

EXHIBIT A

DIP CREDIT AGREEMENT

SENIOR SECURED SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT,

dated as of January 28, 2010,

among

PCAA PARENT, LLC,
as a Borrower, a Debtor and a Debtor-In-Possession,

AIRPORT PARKING MANAGEMENT, INC., PARKING COMPANY OF AMERICA
AIRPORTS, LLC, PARKING COMPANY OF AMERICA AIRPORTS PHOENIX, LLC, PCA
AIRPORTS, LTD., PCAA CHICAGO, LLC, PCAA GP, LLC, PCAA LP, LLC, PCAA
MISSOURI, LLC, PCAA OAKLAND, LLC, PCAA PROPERTIES, LLC, PCAA SP, LLC,
PCAA SP-OK, LLC and RCL PROPERTIES, LLC,
each as a Subsidiary Guarantor, a Debtor and a Debtor-In-Possession,

VARIOUS FINANCIAL INSTITUTIONS,
as the Lenders,

and

ING REAL ESTATE FINANCE (USA) LLC,
as the Administrative Agent.

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**SENIOR SECURED
SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

THIS SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of January 28, 2010, among PCAA PARENT, LLC (the “**Borrower**”), a Delaware limited liability company and a Debtor and Debtor-in-possession under Chapter 11 of 11 U.S.C. §§ 101-1532 (as amended from time to time, the “**Bankruptcy Code**”), PARKING COMPANY OF AMERICA AIRPORTS, LLC (“**PCAA**”), PCAA SP, LLC (“**PCAA SP**”), PARKING COMPANY OF AMERICA AIRPORTS PHOENIX, LLC (“**PCAA Phoenix**”), AIRPORT PARKING MANAGEMENT, INC. (“**APM**”), PCAA CHICAGO, LLC (“**PCAA Chicago**”), PCAA GP, LLC (“**PCAA GP**”), PCAA LP, LLC (“**PCAA LP**”), PCAA MISSOURI, LLC (“**PCAA Missouri**”), PCAA OAKLAND, LLC (“**PCAA Oakland**”), PCAA PROPERTIES, LLC (“**PCAA Properties**”), PCAA SP-OK, LLC (“**PCAA OK**”), each a Delaware limited liability company, RCL PROPERTIES, LLC, a Pennsylvania limited liability company (“**RCL**”) and PCA AIRPORTS, LTD., a Texas limited liability company (“**PCAA Texas**”); together with PCAA, PCAA SP, PCAA Phoenix, APM, PCAA Chicago, PCAA GP, PCAA LP, PCAA Missouri, PCAA Oakland, PCAA Properties, PCAA OK and RCL, collectively, the “**Subsidiary Guarantors**” and each, a “**Subsidiary Guarantor**”), the various financial institutions as are or may become parties hereto, including, without limitation, DEKABANK DEUTSCHE GIROZENTRALE, a bank organized under the laws of Germany (“**Deka**”) and ING REAL ESTATE FINANCE (USA) LLC, a Delaware limited liability company (“**ING**”; together with Deka and such other various financial institutions, collectively, the “**Lenders**”), and ING as the administrative agent (in such capacity, the “**Administrative Agent**”) for the Lenders.

W I T N E S S E T H:

WHEREAS, on January 28, 2009 (the “**Petition Date**”), the Borrower and the Subsidiary Guarantors (each a “**Debtor**” and collectively, the “**Debtors**”) each filed a separate voluntary petition for relief (each a “**Case**” and collectively, the “**Cases**”) under Chapter 11 of the Bankruptcy Code to be administered jointly in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”); and

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

WHEREAS, on September 1, 2006, PCAA, PCAA SP, PCAA Texas and PCAA Phoenix (the “**Prepetition Borrowers**”) and Capmark Finance Inc. (“**Capmark**”) in its capacity as a lender (collectively with the other lenders party thereto, the “**Prepetition Lenders**”) and as the administrative agent for the Prepetition Lenders, entered into that certain Loan Agreement, as amended through the Petition Date (as amended, the “**Prepetition Loan Agreement**”) whereby the Prepetition Lenders made loans to the Prepetition Borrowers (the “**Prepetition Loans**”) which Prepetition Loans are secured by Prepetition Security Interests (as defined herein) in certain real and personal property of the Debtors as further described and defined in the Prepetition Loan Documents (as defined herein) (the “**Prepetition Collateral**”) and guaranteed by that certain Guaranty issued by the Borrower (the “**Prepetition Guaranty**”); and

WHEREAS, as of the date hereof, Deka, Deutsche Hypothekenbank AG, a bank organized under the laws of Germany (“**Deutsche Hypo**”), ING and Capmark are the Prepetition Lenders under the Prepetition Loan Agreement and the Prepetition Loan Documents; and

WHEREAS, ING has succeeded Capmark in the role of administrative agent for the Prepetition Lenders (in such capacity, the “**Prepetition Agent**”; and together with the Prepetition Lenders, the “**Prepetition Loan Parties**”) and is the holder of the Prepetition Mortgages (as defined herein) for the benefit of the Prepetition Lenders; and

WHEREAS, as of the Effective Date (as defined herein), 100% of the Subsidiary Guarantor Membership Interests (as defined herein) are owned directly by the Borrower; and

WHEREAS, PCAA (i) owns the site described in Exhibit A (the “**Atlanta Site**”), (ii) owns the site described in Exhibit B (the “**Denver Site**”), (iii) leases the site described in Exhibit C (the “**Hartford Site**”), (iv) owns a portion and leases a portion of the site described in Exhibit D (the “**JFK Site**”), (v) owns a portion and leases a portion of the site described in Exhibit E (the “**Memphis Site**”), (vi) owns a portion and leases a portion of the site described in Exhibit F (the “**Newark Site**”), (vii) owns a portion and leases a portion of the site described in Exhibit G (the “**Oakland Site**”), (viii) leases the site described in Exhibit H (the “**O’Hare Site**”), (ix) owns a portion and leases a portion of the site described in Exhibit I (the “**Pittsburgh Site**”) and (x) owns a portion, leases a portion and licenses a portion of the site described in Exhibit J (the “**San Francisco Site**”); and

WHEREAS, PCAA and PCAA SP, collectively, (i) lease the site described in Exhibit K (the “**LaGuardia Site**”) and (ii) own a portion and lease a portion of the site described in Exhibit L (the “**Philadelphia Site**”); and

WHEREAS, PCAA SP (i) owns the site described in Exhibit M (the “**Buffalo Site**”), (ii) leases the site described in Exhibit N (the “**Columbus Site**”), (iii) owns the site described in Exhibit O (the “**Houston Site**”), (iv) owns the site described in Exhibit P (the “**Oklahoma Site**”) and (v) owns the site described in Exhibit Q (the “**St. Louis Site**”); and

WHEREAS, PCAA SP and PCAA Phoenix, collectively, own the site described in Exhibit R (the “**Phoenix Site**”); and

WHEREAS, PCAA Texas leases the site described in Exhibit S (the “**Dallas Site**”); and

WHEREAS, the Debtors have requested that the Lenders provide post-petition financing to the Borrower in the form of a senior secured superpriority debtor-in-possession loan facility (the “**DIP Facility**”) in which the Commitment (as defined herein) be made available from the Lenders to the Borrower from time to time on and after the Effective Date and prior to the Commitment Termination Date in an aggregate principal amount not to exceed \$5,000,000; and

WHEREAS, subject to the terms of this Agreement, the proceeds of the Loans will be advanced to the Borrower to be used by the Borrower in accordance with the terms of the Budget to, inter alia, provide working capital during the administration of the Cases to bridge to a sale transaction pursuant to which one or more purchasers acquire all or substantially all of the

Debtor's assets, free and clear of all claims, liens and encumbrances, pursuant to a sale under Bankruptcy Code §§ 363 and 365 (such sale, a "**363 Sale Transaction**"); and

WHEREAS, the proceeds of the 363 Sale Transaction shall be used to repay the DIP Facility in full on the effective date of such 363 Sale Transaction.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.1 Defined Terms. The following terms (whether or not italicized) when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"**363 Sale Transaction**" is defined in the recitals.

"**Actual Expenditures**" shall mean, for any period, the actual total cash disbursements made by the Obligors during such period.

"**Actual Net Cash Flow**" shall mean, for any period, the Actual Receipts for such period less the Actual Expenditures for such period.

"**Actual Receipts**" shall mean, for any period, the actual total cash collections received by the Obligors during such period.

"**Adequate Protection**" is defined in Section 10.4.

"**Adequate Protection Liens**" is defined in clause (a) of Section 10.4.

"**Administrative Agent**" means ING, and includes each other Person as shall have subsequently been appointed as the successor Administrative Agent pursuant to Section 9.4.

"**Affiliate**" means, relative to any Person, any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person (excluding, however, any trustee under, or any Committee with responsibility for administering, any Plan). With respect to any Lender or Approved Fund, a Person shall be deemed to be "controlled by" another Person if such other Person possesses, directly or indirectly, power to vote 51% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors, managing general partners or managers, as the case may be. With respect to all other Persons, a Person shall be deemed to be "controlled by" another Person if such other Person possesses, directly or indirectly, power

(a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors, managing general partners or managers, as the case may be; or

(b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“**Affiliate Transaction**” is defined in Section 7.2.13.

“**Agent’s Fee Letter**” means the letter agreement, dated as of January 28, 2010 between the Borrower and the Administrative Agent, as such letter agreement may thereafter from time to time be amended, supplemented, amended and restated or otherwise modified.

“**Agreement**” means, on any date, this Senior Secured Superpriority Debtor-in-Possession Credit Agreement as in effect on the Effective Date, and as thereafter from time to time amended, supplemented, amended and restated, or otherwise modified.

“**Alternate Base Rate**” means, on any date and relative to all Base Rate Loans, a fluctuating rate of interest per annum (rounded upward, if necessary, to the next highest 1/16 of 1%) equal to the highest of

- (a) the Base Rate in effect on such day; and
- (b) 4.00%;

Changes in the rate of interest on that portion of any Loans maintained as Base Rate Loans will take effect simultaneously with each change in the Alternate Base Rate. The Administrative Agent will give notice promptly to the Borrower and the Lenders of changes in the Alternate Base Rate.

“**Amended Budget**” is defined in clause (b) of Section 7.1.3.

“**Anti-Terrorism Laws**” means any of the following:

- (a) Executive Order No. 13224;
- (b) the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations);
- (c) the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations);
- (d) the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations);
- (e) the USA Patriot Act;
- (f) all other present and future Legal Requirements of any Governmental Instrumentality addressing, relating to, or attempting to eliminate, terrorist acts and acts of war; and
- (g) any regulations promulgated pursuant thereto or pursuant to any Legal Requirement governing terrorist acts and acts of war.

“**APM**” is defined in the preamble.

“**Applicable Base Rate Margin**” means, on any date, relative to any Loan maintained as a Base Rate Loan, a per annum percentage rate equal to 7.00%.

“**Applicable LIBO Rate Margin**” means on any date, relative to any Loan maintained as a LIBO Rate Loan, a per annum percentage rate equal to 8.00%.

“**Approved Fund**” means, relative to any Lender that is a fund that invests in bank loans, any other fund that invests in bank loans and is advised or managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“**Asset Purchase Agreement**” means that certain Asset Purchase Agreement among the Borrower and the Subsidiary Guarantors, as the Sellers, Parking Company of America Airports Holdings, LLC, for the limited purpose stated therein, and Corinthian Bainbridge ZKS Holdings, LLC, as the Purchaser, dated as of January 27, 2010.

“**Asset Sale**” is defined in Section 7.2.11.

“**Assignee Lender**” is defined in Section 12.11.1.

“**Atlanta Site**” is defined in the recitals.

“**Authorized Representative**” means, relative to any Person, those of its officers or managers or managing members (in the case of a limited liability company) whose signatures and incumbency have been certified in a certificate of such Person delivered to the Administrative Agent.

“**Available Cash**” means, on any date, all of the Obligor’s cash and cash equivalents on such date, as determined on a book basis.

“**Bankruptcy Code**” is defined in the preamble.

“**Bankruptcy Court**” is defined in the recitals.

“**Base Rate**” means, at any time, the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its “prime rate.” The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Base Rate Loan**” means a Loan bearing interest at a fluctuating rate determined by reference to the Alternate Base Rate.

“**Board of Directors**” means, relative to any Person, (x) for so long such Person is a corporation, the Management Board or Board of Directors, as the case may be (as such terms are

defined in the Organizational Documents of such Person) appointed pursuant to the Organizational Documents of such Person or (y) on and after such time as such Person is no longer a corporation, the substantially equivalent governing body of such Person.

“**Board of Managers**” means, relative to any Person, (x) for so long such Person is a limited liability company, the Management Board or Board of Managers, as the case may be (as such terms are defined in the Organizational Documents of such Person) appointed pursuant to the Organizational Documents of such Person or (y) on and after such time as such Person is no longer a limited liability company, the board of directors or substantially equivalent governing body of such Person.

