any and all such rights and remedies without further order of the Court or notice to any party; *provided, further*, upon the occurrence of a Default or Event of Default the DIP Lenders' right to have a motion to modify the automatic stay vacated and modified shall be heard on an emergency basis at the earliest possible opportunity. In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, a Default has occurred and is continuing, and the Debtors hereby waive their right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict (i) the rights and remedies of the DIP Lenders set forth in this Order or the DIP Documents, or (ii) the Prepetition Secured Parties pursuant to the Prepetition Secured Obligations or this Order. In no event shall the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral. The DIP Lenders' failure to seek relief or otherwise exercise their rights and remedies under the DIP Documents or this Order shall not constitute a waiver of the DIP Lenders' rights hereunder, thereunder or otherwise.

10. *Limitation on Charging Expenses Against Collateral.*

Except to the extent of the Carve Out, 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, the Prepetition Collateral or the Prepetition Secured Parties' Replacement Collateral (as defined in paragraph 14(a) below), pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, upon entry of the Final Order, without the prior written consent of the DIP Lenders or the Prepetition Secured Parties, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lenders or the Prepetition Secured Parties .

11. *Payments Free and Clear.* Subject to the right of third parties to bring an action by the Challenge Deadline in paragraph 19 of this Order, upon entry of the Final Order, any and all payments or proceeds remitted to the DIP Lenders or the Prepetition First Lien Lender pursuant to the provisions of this Order or any subsequent order of the Court shall be received free and clear of any claim, charge, assessment or other liability including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) (whether asserted or assessed by, through or on behalf of the Debtors) or 552(b) of the Bankruptcy Code.

12. *Interest and Fees on DIP Obligations.* Interest and fees on the DIP Obligations shall accrue at the rates and shall be paid at the times as provided in the DIP Documents and in any separate letter agreements between the DIP Agent and/or DIP Lender, as applicable, and the Debtors in connection with the DIP Documents; *provided, however*, that payment of the default rate provided for in Article 2.6(b) of the DIP Credit Agreement and the Unused Line Fee (as defined in the DIP Credit Agreement) shall be payable to the DIP Agent only upon entry of the Final Order.

13. *Use of Cash Collateral.* The Debtors are hereby authorized to use all Cash Collateral of the Prepetition Secured Parties to pay down, on a rolling basis, the Prepetition First Lien Credit Agreement Obligations in accordance with the provisions of the DIP Documents and Approved Budget (the “**Roll-Up Payments**”).

14. *Adequate Protection.* The Prepetition Secured Parties are entitled, pursuant to sections 361, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, in an amount equal to the aggregate diminution in value of the Prepetition Secured Parties’ respective Prepetition Collateral (subject to proof before the Court or as agreed to by the Prepetition Secured Parties, the Debtors and the Committee), including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of the Prepetition Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (such diminution in value, the “**Adequate Protection Obligations**”). As adequate protection, the Prepetition Secured Parties are hereby granted the following:

(a) Prepetition First Lien Adequate Protection Liens. In addition to the Roll-Up Payments, the Prepetition First Lien Lender is hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, financing statements or other agreements) a replacement security interest in and junior lien upon all the Collateral (but senior to the Second Lien Lender Replacement Lien) (the “**First Lien Lender Replacement Lien**”), of the same type and category in which they had Prepetition Liens (such collateral, the “**Replacement Collateral**”).

(b) Prepetition Second Lien Adequate Protection Liens. The Prepetition Second Lien Lenders are hereby granted (effective and perfected upon the date of this



Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, financing statements or other agreements) a replacement security interest in and junior lien (including junior to the First Lien Lender Replacement Lien) upon all the Collateral (the “**Second Lien Lender Replacement Lien**” and, together with the First Lien Lender Replacement Lien, the “**Adequate Protection Liens**”), on the Replacement Collateral.

(c) Prepetition First Lien Section 507(b) Claim. The Prepetition First Lien Lender is hereby granted, subject to the payment of the Carve Out a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Lenders (the “**First Lien Lender Replacement Claim**”); *provided, however*, that the Prepetition First Lien Lender shall receive the Roll-Up Payments in advance of the DIP Obligations being indefeasibly paid in cash in full.