“**Borrower**” is defined in the preamble.

“**Borrowing**” means the Loans of the same type and, in the case of LIBO Rate Loans, having the same Interest Period made, continued or converted by all Lenders required to make, continue or convert such Loans on the same Business Day and pursuant to the same Borrowing Request in accordance with Section 2.3 or Continuation/Conversion Notice in accordance with Section 2.4, as applicable.

“**Borrowing Request**” means a Loan request and certificate duly executed by an Authorized Representative of the Borrower substantially in the form of Exhibit W hereto.

“**Budget**” means a consolidated budget, substantially in the form of Exhibit U, prepared on a rolling thirteen (13) week basis, which sets forth all of the Obligors’ Budget Expenditures, Budget Receipts and Budget Net Cash Flow, including all Amended Budgets delivered to the Lenders at the end of each Budget Period pursuant to clause (b) of Section 7.1.3, with weekly updates provided pursuant to clause (c) of Section 7.1.3, which initial Budget shall cover the period of time from the Petition Date to and including the date that ends on the last day of the thirteenth (13th) week thereafter.

“**Budget Expenditures**” shall mean, for any period, the total cash disbursements projected to be made by the Obligors during such period.

“**Budget Net Cash Flow**” shall mean, for any period, Budget Receipts for such period less Budget Expenditures for such period.

“**Budget Period**” means the thirteen (13) week period covered by a Budget that has been delivered by the Borrower, which initial Budget Period shall cover the period of time from the Petition Date to and including the date that ends on the last day of the thirteenth (13th) week thereafter.

“**Budget Receipts**” shall mean, for any period, the total cash collections projected to be received by the Obligors during such period.

“**Budget Shortfall**” shall mean, for any period, the amount by which Budget Expenditures exceed Budget Receipts for such period.

“**Budget Update and Variance Report**” is defined in clause (c) of Section 7.1.3.

“Budget Variance Review Period” means the weekly period ending on (and including) each Saturday during any Budget Period.

“Buffalo Site” is defined in the recitals.

“Business Day” means

(a) any day which is neither a Saturday or Sunday nor a legal holiday on which banks are authorized or required to be closed in New York, New York; and

(b) relative to the making, continuing, converting, prepaying or repaying of any LIBO Rate Loans, any day described in clause (a) on which dealings in Dollars are carried on in the London interbank eurodollar market.

“Capital Expenditures” means, for any period, the aggregate of all expenditures for the acquisition or lease (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and other improvements) made during such period which, in accordance with GAAP, are required to be (x) classified as capital expenditures and (y) shown as such on the applicable balance sheet, excluding, however, any depreciation or amortization.

“Capital Stock” means, relative to any Person, any and all shares, interests (including Membership Interests), participations or other equivalents (however designated, whether voting or non-voting) of such Person’s capital, whether now outstanding or issued after the Effective Date.

“Capitalized Lease Liability” means, relative to any Person, any monetary obligation of such Person under any leasing or similar arrangement which, in accordance with GAAP, is required be classified as a capitalized lease, and, for purposes of this Agreement and each other Loan Document, the amount of such obligation shall be the capitalized amount thereof, determined in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a premium or a penalty.

“Capmark” is defined in the recitals.

“Carve-Out” means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a), and (ii) after the occurrence and during the continuance of an Event of Default (a) fees and expenses projected in the Budget and incurred by the Obligors’ Professionals prior to delivery of the Carve-Out Trigger Notice and allowed by the Bankruptcy Court, (b) after delivery of a Carve-Out Trigger Notice, an amount not exceeding \$500,000 in the aggregate, to pay any fees or expenses incurred by the Obligors’ Professionals, and (c) after delivery of a Carve-Out Trigger Notice, an amount not exceeding \$175,000 in the aggregate, to pay any fees or expenses incurred by Professionals retained by any Committee, in each case, that remain unpaid subsequent to the payment of such fees and expenses from available funds remaining in the Obligors’ estates for such creditors, in respect of (A) allowances of compensation for services rendered or reimbursement of expenses awarded by the Bankruptcy Court to the Obligors’ or any Committee’s Professionals and (B) the

reimbursement of expenses allowed by the Bankruptcy Court incurred by any Committee members in the performance of their duties (but excluding fees and expenses of third party professionals employed by such members), provided that (x) the dollar limitation in this clause (ii)(b) and (c) on fees and expenses 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 an Event of Default in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities or other amounts paid to the Administrative Agent, the Prepetition Agent, any of the Lenders or any of the Prepetition Lenders (or any of their respective attorneys or agents under the Prepetition Loan Agreement or otherwise), and (y) nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above.

“**Carve-Out Account**” is defined in clause (a) of Section 7.1.4.

“**Carve-Out Trigger Notice**” means a notice delivered by the Administrative Agent to the Borrower’s counsel and the lead counsel retained by the Creditors’ Committee following the occurrence of an Event of Default and referencing the relevant default provision under Article VIII hereof.

“**Case**” and “**Cases**” are defined in the recitals.

“**Cash Equivalent Investment**” means, at any time, (u) Dollars, (v) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided, however, that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one (1) month from the date of acquisition, (w) certificates of deposit and eurodollar time deposits with maturities of one (1) month or less from the date of acquisition, bankers’ acceptances with maturities not exceeding one (1) month and overnight bank deposits, in each case with any domestic commercial bank having capital and surplus in excess of \$500 million and a Thompson Bank Watch Rating of “B” or better, (x) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in item (v) and (w) entered into with any financial institution meeting the qualifications specified in item (w), (y) commercial paper having the highest rating obtainable from Moody’s or S&P and in each case maturing within one (1) month after the date of acquisition and (z) money market funds substantially all of the assets of which constitute Cash Equivalent Investments of the kinds described in items (u)-(y) of this definition.

“**CERCLA**” is defined in clause (a) of the definition of “Environmental Law”.

“**CERCLIS**” means the Comprehensive Environmental Response Compensation Liability Information System List.

“**Change of Control**” means (i) Parking Company of America Airports Holdings, LLC, Frank Lemieux and Richard West shall cease to collectively own, directly or indirectly, 100% of the Capital Stock of the Borrower, (ii) Parking Company of America Airports Holdings, LLC shall cease to own, directly or indirectly, at least 91% of the Capital Stock of the Borrower or shall cease to control the Borrower, (iii) the Borrower shall cease to own, directly or indirectly, 100% of the Capital Stock of each Subsidiary Guarantor or shall cease to control each Subsidiary

Guarantor, and (iv) any sale or transfer of any Obligor's interest in any of the Real Property Collateral, which sale or transfer is not otherwise permitted by the terms and provisions of this Agreement. For purposes of this definition, a Person shall be deemed to "control" another Person if such Person possesses, directly or indirectly, the power (a) to vote 10% or more of the securities (on a fully diluted basis) of such other Person having ordinary voting power for the election of directors, managing general partners or managers, as the case may be or (b) to direct or cause the direction of the management and policies of such other Person whether by contract or otherwise.

"Chapter 11 Plan" means a plan of reorganization under Chapter 11 of the Bankruptcy Code for the Debtors that is confirmed pursuant to an order entered by the Bankruptcy Court in the Cases.

"Code" means the Internal Revenue Code of 1986, and the regulations thereunder, in each case as amended, reformed or otherwise modified from time to time.

"Columbus Site" is defined in the recitals.

"Commitment" means, on any date, relative to any Lender, (a) the result obtained by multiplying the Commitment Amount by such Lender's Percentage reduced by (b) the principal amount of any Loans made by such Lender as of such date. The amount of the Commitment and each Lender's Percentage is set forth on such Lender's signature page hereto or in a Lender Assignment Agreement.

"Commitment Amount" means, collectively or individually, as the case may be, the Initial Commitment Amount and the Full Commitment Amount.

"Commitment Fee" is defined in Section 3.2.1.

"Commitment Termination Date" means the earlier of (x) the DIP Facility Termination Date or (y) the occurrence and continuation of any Event of Default and either (i) the declaration of all or any portion of the Loans to be immediately due and payable pursuant to Section 8.2 or (ii) the giving of notice by the Administrative Agent, acting at the direction of the Required Lenders, to the Borrower that the Commitments have been terminated.

"Committee" means any official statutory committee appointed in the Cases pursuant to the Bankruptcy Code, including, without limitation, the Creditors' Committee.

"Compliance Certificate" means a certificate duly completed and executed by an Authorized Representative of the Borrower, made on behalf of itself and each of the Obligors, substantially in the form of Exhibit Z hereto, as amended, supplemented, amended and restated or otherwise modified from time to time, together with such changes thereto as the Administrative Agent may from time to time reasonably request for the purpose of monitoring compliance by the Obligors with the covenants contained herein.

"Contingent Liability" means, relative to any Person, any agreement, undertaking or arrangement by which such Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for

payment, to supply funds to, or otherwise to invest in, another Person, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection or standard contractual indemnities entered into in the ordinary course of business), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Liability shall be deemed to be the lower of (x) an amount equal to the stated or determinable amount of the primary obligation underlying such Contingent Liability and (y) the maximum amount for which such Person may be liable pursuant to the terms of the Instrument evidencing such Contingent Liability; provided, however, if such primary obligation and the maximum amount thereof for which such Person may be liable are not stated or determinable, then the amount of any Person's obligation under such Contingent Liability shall be such Person's maximum anticipated liability (assuming such Person is required to perform) in respect thereof as reasonably determined by the Administrative Agent.

“Continuation/Conversion Notice” means a notice of continuation or conversion and certificate duly executed by an Authorized Representative of the Borrower substantially in the form of Exhibit X hereto.

“Contract” means any contract entered into from time to time by any Obligor with any Person for performance of services or sale of goods or services in connection with the operation or maintenance of the Real Property Collateral, including all warranties and guarantees of all such contracts, as the same may from time to time be amended, supplemented, amended and restated or otherwise modified in accordance with the Loan Documents.

“Controlled Group” means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with any Obligor, are treated as a single employer under Section 414(b) or 414(c) of the Code or Section 4001 of ERISA.

“Creditors' Committee” means the official statutory committee of unsecured creditors appointed in the Cases pursuant to Section 1102 of the Bankruptcy Code.

“CRG Partners” means CRG Partners Group LLC.

“Cumulative Budget Variance Review Period” means, on any date, the period of time that has elapsed since the beginning of the current Budget Period.

“Dallas Site” is defined in the recitals.

“Debtor” and **“Debtors”** are defined in the recitals.

“Default” means any Event of Default or any condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

“Deka” is defined in the preamble.

“Denver Site” is defined in the recitals.

“**Deutsche Hypo**” is defined in the recitals.

“**Diminution in Value**” is defined in Section 10.4.

“**DIP Collateral**” means the First Lien Collateral and the Second Lien Collateral.

“**DIP Facility**” is defined in the recitals.

“**DIP Facility Termination Date**” means the earliest of:

- (a) the date which is one hundred fifty (150) days after the Petition Date;
- (b) the effective date of a Chapter 11 Plan for the Debtors;
- (c) the date on which the 363 Sale Transaction is consummated;
- (d) the date that is thirty (30) days after the Interim Order Entry Date, if the Final Order has not been entered by the Bankruptcy Court prior to such date;
- (e) the date of a declaration of all or any portion of the Loans to be immediately due and payable pursuant to Section 8.2; and
- (f) the date of termination of the Asset Purchase Agreement except for a termination occurring pursuant to clause (d) of Section 4.4 of the Asset Purchase Agreement.

“**Disclosure Schedule**” means the Disclosure Schedule attached hereto as Schedule I, as it may be amended, supplemented, amended and restated or otherwise modified from time to time by any Obligor with the written consent of the Administrative Agent.

“**Dollar**” and the symbol “\$” mean lawful money of the United States.

“**Easement**” means any easement appurtenant, easement in gross, license agreement or other right running for the benefit of any of the Obligors appurtenant to any Real Property Collateral, the Improvements thereon, and including those easements and licenses described in each title insurance policy securing the lien of the applicable Prepetition Mortgage.

“**Effective Date**” means the date this Agreement becomes effective pursuant to Section 12.8.

“**Eligible Assignee**” means (A) any of the following entities: (i) a commercial bank organized under the laws of the United States or any state thereof; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof (provided that (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 (iv) any other entity which is an “accredited investor” (as defined in Regulation D

under the Securities Act) which extends credit or buys loans as one of its businesses including insurance companies, mutual funds and lease financing companies or (B) a Lender, an Affiliate of a Lender or an Approved Fund; or (C) any other Person (other than a natural Person) approved by the Administrative Agent after consultation with the Borrower (but only if no Default exists hereunder); provided, however, that neither the Obligors nor any of their respective Affiliates shall be an Eligible Assignee.