(d) Prepetition Second Lien Section 507(b) Claim. The Prepetition Second Lien Lenders are hereby granted, subject to the payment of the Carve Out a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Lenders (the “**Second Lien Lender Replacement Claim**”); *provided, however*, that the Prepetition Second Lien Lenders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the Prepetition Secured Credit Documents unless and until the DIP Obligations and the Prepetition First Lien Credit Agreement Obligations have indefeasibly been paid in cash in full.

15. *DIP Financing Under Intercreditor Agreement.* The liens securing the Prepetition First and Second Lien Credit Agreement Obligations are subordinated to the DIP Liens and DIP Facility in accordance with Section 6.1(b) of the Intercreditor Agreement and that

the DIP Facility is “DIP Financing” as such term is used in the Intercreditor Agreement executed by those parties dated March 19, 2010.

16. *Reservation of Rights of Prepetition Secured Parties.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. Except as expressly provided herein, nothing contained in this Order shall impair or modify any rights, claims or defenses available in law or equity to the Prepetition Secured Parties or the DIP Lenders. Notwithstanding anything contained herein or in the DIP Documents, the Prepetition First Lien Lender does not consent to the priming of its liens on property of the Debtors except as specifically set forth in this Order.

17. *Perfection of DIP Liens.*

(a) Subject to the provisions of paragraph 9(a) above, the DIP Lenders 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 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, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of this Order.

(b) A certified copy of this Order may, in the discretion of the DIP Lenders, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording without the imposition of any stamp, intangibles recording or similar tax in accordance with the provisions of section 1146 of the Bankruptcy Code.

(c) The Debtors shall execute and deliver to the DIP Lenders all such agreements, security agreements, pledge agreements, control agreements, financing statements, mortgages, instruments and other documents as the DIP Lenders may reasonably request that are not inconsistent with this Order to evidence, confirm, validate or perfect the DIP Liens granted pursuant hereto.

18. *Preservation of Rights Granted Under the Order.*

(a) Unless all DIP Obligations shall have been paid in full, the Debtors shall not seek, and it shall constitute a Default and a termination of the right to use the DIP Facility if the Debtors seek, or if there is entered, (i) any modifications or extensions of this Order without the prior written consent of the Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the Agent, or (ii) an order dismissing any of the Cases. 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) that (y) the priming liens, security interests and replacement security interests granted to the Agent and, as applicable, the Prepetition Secured Parties pursuant to this Order shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Obligations shall have been paid and satisfied in full (and

that such priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (z) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the liens and security interests referred to in clause (y) above.

(b) If any or all of the provisions of this 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 actual receipt of written notice by the DIP Lenders or the Prepetition Secured Parties, as applicable, of 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 Documents with respect to any DIP Obligations or 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 to the DIP Lenders or the Prepetition Secured Parties prior to the actual receipt of written notice by the DIP Lenders or the Prepetition Secured Parties as of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Order, and the DIP Lenders and Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(c) Except as expressly provided in this Order or in the DIP Documents, the DIP Liens, the Superpriority Claims and all other rights and remedies of the Agent and the DIP Lenders granted by the provisions of this Order and the DIP Documents shall survive, and

shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to cases under chapter 7, dismissing any of the Cases (excepting the Superpriority Claims) or by any other act or omission, or (ii) the entry of an order confirming a plan of reorganization in 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 that are not addressed by the confirmation order. The terms and provisions of this Order and the DIP Documents shall continue in the Cases or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies of the Agent and the DIP Lenders granted by the provisions of this Order and the DIP Documents shall continue in full force and effect in such cases until the DIP Obligations are indefeasibly paid in full.

19. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in this Order, including, without limitation, in paragraph 4 of this Order, shall be binding upon the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other Estate representative and all of their successors-in-interest and assigns. The stipulations and admissions contained in this Order, including, without limitation, in paragraph 4 of this Order, shall be binding upon all other parties-in-interest, including, without limitation, the Committee, unless (a) a party-in-interest with standing and requisite authority has timely filed a motion seeking standing to file an adversary proceeding or contested matter or has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, inter alia, in paragraph 20) by no later than the date that is the later of (i) (a) 60 days from the date of the selection of its counsel for the Committee, (b) if no such committee has been appointed, no later than 75 days (or a longer period as the Court orders for cause shown before the expiration of such period) from the entry of the final financing order, or (c) upon conversion

of a chapter 11 case to chapter 7, to the extent that any relevant challenge period has not expired, such period shall be automatically extended for 60 days from the date a chapter 7 trustee is appointed or (ii) such later date (x) as has been agreed to, in writing, by the Prepetition Secured Parties in their sole discretion or (y) as has been ordered by the Court (the “**Challenge Deadline**”) (1) challenging the validity, enforceability, priority or extent of the Prepetition Secured Obligations or the Prepetition Liens on the Prepetition Collateral or (2) otherwise asserting or prosecuting any action for preferences, fraudulent conveyances, other avoidance power claims or any other any claims, counterclaims or causes of action, objections, contests or defenses that the Debtors’ estates may have (collectively, “**Claims and Defenses**”) against the Prepetition Secured Parties or their affiliates, representatives, attorneys or advisors in connection with matters related to the Prepetition Secured Credit Documents, the Prepetition Secured Obligations, or the Prepetition Collateral, and (b) there is a final order in favor of the plaintiff sustaining any such challenge or claim in any such adversary proceeding or contested matter filed by the Challenge Deadline; *provided, that* as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. If no such motion for standing or adversary proceeding or contested matter, as applicable, is filed by the Challenge Deadline, (x) Prepetition Secured Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 cases, (y) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination, avoidance or reduction, except by payment and (z) the Prepetition Secured Obligations, the Prepetition Liens on the Prepetition Collateral and the Prepetition Secured Parties shall not be subject to 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 (including, without limitation, any chapter 7 or 11 trustee appointed or elected for the Debtors). If any such motion for standing or adversary proceeding or contested matter, as applicable, is filed by the Challenge Deadline, the stipulations and admissions contained in paragraph 4 of this Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Committee and on any other person or entity, except to the extent that such findings and admissions were expressly challenged in such adversary proceeding or contested matter. Nothing in this Order vests or confers on any Person (as defined in the Bankruptcy Code), including the 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 Prepetition Liens or the Prepetition Secured Obligations.

20. *Waiver of Claims and Causes of Action Against the DIP Lenders.* Without prejudice to the rights of any other party, including the Committee, the Debtors have waived any and all claims and causes of action arising prior to entry of this Order and through the period prior to entry of the Final Order against the DIP Lenders, and their affiliates, directly related to the DIP Documents or the negotiation of the terms thereof.

21. *Limitation on Use of DIP Facility Proceeds and Collateral.* The Debtors shall use the proceeds of the DIP Facility solely as provided in this Order and in the DIP Documents. Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, letters of credit, Cash Collateral, Prepetition Collateral, Replacement Collateral, Collateral or the Carve Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under this Order, the

DIP Facility or the Prepetition Secured Credit Documents, or the liens or claims granted under this Order, the DIP Documents or the Prepetition Secured Credit Documents, (b) assert any Claims and Defenses or causes of action against the DIP Lenders, the Prepetition Secured Parties or their respective agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Lenders' or the Prepetition Secured Parties' assertion, enforcement or realization on the Cash Collateral or the Collateral in accordance with the DIP Documents, the Prepetition Secured Credit Documents or this Order, (d) seek to modify any of the rights granted to the DIP Lenders or the Prepetition Secured Parties hereunder, under the DIP Documents or the Prepetition Secured Credit Documents, in each foregoing case without such party's prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an Order of this Court or (ii) in accordance with the terms of the DIP Documents. The foregoing shall not limit the ability of the Committee to use the Carve Out to investigate matters referenced in paragraph 19 of this Order or relating to its objections (if any) to the DIP Documents or the proposed sale other than a challenge to the rights of the Prepetition Secured Parties to credit bid pursuant to section 363(k) of the Bankruptcy Code.