“**Environmental Claim**” means any and all obligations, liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, Liens, judgments, written warning notices, written notices of noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements, reasonable attorneys’ and consultants’ fees, resulting from any obligation under, or violation of, any Environmental Law or any Permit issued under any such Environmental Law including (x) any and all claims by Governmental Instrumentalities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (y) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to health, safety or the environment.

“**Environmental Law**” means any of:

- (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) (“**CERCLA**”);
- (b) the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.) (“**Clean Water Act**” or “**CWA**”);
- (c) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.) (“**RCRA**”);
- (d) the Clean Air Act (42 U.S.C. Section 7401, et seq.);
- (e) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001, et seq.);
- (f) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136, et seq.) (“**FIFRA**”);
- (g) the Oil Pollution Act of 1990 (P.L. 101-380, 104 Stat. 486);
- (h) the Safe Drinking Water Act (42 U.S.C. Sections 300f, et seq.) (“**SDWA**”);
- (i) the Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.) (“**TSCA**”);

(j) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.) (“**HMTA**”);

(k) the Occupational Safety and Health Act (29 U.S.C. Section 651, et seq.) (“**OSHA**”);

(l) the Michigan Natural Resources and Environmental Protection Act (MCL 324.3101-.21551); and

(m) all other federal, state and local Legal Requirements which govern Hazardous Substances, and the regulations adopted pursuant to all such foregoing laws;

in each case, as amended by an amendment thereto or succeeded by a successor law, statute or regulation thereto.

“**Environmental Matter**” means any:

(a) release, emission, entry or introduction into the air including the air within buildings and other natural or man-made structures above ground in quantities or concentrations exceeding standards set by Environmental Laws;

(b) discharge, release or entry into water including into any river, watercourse, lake or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea in quantities or concentrations exceeding standards set by Environmental Laws;

(c) deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Substance in quantities or concentrations exceeding standards set by Environmental Laws (including, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it reusable or reclaiming substances from it) and any substance or article which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled); or

(d) nuisance, noise, health and safety at work, industrial illness, industrial injury due to environmental factors or environmental health problems (including asbestosis or any other illness or injury caused by exposure to asbestos).

“**Equity Interest**” means, relative to any Person, Capital Stock and all warrants, options or other rights to acquire Capital Stock (excluding, however, any debt security that is convertible into, or exchangeable for, Capital Stock) of such Person.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections thereto.

“**Event of Default**” is defined in Section 8.1.

“**Event of Loss**” means, relative to any property or asset (tangible or intangible, real or personal), (x) any loss, destruction or damage of such property or asset, (y) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of all or a part of such property or asset, or confiscation of all or a part of such property or asset or the requisition of the use of all or a part of such property or asset or (z) any settlement in lieu of item (y).

“**Excess Available Cash**” means, with respect to any Budget Variance Review Period, the amount of Available Cash as of the end of the immediately preceding Budget Variance Review Period less any Budget Shortfall for the then current Budget Variance Review Period, as determined on a book basis.

“**Existing Indebtedness**” means Indebtedness of the Obligors in existence on the Effective Date, which is disclosed in Item 7.2.2 of the Disclosure Schedule.

“**Existing Operating Leases**” means those Operating Leases that are in place on the Effective Date and which are disclosed in Item 7.2.7 of the Disclosure Schedule.

“**Expenditure Variance**” shall mean, for any period, the difference between Budget Expenditures and Actual Expenditures for such period which, (x) if Actual Expenditures are less than Budget Expenditures, such result being a negative number and (y) if Actual Expenditures are greater than Budget Expenditures, such result being a positive number.

“**FF&E**” means all furnishings, fixtures and equipment at, on or about the Improvements.

“**Final Order**” means, collectively, the order or orders of the Bankruptcy Court entered in the Debtors’ Cases after a final hearing under Bankruptcy Rule 4001 which order or orders shall be in form and substance satisfactory to the Administrative Agent and the Lenders, and shall approve and authorize on a final basis (including the expiration of all appeals and extension periods) the DIP Facility and related transactions, all provisions thereof, and the priorities, Liens and claims granted therein.

“**Final Order Entry Date**” means the date of the Bankruptcy Court’s entry of the Final Order.

“**First Day Orders**” means all orders entered by the Bankruptcy Court on the Petition Date or within five (5) Business Days of the Petition Date or based on motions filed on the Petition Date.

“**First Lien Collateral**” is defined in clause (a) of Section 10.2.

“**First Lien Real Property**” or “**First Lien Real Properties**”, as the case may be, means, individually or collectively, all Real Property that constitutes First Lien Collateral.

“**Fiscal Quarter**” means a calendar quarter ending on the last day of March, June, September or December.

“**Fiscal Year**” means any period of twelve consecutive calendar months ending on December 31; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the “2008 Fiscal Year”) refer to the Fiscal Year ending on December 31 of such calendar year.

“**Fitch**” means Fitch Investor Services, Inc. or any successor thereto.

“**F.R.S. Board**” means the Board of Governors of the Federal Reserve System or any successor thereto.

“**Full Commitment Amount**” means the aggregate principal amount of Loans which the Lenders are obligated to make pursuant to Section 2.1. The Full Commitment Amount shall not exceed \$5,000,000.

“**GAAP**” is defined in Section 1.4.

“**Governmental Approvals**” means all approvals, consents, waivers, orders, acknowledgments, authorizations, certificates, registrations, permits, environmental permits, and licenses required under applicable Legal Requirements to be obtained from any Governmental Instrumentality for the Real Property Collateral, or any portion thereof, for the use, occupancy, and operation of the Real Property Collateral.

“**Governmental Instrumentality**” means any national, state or local government, any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including any zoning authority, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the F.R.S. Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law.

“**Hartford Site**” is defined in the recitals.

“**Hazardous Substances**” means (statutory acronyms and abbreviations having the meaning given them in the definition of “Environmental Laws”) substances defined as “hazardous substances,” “pollutants” or “contaminants” in Section 101 of the CERCLA; those substances defined as “hazardous waste,” “hazardous materials” or “regulated substances” by the RCRA; those substances designated as a “hazardous substance” pursuant to Section 311 of the CWA; those substances defined as “hazardous materials” in Section 103 of the HMTA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Sections 6 or 7 of the TSCA; those substances defined as “contaminants” by Section 1401 of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to Section 2(u) of the FIFRA; those substances defined as “toxic materials” or “harmful physical agents” pursuant to Section 6 of the OSHA; those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendices VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous

substances or toxic substances in 40 C.F.R. Part 1910; those substances defined as hazardous materials, hazardous substances or toxic substances in any other Environmental Laws; and those substances defined as hazardous materials, hazardous substances or toxic substances in the regulations adopted pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

“**Hedging Liability**” means, relative to any Person, any liability of such Person under any currency exchange agreement, interest rate swap agreement, interest rate cap agreement or interest rate collar agreement, or any other agreement designed to protect such Person against fluctuations in interest rates or currency exchange rates including any rate protection agreement.

“**herein**”, “**hereof**”, “**hereto**”, “**hereunder**” and similar terms contained in this Agreement or any other Loan Document referred to in this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular Section, paragraph or provision of this Agreement or such other Loan Document.

“**Houston Site**” is defined in the recitals.

“**Imposition**” means any real estate tax, payment in lieu of taxes or other assessment levied, assessed or imposed against the Real Property Collateral, and any water rates, sewer rentals or other governmental, municipal or public dues, charges or impositions, of every nature and to whomever assessed, that may now or hereafter be levied or assessed upon any of the Real Property Collateral, or upon the rents, issues, income, proceeds or profits thereof, whether the Imposition is levied directly or indirectly against the applicable Real Property Collateral or as excise taxes or income taxes.

“**Improvement**” means any building, structure or other improvements located, constructed or to be located or constructed on any Real Property Collateral.

“**including**” and “**include**” means including, without limiting the generality of any description preceding such term, and, for purposes of this Agreement and each other Loan Document, the parties hereto agree that the rule of ejusdem generis shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned.

“**Indebtedness**” means, relative to any Person, without duplication:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (b) all obligations, contingent or otherwise, relative to the face amount of all letters of credit (or reimbursement agreements in respect thereof), whether or not drawn, and banker’s acceptances issued for the account of such Person;
- (c) all Capitalized Lease Liabilities of such Person;
- (d) all other items which, in accordance with GAAP, would be required to be included as liabilities on the liability side of the balance sheet of such Person as of the

date at which Indebtedness is to be determined (other than payments by the Obligors under the Property Documents) and accounts payable and accrued expenses by the Obligors arising in the ordinary course of business in connection with the operation of the Real Property Collateral, in each such case, to the extent set forth in the Budget;

(e) net liabilities of such Person under all Hedging Liabilities;

(f) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services if the purchase price is due more than six (6) months from the date that the obligation is incurred, and Indebtedness (excluding, however, prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person, whether or not such Indebtedness shall have been assumed by such Person or is limited in recourse; provided, however, that the amount of such Indebtedness that is limited in recourse to such property owned or being purchased shall, for purposes of this clause (f), be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such obligations of such Person and (ii) the fair market value of the property for which such Indebtedness has been incurred; and

(g) all Contingent Liabilities of such Person in respect of any of the foregoing that are required to be included as a liability in accordance with GAAP.

For all purposes of this Agreement, (x) the Indebtedness of any Person shall include the proportion of Indebtedness of any partnership in which such Person is a general partner or joint venturer with liability for the entire indebtedness of the joint venture and (y) the amount of any Indebtedness outstanding as of any date shall be the principal amount thereof, together with any interest thereon that is more than thirty (30) days past due.

“**Indemnified Liability**” is defined in Section 12.4.

“**Indemnified Parties**” is defined in Section 12.4.

“**Independent Consultant**” means the Insurance Consultant, CRG Partners or their successors engaged pursuant to this Agreement.

“**ING**” is defined in the preamble.

“**Initial Borrowing**” means the first Borrowing on or after the Effective Date made to or for the benefit of the Borrower pursuant to this Agreement after the conditions in Article V have been satisfied.

“**Initial Commitment Amount**” means the lesser of (i) \$1,000,000 or (ii) such other amount as may be approved by order of the Bankruptcy Court prior to the entry of the Final Order, in accordance with the Budget.

“**Instrument**” means any contract, agreement, indenture, mortgage, deed of trust, document or writing (whether by formal agreement, letter or otherwise) under which any obligation is evidenced, assumed or undertaken, or any Lien (or right or interest therein) is granted or perfected.

“Insurance Consultant” means Harbor Group Ltd. or any other Person designated from time to time by the Administrative Agent in its sole discretion to serve as the Insurance Consultant.

“Insurance Consultant’s Report” means a report of the Insurance Consultant which shall include an analysis of the insurance required to be maintained pursuant to the Prepetition Loan Agreement and the Obligor’s policies of insurance in effect and stating, among other things, that (x) the Insurance Consultant has reviewed the Obligors’ policies of insurance and other material information deemed necessary by the Insurance Consultant for the purpose of evaluating whether the Obligors are in compliance with their insurance obligations hereunder and (y) based on its review of such information, the Insurance Consultant is of the opinion that they are in compliance with the insurance obligations hereunder and that the insurance policies in effect are adequate for the continued operation by the Obligors of the Real Property Collateral.

“Insurance Requirement” means any provisions of any insurance policy covering or applicable to any of the Obligors, the Real Property Collateral or any portion thereof, all requirements of the issuer of any such policy and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any body exercising similar functions) applicable to or affecting the Real Property Collateral or any portion thereof, any use or condition thereof or any of the Obligors.

“Interest Period” means, relative to any LIBO Rate Loan, the period beginning on (and including) the date on which such LIBO Rate Loan is made or continued as, or converted into, a LIBO Rate Loan pursuant to Section 2.3 or Section 2.4, as applicable, and, (i) with respect to Interest Periods commencing on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period), shall end on the last Business Day one month thereafter and (ii) with respect to Interest Periods commencing on days other than the last Business Day of a calendar month, shall end on the date which numerically corresponds to such date one month thereafter (or if such numerically corresponding date is not a Business Day or does not exist, then on the Business Day nearest preceding such numerically corresponding date), provided, however, that

- (a) the Borrower shall not be permitted to select Interest Periods to be in effect at any one time which have expiration dates occurring on more than four (4) different dates; and
- (b) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day); and
- (c) no Interest Period with respect to any portion of the Loans shall extend beyond the date on which a permanent reduction of the Commitment Amount is scheduled to occur unless the sum of (x) the aggregate principal amount of Loans that are Base Rate Loans plus (y) the aggregate principal amount of Loans that are LIBO Rate Loans with Interest Periods expiring on or before such date plus (z) the excess of the

Commitments then in effect over the aggregate principal amount of the Loans then outstanding equals or exceeds the permanent reductions of the Commitments that are scheduled to occur on such date; and

(d) no Interest Period for any Loan may end later than the DIP Facility Termination Date.

“**Interim Order**” means that certain order of the Bankruptcy Court approving the DIP Facility substantially in the form of Exhibit T and otherwise in form and substance satisfactory to the Administrative Agent.

“**Interim Order Entry Date**” means the date of the Bankruptcy Court’s entry of the Interim Order.

“**Interim Period**” shall mean the period commencing on the Effective Date (included) and ending on the date on which the Bankruptcy Court enters the Final Order (excluded).

“**Investment**” means, relative to any Person,

(a) any loan or advance made by such Person to any other Person (including Affiliates) (excluding, however, commission, travel, petty cash and similar advances to managers, officers and employees made in the ordinary course of business);

(b) any Contingent Liability of such Person;

(c) any ownership or similar interest held by such Person in any other Person;
and

(d) any other item that is required to be classified as an investment on a balance sheet of such Person prepared in accordance with GAAP.

The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property at the time of such Investment.

“**JFK Site**” is defined in the recitals.

“**LaGuardia Site**” is defined in the recitals.

“**Legal Requirement**” means, relative to any Person or property, all laws, statutes, codes, regulations, rules, acts, ordinances, permits, licenses, authorizations, directions and requirements of all Governmental Instrumentalities, departments, commissions, boards, courts, authorities, agencies, officials and officers, and any deed restrictions or other requirements of record, applicable to such Person or such property, or any portion thereof or interest therein or any use or condition of such property or any portion thereof or interest therein (including those relating to zoning, planning, subdivision, building, safety, health, use, environmental quality and other similar matters).

“**Lender**” means any Lender which has made a Commitment or holds a Loan and, in addition, shall include any Person that becomes a Lender pursuant to Section 12.11.1.

“**Lender Assignment Agreement**” means a lender assignment agreement substantially in the form of Exhibit V hereto.

“**Lender’s Environmental Liability**” means any and all losses, liabilities, obligations, penalties, claims, litigations, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including reasonable attorneys’ fees at trial and appellate levels and reasonable consultants’ and experts’ fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by, or asserted or awarded against, any Lender or any of such Lender’s parent and Subsidiary corporations, and their Affiliates, shareholders, directors, officers, employees, and agents in connection with or arising from:

(a) any Hazardous Substances on, in, under or affecting all or any portion of the Real Property Collateral or the groundwater thereunder, or any surrounding areas thereof to the extent caused by Releases from any of the Obligor or any of their properties;

(b) any violation or claim of violation by any of the Obligor of any Environmental Laws; or

(c) the imposition of any Lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Substances from any of the Real Property Collateral by any of the Obligor or in connection with any property owned or formerly owned by them.

“**Lender’s Tax**” is defined in Section 4.6.

“**LIBO Rate**” means, relative to any Interest Period for LIBO Rate Loans, the highest of:

(i) a rate of interest per annum determined by the Administrative Agent as follows:

(a) at approximately 11:00 a.m. (London time) on the date that is two (2) Business Days prior to the first day of such Interest Period or requested Borrowing, the Administrative Agent shall obtain the offered quotation(s) that appear on Reuter’s display page 3750 for Dollar deposits for a period comparable to such Interest Period; and

(b) if such rate does not appear on Reuter’s page 3750 as of approximately 11:00 a.m. (London time) on the date which is two (2) Business Days prior to the first day of such Interest Period or requested Borrowing, the LIBO Rate shall be the rate per annum (rounded up to the nearest 1/16th of 1%) at which deposits in Dollars are offered to the Administrative Agent in the London interbank market at approximately 11:00 a.m. (London time) on the date that is two (2) Business Days prior to the first day of such Interest Period in the approximate amount of the

relevant LIBO Rate Loan and having a maturity approximately equal to the relevant Interest Period; and

(ii) a rate of interest per annum equal to 3.00%.

“**LIBO Rate Loan**” means a Loan bearing interest, at all times during an Interest Period applicable to such Loan, at a fixed rate of interest determined by reference to the LIBO Rate (Reserve Adjusted).

“**LIBO Rate (Reserve Adjusted)**” means, relative to any Loan to be made, continued or maintained as, or converted into, a LIBO Rate Loan for any Interest Period, a rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) determined pursuant to the following formula:

$$\text{LIBO Rate (Reserve Adjusted)} = \frac{\text{LIBO Rate}}{1.00 - \text{LIBOR Reserve Percentage}}$$

The LIBO Rate (Reserve Adjusted) for any Interest Period for LIBO Rate Loans will be determined by the Administrative Agent on the basis of the LIBOR Reserve Percentage in effect, and the applicable rates furnished to and received by the Administrative Agent from the Lenders, two (2) Business Days before the first day of such Interest Period; provided, however, that notwithstanding anything contained herein to the contrary, in no event shall the LIBO Rate (Reserve Adjusted) be less than 3.00%.

“**LIBOR Reserve Percentage**” means, relative to any Interest Period for LIBO Rate Loans, the reserve percentage (expressed as a decimal) equal to the maximum aggregate reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) specified under regulations issued from time to time by the F.R.S. Board and then applicable to assets or liabilities consisting of or including “Eurocurrency Liabilities”, as currently defined in Regulation D of the F.R.S. Board, having a term approximately equal or comparable to such Interest Period.

“**Lien**” means, relative to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof or any option or other agreement to sell or give a security interest therein).

“**Loan**” is defined in Section 2.1.1.

“**Loan Documents**” means, collectively, this Agreement, the Orders, the Borrowing Requests, and any other agreement, certificate, document or Instrument delivered in connection with this Agreement or designated as a Loan Document by the Obligors and the Administrative Agent and such other agreements, whether or not specifically mentioned herein or therein.

“**Loss Proceeds**” is defined in clause (b) of Section 7.1.16.

“**Mandatory Prepayments**” is defined in clause (b) of Section 3.1.1.

“**Material Adverse Effect**” means any event, development or circumstance which has or could reasonably be expected to have a material and adverse effect on (i) the business, operations, assets, property or financial condition of the Obligors, taken as a whole, or with respect to the Real Property Collateral, taken as a whole, or (ii) the validity or enforceability of the Loan Documents or the rights, remedies, options or benefits of the Administrative Agent and the Lenders thereunder; provided, however, any material adverse change resulting from or in connection with the commencement of the Cases and the events leading up to the Cases shall not be considered to be a Material Adverse Effect.

“**Members**” means, relative to any Person which is a limited liability company, the Persons owning a Membership Interest therein.

“**Membership Interest**” means, relative to any Person which is a limited liability company, a membership interest or a limited liability company interest, as the case may be, of such Person.

“**Memphis Site**” is defined in the recitals.

“**Monthly Payment Date**” means the last Business Day of each month.

“**Moody’s**” means Moody’s Investors Service, Inc., a Delaware corporation, or any successor thereto.

“**Net Cash Flow Variance**” shall mean, for any period, the difference between Budget Net Cash Flow and Actual Net Cash Flow for such period which, (x) if Actual Net Cash Flow is less than Budget Net Cash Flow for such period, such result being a negative number and (y) if Actual Net Cash Flow is greater than Budget Net Cash Flow for such period, such result being a positive number.

“**Newark Site**” is defined in the recitals.

“**Non-U.S. Lender**” is defined in Section 4.6.

“**Oakland Site**” is defined in the recitals.

“**Obligations**” means (x) all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Obligors under this Agreement to any Lender of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising in connection with this Agreement, or pursuant to the terms of any of the Loan Documents, including all interest, fees, charges, reasonable expenses, reasonable attorneys’ fees and costs and expenses, reasonable consultants’ fees and reasonable accountants’ fees chargeable to the Obligors in connection with such Person’s dealings with the Obligors and payable by the Obligors hereunder or thereunder; (y) any and all sums advanced by the Lenders in order to complete or preserve the DIP Collateral or preserve any Lenders’ security interest in the DIP Collateral, including all protective advances; and (z) in the event of any proceeding for the

collection or enforcement of, or any “working out” of, the Obligations after an Event of Default shall have occurred and be continuing, the reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the DIP Collateral, or of any exercise by any Lender of its rights under the Loan Documents, together with reasonable attorneys’ fees and costs and expenses.

“**Obligor**” means the Borrower and the Subsidiary Guarantors.

“**O’Hare Site**” is defined in the recitals.

“**Oklahoma Site**” is defined in the recitals.

“**Operating Lease**” means any lease for any equipment or Real Property at (or benefiting) the Real Property Collateral and classified as an “operating lease” under GAAP.

“**Orders**” means, as the context may require, the Interim Order and the Final Order.

“**Organizational Document**” means, relative to any Obligor, its certificate or articles of incorporation, by laws, certificate of partnership, partnership agreement, certificate of formation, articles of organization, operating agreement, limited liability company or operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to such Obligors’ partnership interests, limited liability company interests or authorized shares of Capital Stock.

“**Other Adequate Protection Parties**” is defined in Section 10.4.

“**Participant**” is defined in Section 12.11.2.

“**PBGC**” means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

“**PCAA**” is defined in the preamble.

“**PCAA Chicago**” is defined in the preamble.

“**PCAA GP**” is defined in the preamble.

“**PCAA LP**” is defined in the preamble.

“**PCAA Missouri**” is defined in the preamble.

“**PCAA Phoenix**” is defined in the preamble.

“**PCAA Properties**” is defined in the preamble.

“**PCAA Oakland**” is defined in the preamble.

“**PCAA OK**” is defined in the preamble.

“PCAA SP” is defined in the preamble.

“PCAA Texas” is defined in the preamble.

“**Pension Plan**” means a “pension plan”, as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (excluding, however, a multiemployer plan as defined in Section 4001(a)(3) of ERISA), and to which any Obligor or any corporation, trade or business that is, along with any Obligor, a member of a Controlled Group, has liability or a reasonable expectation of liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“**Percentage**” means, relative to any Lender, the applicable percentage relating to such Lender’s portion of the Commitment Amount as set forth on such Lender’s signature page attached hereto or as set forth in a Lender Assignment Agreement under the applicable column heading, in each case, as such percentage may be adjusted from time to time pursuant to Lender Assignment Agreement(s) executed by such Lender and its Assignee Lender(s) and delivered pursuant to Section 12.11.1.

“**Permit**” means any building, construction, land use, environmental or other permit, license, franchise, approval, consent and authorization (including central bank and planning board approvals from applicable Governmental Instrumentalities) required for or in connection with the construction, ownership, use, occupation and operation of the Real Property Collateral and the Transaction.

“**Permitted Asset Sale**” is defined in Section 7.2.11.

“**Permitted Lien**” means any of the following types of Liens (excluding, however, any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA, any such Lien relating to or imposed in connection with any Environmental Claim and any such Lien expressly prohibited by any applicable terms of any of the Loan Documents):

- (a) Liens securing the Obligations under the Loan Documents;
- (b) Liens set forth in Item 7.2.3 of the Disclosure Schedule;
- (c) (x) Liens for Impositions or (y) statutory Liens of landlords, and carriers’, warehousemen’s, construction, suppliers’, materialmen’s, repairmen’s or other similar Liens arising in the ordinary course of business, in the case of each of items (x) and (y), with respect to amounts that either (1) are not yet delinquent by more than thirty (30) days or (2) are being contested in good faith by appropriate proceedings; provided, however, that, in each case, any reserve or other appropriate provision as shall be required in conformity with GAAP, consistently applied, shall have been made therefor;
- (d) Easements, zoning restrictions, rights-of-way, avigational servitude, restrictions, defects, encroachments or irregularities in title and other similar charges or encumbrances which, in the case of each of the foregoing, do not interfere in any material

respects with the ordinary conduct of business of any of the Obligors or the Real Property Collateral;

(e) Licenses of patents, trademarks and other intellectual property rights granted by any of the Obligors in the ordinary course of business;

(f) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, government contracts, trade contracts, performance and return of money bonds and other similar obligations (excluding, however, obligations for the payment of borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds, so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the DIP Collateral on account thereof, for amounts (x) not yet overdue by more than thirty (30) days are being contested in good faith by appropriate proceedings, so long as (1) such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts and (2) in the case of a Lien with respect to any portion of the DIP Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the DIP Collateral on account of such Lien;

(g) Liens for taxes, assessments or governmental charges or claims the payment of which is not, at the time due and payable or which is being contested in good faith by appropriate governmental proceedings promptly instituted and diligently contested, so long as (x) such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP, consistently applied, shall have been made therefor and (y) in case of any charge or claim which has or may become a Lien against any of the DIP Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the DIP Collateral to satisfy such charge or claim;

(h) Liens securing judgments that do not constitute an Event of Default;

(i) Liens arising from precautionary UCC financing statement filings with respect to Operating Leases permitted under Section 7.2.7; and

(j) as to the Second Lien Collateral, Liens securing the Prepetition Loan Agreement.

“**Person**” means any natural person, corporation, limited liability company, partnership, joint venture, joint stock company, firm, association, trust or unincorporated organization, government, governmental agency, Governmental Instrumentality, court or any other legal entity, whether acting in an individual, fiduciary or other capacity.