22. *Insurance.* Pursuant to this Order, (i) the DIP Lenders shall be and shall be deemed to be, without any further action or notice, named as an additional insured on each insurance policy maintained by the Debtors which in any way relates to the Collateral, and (ii) the Prepetition Secured Parties, to the extent of their Adequate Protection Liens, shall be and shall be deemed to be, without any further action or notice, named as additional insureds on each insurance policy maintained by the Debtors which in any way relates to the Replacement Collateral. Except upon an Event of Default, to the extent BDCF has control over the insurance



policies covering assets of the Debtors, BDCF agrees that it will not take any action to terminate any such coverage.

23. *Order Governs.* In the event of any inconsistency between the provisions of this Order and the DIP Documents, the provisions of this Order shall govern.

24. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties in interest in the Cases, including, without limitation, the DIP Lenders, the Prepetition Secured Parties, any Committee appointed in the Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary hereafter appointed as a legal representative of any Debtor or with respect to the property of any of the Debtors' estates) and shall inure to the benefit of the DIP Lenders, the Prepetition Secured Parties and the Debtors and each of their respective successors and assigns; *provided, however*, that the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estate of any Debtor.

25. [Reserved].

26. *Right of Access and Information.*

(a) The Debtors shall permit representatives, agents and/or employees of the DIP Lenders to have reasonable access to their premises and their records during normal business hours (without unreasonable interference with the proper operation of the Debtors' businesses) and shall cooperate, consult with, and provide to such persons all such non-privileged information as they may reasonably request.

(b) Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Lenders contained in this Order or the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, upon written notice to the landlord of any leased premises that a Default has occurred and is continuing under the DIP Documents, the DIP Lenders may, subject to any separate agreement by and between such landlord and the DIP Lenders, enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to Collateral located thereon and shall be entitled to all of the applicable Debtor's rights and privileges as lessee under such lease without interference from the landlords thereunder; *provided, that* the DIP Lenders shall only pay rent and additional rent obligations of the Debtors that first arise after the DIP Lenders' written notice referenced above and that are payable during the period of such occupancy by the DIP Lenders, calculated on a per diem basis. Other than the payment obligation contained in this paragraph, the DIP Lenders shall not be required to perform any of the Debtors' obligations under any lease as a condition to the rights afforded to the DIP Lenders in this paragraph. Furthermore, any title, landlord's lien, right of distraint or levy, security interest or other interest that any landlord or mortgagee may have in any Collateral of the Debtors located on such leased premises, to the extent the same is not void under section 545 of the Bankruptcy Code, is hereby expressly subordinated to the liens of the DIP Lenders in such Collateral.

27. *Events of Default.* Each of the following shall constitute an "Event of Default" hereunder: (i) the use of the Cash Collateral and/or DIP Facility other than as set forth herein; (ii) the Debtors or any other party applies to the Court for an order, other than this Interim Order or the Final Order (in form and substance acceptable to Agent in its sole discretion), authorizing

the use of the Cash Collateral and/or DIP Facility or that seeks approval of a priming, senior, pari passu or junior security interest in or lien upon the Prepetition Collateral; (iii) the filing by the Debtors of any pleading seeking to challenge the Agent's lien upon the Cash Collateral and/or DIP Facility or the Prepetition Collateral or otherwise asserting rights, claims or causes of action against the Agent and/or the Prepetition Secured Parties with respect to the Prepetition Debt, or the entry of an order granting any such relief in connection with any such pleading filed by a third party; (iv) the breach by any of the Debtors of their obligations under this Interim Order, including but not limited to their failure to be in compliance with the Approved Budget or the failure to comply with the covenants, events of default, reporting and other requirements contained herein; (v) any stay, reversal, vacatur or rescission of this Interim Order; (vi) the dismissal of, conversion of or appointment of an examiner with expanded powers in the Debtors' Cases; (vii) the failure to meet any obligations of the Debtors in this Interim Order related to the Sale Process; and (viii) the failure to obtain entry of a final order approving the use of the Cash Collateral and/or DIP Facility in form and substance satisfactory to the Agent in its sole discretion on or before the date that is thirty (30) days from the Petition Date; and (ix) the occurrence and continuance of an Event of Default pursuant to the DIP Credit Agreement.