“**Petition Date**” is defined in the recitals.

“**Phoenix Site**” is defined in the recitals.

“**Philadelphia Site**” is defined in the recitals.

“**Pittsburgh Site**” is defined in the recitals.

“**Plan**” means any Pension Plan or Welfare Plan.

“**Preferred Stock**” means any Equity Interest with preferential right of payment of dividends or distributions, as applicable, or upon liquidation, dissolution or winding up.

“**Prepetition Agent**” is defined in the recitals.

“**Prepetition Borrowers**” is defined in the recitals.

“**Prepetition Cash Collateral**” means all cash proceeds of the Prepetition Collateral or the Prepetition Lenders and all other cash collateral (as defined in Section 363 of the Bankruptcy Code) of the Prepetition Lenders.

“**Prepetition Collateral**” is defined in the recitals.

“**Prepetition Guaranty**” is defined in the recitals.

“**Prepetition Lenders**” is defined in the recitals.

“**Prepetition Loan Agreement**” is defined in the recitals.

“**Prepetition Loan Documents**” means, collectively, the Loan Documents (as defined in the Prepetition Loan Agreement) and the Prepetition Mortgages.

“**Prepetition Loan Parties**” is defined in the recitals.

“**Prepetition Loans**” is defined in the recitals.

“**Prepetition Mortgage**” or “**Prepetition Mortgages**” means, on any date, the Fee and Leasehold Mortgages/Deeds of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by each Prepetition Borrower, as a mortgagor, to the Prepetition Agent (or its successor) for the benefit of the Prepetition Loan Parties, as the mortgagee, and recorded with the appropriate register of deeds, as each may be thereafter from time to time amended, supplemented, amended and restated or otherwise modified, covering the Atlanta Site, the Denver Site, the Hartford Site, the JFK Site, the Memphis Site, the Newark Site, the Oakland Site, the O’Hare Site, the Pittsburgh Site, the San Francisco Site, the LaGuardia Site, the Philadelphia Site, the Buffalo Site, the Columbus Site, the Houston Site, the Oklahoma Site, the St. Louis Site, the Phoenix Site and the Dallas Site. A list of the Prepetition Mortgages is attached hereto as Exhibit AA.

“**Prepetition Obligations**” means “Obligations” as defined in the Prepetition Loan Agreement.

“**Prepetition Security Interests**” is defined in Section 10.4.

“**Professionals**” means, collectively, any and all professional Persons retained pursuant to Sections 327, 328, 330 and 331 and 1103 of the Bankruptcy Code by one or more of the Obligors or any Committee.

“**Property Documents**” means, collectively, the Existing Operating Leases pursuant to which the leased portions of the Second Lien Real Properties are leased by certain of the Prepetition Borrowers and all Instruments evidencing the ownership of the owned portions of the Second Lien Real Properties, in each case, as the same may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms and conditions hereof and thereof.

“**RCL**” is defined in the preamble.

“**Real Property**” means, relative to any Person, such Person’s present and future right, title and interest (including any leasehold estate) in

- (a) any plots, pieces or parcels of land;
- (b) any improvements, buildings, structures and fixtures now or hereafter located or erected thereon or attached thereto of every nature whatsoever;
- (c) any other interests in property constituting appurtenances to the Real Property in (a) or (b) above or which hereafter shall in any way belong, relate or be appurtenant thereto; and
- (d) all other rights and privileges thereunto belonging or appertaining and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or of any of the rights and interests described in clause (c).

“**Real Property Collateral**” shall mean, collectively or individually, as the context may require, any or all of the First Lien Real Properties or the Second Lien Real Properties.

“**Receipt Variance**” shall mean, for any period, the difference between Budget Receipts and Actual Receipts for such period which, (x) if Actual Receipts are less than Budget Receipts for such period, such result being a negative number and (y) if Actual Receipts are greater than Budget Receipts for such period, such result being a positive number.

“**Register**” is defined in clause (b) of Section 2.6.

“**Release**” means a “**release**”, as such term is defined in CERCLA.

“**Required Lenders**” means, at any time, Lenders holding at least 51% of the sum of the aggregate outstanding principal amount of the Loans, but not fewer than all of the Lenders to the extent there are two (2) or fewer Lenders.

“**Restricted Payment**” is defined in item (ii) of clause (b) of Section 7.2.5.

“**S&P**” means Standard & Poor’s Ratings Group, Inc., a New York corporation, or any successor thereto.

“**Sales Process**” is defined in clause (f) of Section 8.1.9.

“**San Francisco Site**” is defined in the recitals.

“**Second Lien Collateral**” is defined in clause (b) of Section 10.2.

“**Second Lien Real Property**” or “**Second Lien Real Properties**”, as the case may be, means, individually or collectively, all Real Property that constitutes Second Lien Collateral.

“**Securities Act**” means 15 U.S.C. § 77a known as the Federal Securities Act.

“**St. Louis Site**” is defined in the recitals.

“**Subsidiary**” means, relative to any Person, any corporation, partnership or other business entity of which more than 50% of the outstanding capital stock (or other ownership interest) having ordinary voting power to elect the board of directors, managers or other voting members of the governing body of such Person (irrespective of whether at the time Capital Stock (or other ownership interest) of any other class or classes of such Person shall or might have voting power upon the occurrence of any contingency) is at the time owned directly or indirectly by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.

“**Subsidiary Guarantor**” and “**Subsidiary Guarantors**” are defined in the preamble.

“**Subsidiary Guarantor Membership Interest**” means a Membership Interest as defined in the Organizational Documents of each of the Subsidiary Guarantors.

“**Superpriority Claims**” is defined in Section 10.1.

“**Tax**” means any federal, state, local, foreign or other tax, levy, impost, fee, assessment or other government charge, including income, estimated income, business, occupation, franchise, property, payroll, personal property, sales, transfer, use, employment, commercial rent, occupancy, franchise or withholding taxes, and any premium, including interest, penalties and additions in connection therewith.

“**Tax Certificate**” means a Tax Certificate substantially in the form of Exhibit Y hereto.

“**Transaction**” means the transactions contemplated by the Loan Documents.

“**type**” means, relative to any Loan, the portion thereof, if any, being maintained as a Base Rate Loan or a LIBO Rate Loan.

“**United States**” or “**U.S.**” means the United States of America, its fifty states and the District of Columbia.

“**Up Front Fee**” is defined in Section 3.2.3.

“**U.S. Trustee**” means the United States Trustee for the Eastern District of Michigan, Southern Division.

“**USA PATRIOT Act**” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“**Welfare Plan**” means a “welfare plan”, as such term is defined in Section 3(1) of ERISA.

SECTION 1.2 Use of Defined Terms. Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in each other Loan Document, the Disclosure Schedule, any Borrowing Request, Continuation/Conversion Notice, Compliance Certificate, notice or other communications delivered from time to time in connection with this Agreement or any other Loan Document.

SECTION 1.3 Cross-References. Unless otherwise specified, references in this Agreement and in each other Loan Document to any Article or Section are references to such Article or Section of this Agreement or such other Loan Document, as the case may be, and, unless otherwise specified, references in any Article, Section or definition to any item or clause are references to such item or clause of such Article, Section or definition.

SECTION 1.4 Accounting and Financial Determinations. Unless otherwise specified, all accounting terms used herein or in any other Loan Document shall be interpreted, and all accounting determinations and computations hereunder or thereunder shall be made, in accordance with the generally accepted accounting principles (“GAAP”) applied in the United States in the preparation of the financial statements to be provided by the Obligors from time to time in accordance with Section 7.1.1. If any change in accounting principles from those used in the preparation of the financial statement referred to in Section 6.6 hereafter occasioned by the promulgation of any rule, regulation, pronouncement, interpretation or opinion by or required by GAAP would result in a change in the method of calculation of financial covenants, standards or terms found in clause (b) of Section 7.1.1, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such changes with the desired result that the criteria for determining compliance with such Sections shall be the same after such change as if such change had not been made; provided, however, the parties hereto agree to construe all terms of an accounting or financial nature in accordance with GAAP as in effect prior to any such change in accounting principles until the parties hereto have amended the applicable provisions of this Agreement.

ARTICLE II

COMMITMENTS, BORROWING AND ISSUANCE PROCEDURES, AND LETTERS OF CREDIT

SECTION 2.1 Commitments. On the terms and subject to the conditions of this Agreement, each Lender severally agrees to make Loans pursuant to its Commitments, in each

case as described in this Section 2.1. No Lender shall have any liability for the failure of another Lender to make its Commitment available or any obligation to advance such other Lender's Percentage of any Loans to be made to the Borrower.

SECTION 2.1.1 Loans and Commitments. From time to time on any Business Day occurring from and after the Effective Date but prior to the Commitment Termination Date, subject to the terms and conditions of this Agreement, each Lender will make a revolving loan (relative to such Lender, its "**Loan**") to the Borrower equal to such Lender's Percentage of the aggregate amount of each Borrowing of the Loans requested by the Borrower to be made on such day. Proceeds from the Loans shall be used in accordance with clause (a) of Section 7.1.10. From and after the Effective Date and so long as no Default exists, the Borrower may from time to time borrow, prepay and reborrow the Loans as follows and on the terms and subject to the conditions hereof: (i) any amounts paid or prepaid by the Borrower pursuant to Section 3.1.1(a) or 3.1.1(b)(i) shall be available for reborrowing in accordance with the provisions of this Agreement and (ii) any amounts paid or prepaid by the Borrower under Sections 3.1.1(b)(ii) – (v) and 3.1.1(c) shall not be available for reborrowing and shall permanently reduce the Commitment Amount.

SECTION 2.1.2 Lenders Not Permitted or Required to Make Loans. No Lender shall be permitted or required to make any Loan if, after giving effect thereto, the aggregate outstanding principal amount of (i) all Loans of all Lenders with Commitments would exceed (x) the Commitment Amount reduced by the aggregate amount of the outstanding Loans or (y) the aggregate amount of Loans authorized by the Interim Order or the Final Order, as the case may be, or (ii) all Loans of such Lender with a Commitment would exceed such Lender's Commitment.

SECTION 2.1.3 Reduction of the Commitments. The Borrower may, from time to time on any Business Day, voluntarily reduce the Commitment Amount on the Business Day so specified by the Borrower; provided, however, that all such reductions shall require at least one (1) Business Day's prior written notice to the Administrative Agent and be permanent. Any partial reduction of the Commitment Amount shall be in a minimum amount of \$100,000 and in an integral multiple of \$50,000. Any such reduction shall be made pro rata according to the respective Percentage of the relevant Lender.

SECTION 2.1.4 Termination of Commitments. The Commitments shall terminate automatically and without further action on the Commitment Termination Date.

SECTION 2.2 Use of Available Cash and Cash Collateral. The Loans shall be available only after the Obligors use all of their cash that constitutes Available Cash in the amount set forth in the most recent report to be delivered to the Administrative Agent pursuant to clause (e) of Section 7.1.1 to fund the amounts set forth in the applicable Borrowing Request that are then due and payable.

SECTION 2.3 Borrowing Procedure. Loans shall be made by the Lenders in accordance with this Section 2.3 for the purposes permitted under clause (a) of Section 7.1.10. On the terms and subject to the conditions of this Agreement, by delivering a Borrowing Request for approved amounts set forth in the Budget to the Administrative Agent and the Lenders on or before 10:00

a.m., New York City time, on a Business Day, the Borrower may from time to time irrevocably request, on not less than three (3) Business Days' notice in the case of Base Rate Loans or LIBO Rate Loans, and on not more than five (5) Business Days' notice, that a Borrowing be made. On the terms and subject to the conditions of this Agreement, each Borrowing shall be comprised of the type of Loans, and shall be made on the Business Day, specified in such Borrowing Request executed by an Authorized Representative of the Borrower to the effect that (i) the proposed Loan and its intended use are consistent with the terms of the Loan Documents and the Budget and are necessary, after giving effect to the application of Available Cash as set forth herein, (ii) the Obligors have observed or performed all of their covenants and other agreements and have satisfied every condition contained in the Loan Documents to be observed, performed or satisfied by one or more of them, and (iii) such Authorized Representative has no knowledge that any Default has occurred and is continuing. On or before 11:00 a.m. (New York City time) on such Business Day each Lender being requested to make the Loans shall deposit with the Administrative Agent same day funds in an amount equal to such Lender's Percentage of the requested Borrowing. Such deposit will be made to an account which the Administrative Agent shall specify from time to time by notice to the Lenders. To the extent funds for Loans are received from the Lenders on or before 11:00 a.m. (New York City Time) on a particular date, the Administrative Agent shall make such funds available to the Borrower by wire transfer to the account specified in the Borrowing Request on such date and if such funds are so received after such time on such date, the Administrative Agent shall make such funds available to the Borrower by wire transfer to the account specified in the Borrowing Request on the next succeeding Business Day.

SECTION 2.4 Continuation and Conversion Elections. By delivering a Continuation/Conversion Notice to the Administrative Agent and the Lenders on or before 10:00 a.m., New York City time, on a Business Day, the Borrower may from time to time irrevocably elect, on not less than three (3) Business Days' notice in the case of continuation of or conversion to Base Rate Loans or LIBO Rate Loans, and on not more than five (5) Business Days' notice, that all, or any portion in an aggregate minimum amount of \$250,000 and an integral multiple of \$250,000, in the case of LIBO Rate Loans, or an aggregate minimum amount of \$250,000 and an integral multiple of \$250,000, in the case of Base Rate Loans, be, in the case of Base Rate Loans, converted into LIBO Rate Loans or be, in the case of LIBO Rate Loans, converted into Base Rate Loans or continued as LIBO Rate Loans (in the absence of delivery of a Continuation/Conversion Notice with respect to any LIBO Rate Loan at least three (3) Business Days (but not more than five (5) Business Days) before the last day of the then current Interest Period with respect thereto, but subject in all events to clause (y) in the proviso of this sentence, such LIBO Rate Loan shall, on such last day, automatically be continued as a LIBO Rate Loan having a one (1) month Interest Period); provided, however, that (x) each such conversion or continuation shall be pro rated among the applicable outstanding Loans of all Lenders and (y) no portion of the outstanding principal amount of any Loans may be continued as, or be converted into, LIBO Rate Loans when any Default has occurred and is continuing.

SECTION 2.5 Funding. Each Lender may, if it so elects, fulfill its obligation to make, continue or convert LIBO Rate Loans hereunder by causing one of its foreign branches or Affiliates (or an international banking facility created by such Lender) to make or maintain such LIBO Rate Loan; provided, however, that such LIBO Rate Loan shall nonetheless be deemed to have been made and to be held by such Lender, and the obligation of the Borrower to repay such

LIBO Rate Loan shall nevertheless be to such Lender for the account of such foreign branch, Affiliate or international banking facility. In addition, the Borrower hereby consents and agrees that, for purposes of any determination to be made for purposes of Section 4.1, 4.2, 4.3 or 4.4, it shall be conclusively assumed that each Lender elected to fund all LIBO Rate Loans by purchasing Dollar deposits in its relevant interbank eurodollar market.

SECTION 2.6 Register.

(a) The Administrative Agent agrees to record in the Register each Borrowing and each Lender's Loan. The Administrative Agent shall make appropriate entries in the Register which shall evidence, inter alia, the date of each Borrowing, the outstanding principal of, and the interest rate and Interest Period applicable to the Loans and the date and amount of all payments made with respect to the Loans (each Lender shall make corresponding entries in its books and records). Such entries by the Administrative Agent in the Register shall be conclusive and binding on the Borrower and the Lenders absent manifest error; provided, however, that the failure of the Administrative Agent to make any such entries shall not limit or otherwise affect any Obligations of the Borrower or any other Obligor. The Administrative Agent shall provide a copy of the Register upon request by the Lenders.

(b) The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent, solely for the purpose of this clause, to maintain a register (the "**Register**") on which the Administrative Agent will record each Lender's Commitment, the Loans made by each Lender and each repayment in respect of the principal amount of the Loans, annexed to which the Administrative Agent shall retain a copy of each Lender Assignment Agreement delivered to the Administrative Agent. Failure to make any recordation, or any error in such recordation, shall not affect any Obligor's Obligations. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person in whose name a Loan is registered as the owner thereof for the purposes of all Loan Documents, notwithstanding notice or any provision herein to the contrary. Any assignment or transfer of a Commitment or the Loans made pursuant hereto shall be registered in the Register only upon delivery to the Administrative Agent of a duly executed Lender Assignment Agreement. No assignment or transfer of a Lender's Commitment or Loans shall be effective unless such assignment or transfer shall have been recorded in the Register by the Administrative Agent as provided in this Section.

SECTION 2.7 Superpriority Nature of Obligations and Loans. Except as otherwise provided in the Orders, the Liens granted to the Administrative Agent, for the benefit of the Lenders, shall have the senior secured status afforded by Sections 364(c) of the Bankruptcy Code, all as more fully provided in Article X hereof.

SECTION 2.8 No Discharge; Survival of Claims. (a) The Obligations hereunder shall not be discharged (and each Loan Party, pursuant to Section 1141(d)(4) of the Bankruptcy Code hereby waives any such discharge) by the entry of an order (i) confirming any plan of reorganization in any of the Cases unless paid in full in cash; (ii) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code or (iii) dismissing any of the Cases and (b) until

the full and indefeasible payment of the Obligations, the Superpriority Claims granted to the Obligations and all Liens granted to the Administrative Agent shall continue in full force and effect and maintain their priority as set forth in the Orders.

SECTION 2.9 Waiver of any Priming Rights. Other than the Carve-Out or as expressly provided for in the Orders, the Debtors hereby irrevocably waive any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or superior priority than the Liens securing the Obligations, or to approve or grant a claim of equal or superior priority to the Obligations.

ARTICLE III

REPAYMENTS, PREPAYMENTS, INTEREST AND FEES

SECTION 3.1 Repayments and Prepayments: Application.

SECTION 3.1.1 Repayments and Prepayments. The Borrower shall repay in full the unpaid principal amount of each Loan upon the DIP Facility Termination Date. Prior thereto, payments and prepayments of Loans shall or may be made as set forth below.

(a) From time to time on any Business Day, the Borrower may make a voluntary prepayment, in whole or in part, of the outstanding principal amount of the Loans, provided, however, that

(i) all such voluntary prepayments shall require at least one (1) but no more than five (5) Business Days' prior written notice to the Administrative Agent; and

(ii) all such voluntary partial prepayments shall be in an aggregate minimum amount of \$100,000 and an integral multiples of \$50,000 or, if less, the outstanding amount of such Loans.

(b) The Borrower shall make mandatory prepayments of principal (the "**Mandatory Prepayments**") as set forth below:

(i) on the Tuesday after the end of each Budget Variance Review Period, in an amount equal to the Excess Available Cash as set forth in the report delivered to the Administrative Agent and the Prepetition Agent pursuant to clause (e) of Section 7.1.1;

(ii) promptly, but not later than two Business Days after receipt of the same, in an amount equal to 100% of the cash proceeds of an Asset Sale received by any Obligor (less any taxes and reasonable costs and expenses that have been incurred or are payable by the Obligors in connection with such Asset Sale and any required prepayments of permitted Indebtedness secured by a Permitted Lien) after giving effect to an Asset Sale that is permitted or that has been approved and consented to by the Administrative Agent in accordance with the terms and conditions set forth in Section 7.2.11 hereof;

(iii) promptly upon receipt of the same, in an amount equal to 100% of the Loss Proceeds received (other than those received prior to the date of the commencement of the Cases and set forth on Item 3.1.1(b) of the Disclosure Schedule) by the Obligors, as set forth in Section 7.1.16 hereof;

(iv) promptly upon receipt of the same, in an amount equal to 100% of the cash proceeds received by the Obligors as a result of the incurrence of any Indebtedness not permitted under Section 7.2.2; and

(v) promptly upon receipt of the same, in an amount equal to 100% of the cash proceeds received by the Obligors, or the direct and indirect holders of their Capital Stock, from the issuance, transfer or sale of such Capital Stock, whether or not permitted under Section 7.2.16 hereof, except for any transfer or sale of the Capital Stock of the Borrower held by Frank Lemieux and Richard West.

(c) In addition to the Mandatory Prepayments, the entire outstanding principal balance of all Loans and all Obligations hereunder shall become immediately due and payable and the obligation of any Lender to make a Loan shall automatically terminate upon the occurrence of a Change of Control.

SECTION 3.1.2 Application. Amounts paid or prepaid pursuant to Section 3.1.1 (other than amounts paid to the Prepetition Agent which shall be applied in accordance with the Prepetition Loan Agreement) shall be applied as set forth in this Section.

(a) So long as no Event of Default has occurred and is continuing, the Lenders shall apply all amounts received in accordance with the provisions of this Agreement first, to all Obligations (other than principal and interest on the Loans), second, to accrued and unpaid interest on the Loans, third, to the outstanding principal amount of Loans being maintained as Base Rate Loans, fourth, to the outstanding principal amount of Loans being maintained as LIBO Rate Loans, and fifth, to the Prepetition Obligations in accordance with the Prepetition Loan Agreement; provided, however, that payments and prepayments made pursuant to Section 3.1.1, if not made on the last day of the Interest Period with respect thereto, shall be prepaid subject to the provisions of Section 4.4. Insofar as amounts allocated under the fifth priority above are allocated to Prepetition Loans which are, otherwise, of equal priority, some of which are maintained as Base Rate Loans and some of which are maintained as LIBO Rate Loans, such amounts shall be allocated first to the Base Rate Loans and then to LIBO Rate Loans.

(b) After an Event of Default has occurred and so long as such Event of Default is continuing, all amounts received by the Lenders shall be applied first, to the costs and expenses of protecting and preserving the security interests of the Lenders under the Loan Documents, second, to the costs and expenses of protecting and preserving the DIP Collateral, third, to the costs and expenses of enforcing the rights of the Lenders under this Agreement and the other Loan Documents, fourth, to all other Obligations due under this Agreement and the other Loan Documents (other than principal and interest on the Loans), fifth, to principal and interest on the Loans, and,

after all amounts evidenced and secured by the Loan Documents have been indefeasibly paid in full and the Obligors have performed their obligations under the Loan Documents, the balance, if any, shall be applied against the Prepetition Obligations in accordance with the Prepetition Loan Agreement.

SECTION 3.1.3 Interest Provisions. Interest on the outstanding principal amount of Loans shall accrue and be payable in accordance with this Section 3.1.3.

SECTION 3.1.4 Rates. Subject to (x) Section 2.3 and (y) clause (y) in the proviso in the last sentence of Section 2.4, pursuant to an appropriately delivered Borrowing Request or Continuation/Conversion Notice, the Borrower may elect that Loans comprising a Borrowing accrue interest at a rate per annum:

(a) on that portion maintained from time to time as a Base Rate Loan, equal to the sum of the Alternate Base Rate from time to time in effect plus the Applicable Base Rate Margin; and

(b) on that portion maintained as a LIBO Rate Loan, during each Interest Period applicable thereto, equal to the sum of the LIBO Rate (Reserve Adjusted) for such Interest Period plus the Applicable LIBO Rate Margin.

All LIBO Rate Loans shall bear interest from and including the first day of the applicable Interest Period to (but not including) the last day of such Interest Period at the interest rate determined as applicable to such LIBO Rate Loan.

SECTION 3.1.5 Post-Default Rates. From and after the occurrence of an Event of Default (and only during such period that such Event of Default is continuing), the Obligors shall pay interest (after as well as before judgment), except to the extent not permitted by law, at a rate per annum equal to the rate (inclusive of the Applicable Base Rate Margin) that would otherwise be applicable to Base Rate Loans pursuant to Section 3.1.4 plus 2.00%.

SECTION 3.1.6 Payment Dates. Interest accrued on each Loan shall be payable in arrears, without duplication:

(a) on the DIP Facility Termination Date;

(b) on the date of any payment or prepayment, in whole or in part, of principal outstanding on such Loan on the principal amount so paid or prepaid;

(c) with respect to Base Rate Loans, on each Monthly Payment Date occurring after the Effective Date;

(d) with respect to LIBO Rate Loans, on the last day of each applicable Interest Period;

(e) with respect to any Base Rate Loans converted into LIBO Rate Loans on a day when interest would not otherwise have been payable pursuant to clause (c), on the date of such conversion; and

(f) on that portion of any Loan the repayment of which is accelerated pursuant to Section 8.2, immediately upon such acceleration.

Interest accrued on Loans or other monetary Obligations arising under this Agreement or any other Loan Document after the date such amount is due and payable (whether on the DIP Facility Termination Date, upon acceleration or otherwise) shall be payable upon demand.

SECTION 3.2 Fees. The Obligors agree to pay the fees set forth in this Section 3.2. All such fees shall be non refundable.

SECTION 3.2.1 Commitment Fee. From and after the Effective Date, the Obligors shall pay a non-refundable fee (the “**Commitment Fee**”) on the daily average undrawn amount of the Commitment Amount at a rate equal to one half of one percent (0.50%) per annum. The Commitment Fee shall be payable on each Monthly Payment Date in arrears to the Lenders which have made a commitment to make a Loan in proportion to their respective unfunded Commitment and upon any termination of any Commitment for the number of days elapsed over a 360-day year.

SECTION 3.2.2 Agency Fee. The Obligors agree to pay to the Administrative Agent, for its own account, the fees in the amounts and on the dates set forth in the Agent’s Fee Letter.