28. [Reserved].

29. *No Waiver.* This Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Lenders may have to bring or be heard on any matter brought before the Court. Any consent, modification, declaration of default, or exercise of remedies or non-exercise of remedies under or in connection with this Order or the DIP Documents shall require the approval of DIP Lenders, and, as and to the extent required by the voting provisions of the DIP Documents and shall not be deemed a waiver or relinquishment of

any of the rights of the DIP Lenders. Nothing contained in this Order (including without limitation, the authorization to use the DIP Facility and/or any Cash Collateral) shall impair, prejudice or modify any rights, claims or defenses available in law or equity to the DIP Lenders, including, without limitation, the right to (a) request conversion of the Debtor's Chapter 11 Case to Chapter 7 (to the extent applicable for charitable entities), (b) seek to terminate the exclusive rights of the Debtors to file, and solicit acceptances of, a plan of reorganization under section 1121 of the Bankruptcy Code or propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, (c) object to the fees and expenses of any professionals retained in the Cases, and (d) seek relief from the automatic stay. All such rights, claims and defenses, and the rights, objections and defenses of all parties in connection therewith, are hereby reserved.

30. *Right to Credit Bid.* Pursuant to section 363(k) of the Bankruptcy Code, the Agent, on behalf of the DIP Lenders, shall have the exclusive right to use the DIP Obligations, DIP Liens and DIP Superpriority Claim to credit bid with respect to any bulk or piecemeal sale of all or any portion of the Collateral. For the avoidance of doubt, the rights of the DIP Lenders to credit bid with respect to the Collateral does not permit the DIP Lenders to credit bid collateral of any holder of a Prior Permitted Senior Lien.

31. *Headings.* The headings in this Order are for reference purposes only and will not in any way affect the meaning and interpretation of the terms of this Order.

32. *Effectiveness.* This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

33. *Final Hearing.* The Final Hearing is scheduled for May \_\_, 2013 at \_\_\_\_\_. before this Court, Courtroom Two, 701 Broadway, Nashville, TN. The Debtors shall promptly

mail copies of this Order (which shall constitute adequate notice of Final Hearing, to the parties having been given notice of the Interim Hearing, to the Committee and to any other party that has filed a request for notices with this Court. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be served upon (a) Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, TN 37203 (Attn: William L. Norton, III), attorneys for the Debtors; (b) Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601 (Attn: Daniel J. McGuire), attorneys for BDCF, as Agent; (c) Richard Stieglitz, Jr., Cahill Gordon & Reindel LLP, 80 Pine St., New York, NY 10005, attorneys for Gleacher & Products Company; (e) Christopher F. Graham, McKenna Long & Aldridge LLP, 230 Park Ave., Suite 1700, New York, NY 10169 and David W. Houston IV, Burr & Forman LLP, 3102 West End Ave., Suite 700, Nashville, TN 37203, attorneys for Oreck Acquisition, and (e) the Office of the United States Trustee for the Middle District of Tennessee, and shall be filed with the Clerk of the United States Bankruptcy Court for the Middle District of Tennessee, in each case to allow actual receipt by the foregoing no later than seven (7) days before the Final Hearing.

34. *Effectiveness.* This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution thereof and, notwithstanding anything to the contrary contained in Bankruptcy Rules, including Bankruptcy Rule 4001(a)(3), there shall be no stay of execution of effectiveness of this Order. All objections to the entry of this Interim Order have been withdrawn or overruled and the Motion is approved on an interim basis on the terms and conditions set forth herein.

**This Order Was Signed And Entered  
Electronically as Indicated At The Top  
Of The First**

APPROVED FOR ENTRY:

/s/ William L. Norton III

William L. Norton, III (# 10075)

Alexandra E. Dugan (#30420)

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