SECTION 3.2.3 Up Front Fee. The Obligors agree to pay to the Administrative Agent, for the account of each Lender, pro rata, an up front fee at a rate equal to two percent (2.00%) of each such Lender’s Percentage of the Full Commitment Amount (the “**Up Front Fee**”). The Front End Fee shall be payable and fully earned upon the Effective Date.

ARTICLE IV

CERTAIN LIBO RATE AND OTHER PROVISIONS

SECTION 4.1 LIBO Rate Lending Unlawful. If any Lender shall determine (which determination shall, upon notice thereof to the Administrative Agent, the Borrower and the other Lenders, be conclusive and binding on the Obligors) that the introduction of or any change in, or in the interpretation of, any law makes it unlawful, or any central bank or other Governmental Instrumentality asserts that it is unlawful, for such Lender to make, continue or maintain any Loan as, or to convert any Loan into, a LIBO Rate Loan, the obligations of such Lender to make, continue, maintain or convert any such LIBO Rate Loan shall, upon such notification, forthwith be suspended until such Lender shall notify the Administrative Agent that the circumstances causing such suspension no longer exist, and all outstanding LIBO Rate Loans shall automatically convert into Base Rate Loans at the end of the then current Interest Periods with respect thereto, or sooner, if required by such law or assertion.

SECTION 4.2 Deposits Unavailable. If the Administrative Agent shall have determined that

(a) Dollar deposits in the relevant amount and for the relevant Interest Period are not available to the Administrative Agent in its relevant market; or

(b) by reason of circumstances affecting the Administrative Agent's relevant market, adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBO Rate Loans,

then, upon notice from the Administrative Agent to the Borrower and the Lenders, the obligations of all Lenders under Section 2.3 and Section 2.4 to make or continue any Loans as, or to convert any Loans into, LIBO Rate Loans shall forthwith be suspended until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

SECTION 4.3 Increased LIBO Rate Loan Costs, etc. The Borrower agrees to reimburse each Lender for any increase in the cost to such Lender of, or any reduction in the amount of any sum receivable by such Lender in respect of, making, continuing or maintaining (or of its obligation to make, continue or maintain) any Loans as, or of converting (or of its obligation to convert) any Loans into, LIBO Rate Loans that arises in connection with any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in after the date hereof of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other Governmental Instrumentality, except for (a) such changes with respect to increased capital costs and taxes which are governed by Sections 4.5 and 4.6, respectively, and (b) any reserve requirement which is reflected in the LIBO Rate (Reserve Adjusted). Such Lender shall promptly notify the Administrative Agent and the Borrower in writing of the occurrence of any such event, such notice to state, in reasonable detail, the reasons therefor and the additional amount required fully to compensate such Lender for such increased cost or reduced amount and, if requested by the Borrower, shall include reasonably appropriate documentation confirming the occurrence of such event. Such additional amounts shall be payable by the Borrower directly to such Lender within five (5) days of its receipt of such notice, and such notice shall, in the absence of manifest error, be conclusive and binding on the Borrower.

SECTION 4.4 Funding Losses. In the event any Lender shall incur any loss or expense (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to make, continue or maintain any portion of the principal amount of any Loan as, or to convert any portion of the principal amount of any Loan into, a LIBO Rate Loan but excluding loss of profits) as a result of

(a) any conversion or repayment or prepayment of the principal amount of any LIBO Rate Loans on a date other than the scheduled last day of the Interest Period applicable thereto, whether pursuant to Section 3.1 or otherwise;

(b) any Loans not being made as LIBO Rate Loans in accordance with the Borrowing Request therefor; or

(c) any Loans not being continued as, or converted into, LIBO Rate Loans in accordance with the Continuation/Conversion Notice therefor,

then, upon the written notice of such Lender to the Borrower (with a copy to the Administrative Agent), the Borrower shall, within five (5) days of their receipt thereof, pay directly to such

Lender such amount as will (in the reasonable determination of such Lender) reimburse such Lender for such loss or expense. Such written notice (which shall include reasonably detailed calculations customarily made by the Administrative Agent with respect to such losses and expenses incurred in connection with other loans held by the Administrative Agent) shall, in the absence of manifest error, be conclusive and binding on the Borrower; provided, however, if requested by the Borrower, such Lender shall provide reasonably appropriate documentation confirming the amount of such loss or expense.

SECTION 4.5 Increased Capital Costs. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other Governmental Instrumentality affects or would affect the amount of capital required or expected to be maintained by any Lender or any Person controlling such Lender, and such Lender determines (in good faith but in its sole and absolute discretion) that the rate of return on its or such controlling Person's capital as a consequence of the Commitments or the Loans made by such Lender is reduced to a level below that which such Lender or such controlling Person could have achieved but for the occurrence of any such circumstance, then, in any such case upon written notice from time to time by such Lender to the Borrower, the Borrower shall pay directly to such Lender within (5) days all additional amounts sufficient to compensate such Lender or such controlling Person for such reduction in rate of return. A statement of such Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower; provided, however, if requested by the Borrower, such Lender shall provide reasonably appropriate documentation confirming the amount of such compensation. In determining such amount, such Lender may use any method of averaging and attribution that it (determines in good faith in its sole and absolute discretion) shall deem applicable.

SECTION 4.6 Lender's Tax. All payments by the Borrower of principal of, and interest on, the Loans and all other amounts payable hereunder (including fees) shall be made free and clear of and without deduction for any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, but excluding (x) franchise taxes and other taxes based on a Lender's net income or gross receipts imposed on such Lender by a Governmental Instrumentality located in (i) the jurisdiction where such Lender is organized or (ii) any jurisdiction in which such Lender maintains a lending office which is applicable to the Transaction contemplated hereunder and (y) any tax resulting from the failure of a Lender to deliver documentation required by the last two paragraphs of this Section 4.6 (each such non-excluded item being called a "**Lender's Tax**"). In the event that any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Lender's Tax pursuant to any applicable law, rule or regulation, then the Borrower shall,

- (a) pay directly to the relevant authority the full amount required to be so withheld or deducted;
- (b) promptly forward to the Administrative Agent an official receipt or other documentation satisfactory to the Administrative Agent evidencing such payment to such authority; and

(c) pay to the Administrative Agent for the account of the Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction been required.

Moreover, if any Lender's Tax is directly asserted against the Administrative Agent or any Lender with respect to any payment received by the Administrative Agent or such Lender hereunder, the Administrative Agent or such Lender may pay such Lender's Tax and the Borrower will promptly pay such additional amounts (including any penalties, interest or expenses) as is necessary in order that the net amount received by such Person after the payment of such Lender's Tax (including any Lender's Tax on such additional amount) shall equal the amount such Person would have received had not such Lender's Tax been asserted.

If the Borrower or any other Obligor fails to pay any Lender's Tax when due to the appropriate taxing authority or fails to remit to the Administrative Agent, for the account of the respective Lenders, the required receipts or other required documentary evidence, the Borrower and each Obligor shall indemnify the Lenders for any incremental Lender's Tax, interest or penalties that may become payable by any Lender as a result of any such failure. For purposes of this Section 4.6, a distribution hereunder by the Administrative Agent or any Lender to or for the account of any Lender shall be deemed a payment by the Borrower.

Each Lender that is organized under the laws of a jurisdiction other than the United States or a State thereof (for purposes of this Section 4.6, a "**Non-U.S. Lender**") shall, prior to the date on which any Loan is made hereunder (or in the case any Assignee Lender, before it becomes a party hereto) (a) execute and deliver to the Borrower and the Administrative Agent one or more (as the Borrower or the Administrative Agent may reasonably request) United States Internal Revenue Service Form W-8BEN or Form W-8ECI or such other forms or documents (or successor forms or documents), appropriately completed, certifying in each case that such Lender or Assignee Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, and an applicable Internal Revenue Service Form W-8BEN, Form W-8ECI or Form W-9 or successor applicable form (if required by law), as the case may be, to establish an exemption from United States backup withholding tax or (b) if such Non-U.S. Lender is not a "bank" or other person described in Section 881 (c) (3) of the Code and cannot deliver either Form W-8BEN or Form W-8ECI pursuant to clause (a) above, execute and deliver to the Borrower and the Administrative Agent one or more (as the Borrower or Administrative Agent may reasonably request) copies of the Tax Certificate, Form W-8BEN or Form W-8ECI (or any successor form) and any other certificate or statement of exemption required under the Code or Treasury Regulations issued thereunder, appropriately completed, certifying that such Lender or Assignee Lender is entitled to receive payments under this Agreement without deduction or withholding of United States federal income tax and establishing an exemption from United States backup withholding tax. All Lenders other than Non-U.S. Lenders shall, prior to the date on which any Loan is made hereunder (or in the case of an Assignee Lender, before such Lender becomes a party hereto), execute and deliver to the Borrower and the Administrative Agent one or more copies (as the Borrower or Administrative Agent may reasonably request) of United States Internal Revenue Form W-9 or successor applicable form (if required by law), as the case may be, to establish exemption from United States backup withholding tax.

Each Lender which undertakes to deliver to the Borrower a Tax Certificate, a Form W-8BEN, Form W-8ECI or Form W-9 pursuant to the preceding paragraph shall further undertake to deliver to the Borrower two further copies of said Tax Certificate, Form W-8BEN, Form W-8ECI or Form W-9 (if required by law), or successor applicable forms, or other manner of certification, as the case may be, on or before the date that such form expires or becomes obsolete or after the occurrence of an event requiring a change in the most recent form delivered by it to the Borrower and the Administrative Agent, and such extensions or renewals thereof as may be reasonably requested by the Borrower or Administrative Agent, certifying in the case of a Tax Certificate, Form W-8BEN or Form W-8ECI that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, unless in any case an event (including any change in treaty, law or regulation) has occurred prior to the date on which such delivery would otherwise be required which renders all forms inapplicable or which would prevent such Lender from duly completing and delivering any such form with respect to it and such Lender advises the Borrower and the Administrative Agent that it is not capable of receiving payments without any deduction or withholding of United States federal income tax, and in the case of a Form W-8BEN, Form W-8ECI or Form W-9, establishing an exemption from backup withholding.

SECTION 4.7 Payments, Computations, etc. Unless otherwise expressly provided, all payments by the Obligor pursuant to this Agreement or any other Loan Document shall be made by the Obligor to the Administrative Agent for the pro rata account of the Lenders entitled to receive such payment. All such payments required to be made to the Administrative Agent shall be made, without setoff, deduction or counterclaim, not later than 11:00 a.m., New York City time, on the date due, in same day or immediately available funds, to such account as the Administrative Agent shall specify from time to time by notice to the Borrower. Funds received after that time shall be deemed to have been received by the Administrative Agent on the next succeeding Business Day. The Administrative Agent shall promptly remit in same day funds to each Lender its share, if any, of such payments received by the Administrative Agent for the account of such Lender. All interest (including interest on LIBO Rate Loans) and fees shall be computed on the basis of the actual number of days (including the first day but excluding the last day) occurring during the period for which such interest or fee is payable over a year comprised of 360 days (or, in the case of interest on a Base Rate Loan, 365 days or, if appropriate, 366 days). Whenever any payment to be made shall otherwise be due on a day which is not a Business Day, such payment shall (except as otherwise required by clause (c) of the definition of the term “**Interest Period**”) be made on the next succeeding Business Day and such extension of time shall be included in computing interest and fees, if any, in connection with such payment.

SECTION 4.8 Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan or (other than pursuant to the terms of Section 4.3, 4.4, 4.5 or 4.6) in excess of its pro rata share of payments then or therewith obtained by all Lenders, such Lender shall purchase from the other Lenders such participations in Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided, however, that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the

purchase price to the ratable extent of such recovery together with an amount equal to such selling Lender's ratable share (according to the proportion of

(a) the amount of such selling Lender's required repayment to the purchasing Lender

to

(b) total amount so recovered from the purchasing Lender)

of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower and the Obligors agree that any Lender so purchasing a participation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 4.9) with respect to such participation as fully as if such Lender were the direct creditor of the Obligors in the amount of such participation. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

SECTION 4.9 Setoff. Each Lender shall, with the consent of the Required Lenders, upon the occurrence and during the continuance of an Event of Default, have the right to appropriate and apply to the payment of the Obligations owing to it (whether or not then due), and (as security for such Obligations) the Obligors hereby grant upon the execution of this Agreement to each Lender a continuing security interest in, any and all balances, credits, deposits, accounts or moneys of the Obligors then or thereafter maintained with such Lender; provided, however, that any such appropriation and application shall be subject to the provisions of applicable Legal Requirements (including prohibitions against any such appropriation and application with respect to payroll and trust accounts of the Obligors maintained with such Lender) and Section 4.8. Each Lender agrees promptly to notify the Obligors and the Administrative Agent after any such setoff and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff under applicable law or otherwise) which such Lender may have.

SECTION 4.10 Mitigation. Each Lender agrees that if it makes any demand for payment under Sections 4.3, 4.4, 4.5, or 4.6, or if any adoption or change of the type described in Section 4.1 shall occur with respect to it, it will use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be disadvantageous to it, as determined in its sole discretion) to designate a different lending office if the making of such a designation would reduce or obviate the need for the Obligors to make payments under Sections 4.3, 4.4, 4.5, or 4.6, or would eliminate or reduce the effect of any adoption or change described in Section 4.1.

ARTICLE V

CONDITIONS TO LOANS; EFFECTIVENESS

SECTION 5.1 Conditions Precedent to the Initial Commitment Amount of the DIP Facility. The availability of the Initial Commitment Amount of the DIP Facility shall be conditioned upon satisfaction or waiver of the following conditions precedent.

SECTION 5.1.1 Cases. The Cases shall have been commenced.

SECTION 5.1.2 First Day Orders. All of the First Day Orders and all related pleadings to be entered on the Petition Date or shortly thereafter shall have been reviewed in advance by the Administrative Agent and the Lenders and shall be satisfactory in form and substance to the Administrative Agent and the Lenders.

SECTION 5.1.3 Interim Order. (a) On or before the third (3rd) Business Day after the date upon which the Cases have been commenced, the Bankruptcy Court shall have entered the Interim Order substantially in the form of Exhibit T, upon motion in form and substance satisfactory to the Administrative Agent and the Lenders and on such prior notice to such parties as may be satisfactory to the Administrative Agent and the Lenders.

(b) The Interim Order shall not have been reversed, modified, amended, stayed or vacated and, in the case of any modification or amendment, in a manner that is adverse to the interests of the Lenders or the Prepetition Lenders, without the consent of the Administrative Agent and the Lenders.

(c) The Debtors shall be in compliance in all respects with the Interim Order.

SECTION 5.1.4 Trustee / Examiner. No trustee or examiner with enlarged powers shall have been appointed with respect to the Debtors or the Real Property Collateral.

SECTION 5.1.5 Delivery of Budget and Information. The Borrower shall have delivered a thirteen (13) week Budget covering the Budget Period commencing on the Effective Date, which Budget shall be approved by, and be in form and substance reasonably satisfactory to, the Administrative Agent and the Lenders, and such other material information (financial or otherwise) as reasonably requested by the Administrative Agent and the Lenders.

SECTION 5.1.6 Taxes and Liens Paid. All Taxes and Liens due and owing, except for Permitted Liens, shall have been paid and current and no action shall have been taken against the Real Property owned by the Obligors or any Improvements constructed thereon with regard to eminent domain.

SECTION 5.1.7 Property Documents. Each Property Document shall be in full force and effect, without amendment since the respective date of its execution and delivery (other than amendments which are permitted by this Agreement or which have otherwise been approved by the Administrative Agent and, in each case, which have been delivered to the Administrative Agent), and in a form which was approved by the Administrative Agent, except as otherwise permitted pursuant to this Agreement. All material obligations and requirements

thereunder which are to be performed or satisfied, as the case may be, shall have been performed and satisfied in all material respects and both before and after giving effect to this Agreement and any Instruments required hereunder, no act, condition or event shall exist which, with the giving of notice and/or passage of time would constitute a breach or event of default thereunder.

SECTION 5.1.8 Authority of the Obligors. Each of the Obligors shall deliver to the Administrative Agent (x) a copy of the Organizational Documents of such Person, certified by an Authorized Representative of such applicable Person, and (y) a copy of one or more resolutions or other authorizations of the Board of Managers or Board of Directors, as applicable, of the such applicable Person certified by the Authorized Representative of such Board of Managers or Board of Directors, as applicable, as being in full force and effect on the Effective Date, authorizing the Loans herein provided for, and the execution, delivery and performance of this Agreement, and any Instruments required hereunder or thereunder to which each such Person is a party.

SECTION 5.1.9 Incumbency of the Obligors. The Obligors shall deliver to the Administrative Agent a certificate from themselves, signed by an Authorized Representative of such applicable Person, and dated as of the Effective Date, as to the incumbency of the Person or Persons authorized to execute and deliver this Agreement, and any Instruments or agreements required hereunder or thereunder to which each such Person is a party.

SECTION 5.1.10 Corporate Proceedings. All corporate, limited liability company, partnership and legal proceedings and all Instruments in connection with the Transaction contemplated hereby, shall be reasonably satisfactory in form and substance to the Administrative Agent and the Administrative Agent shall have received all information and copies of all documents, including records of corporate, limited liability company or partnership proceedings and copies of any approval by any Governmental Instrumentality required in connection with the Loans and the Transaction contemplated hereby, which the Administrative Agent may reasonably have requested in connection therewith, such documents to be reasonably satisfactory in form and substance to the Administrative Agent and, where appropriate, to be certified by the requisite corporate, limited liability company or partnership officers or Governmental Instrumentalities.

SECTION 5.1.11 No Violation of Certain Regulations. Neither the entering into of this Agreement, nor any Instrument executed in connection therewith, shall violate any law, including Regulation T, Regulation U or Regulation X of the Board of Governors of the FRS Board.

SECTION 5.1.12 Fees. All amounts required to be paid to or deposited with the Administrative Agent, the Lenders, the Prepetition Agent and the Prepetition Lenders and all Taxes, fees and other invoiced costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 5.1 (including without limitation, the Administrative Agent's invoiced legal fees and costs and expenses), shall have been paid or deposited, as the case may be, in full. The Obligors shall have paid or cause to be paid (i) all Taxes, fees, expenses and other charges then due and payable by it under this Agreement and the other Loan Documents, including all Taxes, fees, costs and expenses due and payable pursuant to Sections 3.2 and 12.3, if then invoiced, in each case to the extent required to

be paid by the Obligors and (ii) all Taxes (as such term is defined in the Prepetition Loan Agreement), fees, expenses and other charges then due and payable by it under the Prepetition Loan Agreement, in each case, on or before the Effective Date.

SECTION 5.1.13 Delivery of Loan Documents by the Obligors. The Administrative Agent and the Lenders shall have received this Agreement and each other Loan Documents, duly executed and delivered by an Authorized Representative of each of the Obligors and satisfactory to the Administrative Agent and the Lenders in their sole discretion.

SECTION 5.1.14 Perfection of Liens. The Liens on the DIP Collateral and the Superpriority Claims described in Section 10.1 shall have been granted to the Administrative Agent for the benefit of the Lenders and the Adequate Protection described in Section 10.4 shall have been granted to the Prepetition Agent for the benefit of the Prepetition Lenders.

SECTION 5.1.15 Insurance Policies.

(a) Insurance maintained pursuant to the Prepetition Loan Agreement and covering the Prepetition Collateral shall be in place and in full force and effect and coverage shall extend to the Second Lien Real Properties, the Easements and the Improvements thereon. Comparable insurance covering the First Lien Collateral and the Second Lien Collateral shall be in place and in full force and effect and coverage shall extend, without limitation, to the First Lien Real Property, the Easements and Improvements thereon.

(b) The Obligors shall have delivered to the Administrative Agent certificates of insurance naming the Administrative Agent, for the benefit of the Lenders, as (i) an additional insured with respect to every commercial general liability policy maintained by the Obligors and (ii) a mortgagee and loss payee with respect to every property policy maintained by the Obligors, and such certificates shall otherwise be in form and substance satisfactory to the Administrative Agent and the Insurance Consultant.

(c) The Administrative Agent and the Lenders shall have received evidence of fully prepaid insurance coverages and endorsements complying with the provisions of Prepetition Loan Agreement and this Agreement, which shall be in form and substance satisfactory to the Administrative Agent and the Lenders.

SECTION 5.1.16 Information pursuant to Anti-Terrorism Laws. The Obligors shall have supplied the Administrative Agent and the Lenders with all information and documentation required under such Lender's Customer Identification Program (as defined in the Anti-Terrorism Laws) as stipulated by the Anti-Terrorism Laws.

SECTION 5.1.17 Satisfactory Form and Substance. All documents, closing certificates, resolutions, solvency letters and/or certificates executed or submitted pursuant hereto by or on behalf of the Obligors shall be provided to the Lenders and shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel.

SECTION 5.1.18 Ownership of Obligors. The Borrower shall directly own 100% of the Subsidiary Guarantor Membership Interests and, collectively, Parking Company of

America Airports Holdings, LLC, Frank Lemieux and Richard West shall own all of the issued and outstanding Capital Stock of the Borrower.

SECTION 5.1.19 Other Conditions. The Administrative Agent and the Lenders shall have received such other documents and evidence as the Administrative Agent and the Lenders may reasonably request in connection with the Transaction to the extent such request results from matters disclosed on the Disclosure Schedules or from matters that first come to the attention of the Administrative Agent or the Lenders after the Effective Date but prior to the date that the Initial Borrowing is made.

SECTION 5.1.20 Asset Purchase Agreement. The Administrative Agent and the Lenders shall have received the Asset Purchase Agreement, duly executed and delivered by an Authorized Representative of each Person that is a party thereto, in form and substance satisfactory to the Administrative Agent and the Lenders together with a certificate duly executed and delivered by an Authorized Representative of the Borrower certifying that all conditions to the effectiveness of the Asset Purchase Agreement have been satisfied or waived in writing.

SECTION 5.2 Conditions Precedent to the Full Commitment Amount of the DIP Facility. The availability of the Full Commitment Amount of the DIP Facility shall be conditioned upon satisfaction or waiver of the following conditions precedent:

SECTION 5.2.1 Conditions to the Initial Commitment Amount. Except as modified by this Section 5.2, the continued satisfaction of each of the conditions precedent to the availability of the Initial Commitment Amount as set forth in Section 5.1 hereof.

SECTION 5.2.2 Final Order. (A) The Final Order shall (i) have been entered by the Bankruptcy Court on a date that is not later than thirty (30) days after the Interim Order Entry Date, (ii) be in full force and effect, (iii) not have been reversed, stayed or vacated, and (iv) not have been modified or amended in a manner that is adverse to the interests of the Lenders or the Prepetition Lenders, without the consent of the Administrative Agent and the Lenders and (B) the Debtors shall be in compliance in all material respects with the Final Order.

SECTION 5.3 Conditions Precedent to All Loans. Not in limitation but in furtherance of the other conditions in this Agreement and the other Loan Documents after the Effective Date, the following ongoing conditions, in addition to the conditions contained in Section 5.1 and Section 5.2, shall be satisfied or waived prior to making any Loan.

SECTION 5.3.1 Representations and Warranties. Both before and after giving effect to any Borrowing after the Effective Date, the following statements shall be true and correct:

- (a) the representations and warranties contained in Article VI (excluding, however, those contained in Section 6.8) and each other Loan Document are accurate as if made on the Effective Date (except those that relate to a different date) except to the extent that the failure of the foregoing to be the case could not reasonably be expected to result in a Material Adverse Effect;

(b) except as disclosed by the Obligors to the Administrative Agent pursuant to Section 6.8 of this Agreement there exists

(i) no material litigation which could reasonably be expected to result in a Material Adverse Effect or which purports to affect the legality, validity or enforceability of any Loan Document; and

(ii) no material development shall have occurred in any litigation disclosed pursuant to Section 6.8 which could reasonably be expected to result in a Material Adverse Effect; and

(c) no claims that are senior to or pari passu with the Superpriority Claims of the Administrative Agent and the Lenders shall exist, other than the Carve-Out.

SECTION 5.3.2 No Defaults or Material Adverse Effect. No Default or Material Adverse Effect shall have occurred and be continuing or, after giving effect to such Borrowing, could reasonably be expected to result, as certified by the Borrower in the relevant Borrowing Request.

SECTION 5.3.3 Borrowing Request. The Administrative Agent shall have received a Borrowing Request, for the Loan being requested executed by an Authorized Representative of the Borrower together with all attachments, exhibits and certificates which conform to the requirements of Section 2.3. Each delivery of a Borrowing Request and the acceptance by the Borrower of the proceeds of such Loan shall constitute a representation and warranty by the Obligors that on the date of such Loan (both immediately before and after giving effect to such Loan and the application of the proceeds thereof) the statements made in Section 5.3.1 and Section 5.3.2 are true and correct in all material respects.

SECTION 5.3.4 Additional Documents. With respect to any Property Documents entered into or obtained, transferred or required since the date of the most recent Borrowing (if a subsequent Borrowing) there shall be redelivery of such matters as are described in Section 5.1.8, Section 5.1.10 (to the extent such Property Document is in substitution of or is a replacement for another Property Document) and, if requested by the Administrative Agent, Section 5.1.9, in each case to the extent not previously addressed. If such delivery or redelivery has not been made, the Borrowing shall not be made by the Lenders until the conditions set forth herein have been satisfied.

SECTION 5.3.5 Fees and Expenses. The Borrower shall have paid out of the requested Borrowing or otherwise all fees, costs, expenses and other charges then due and payable by it under this Agreement and the other Loan Documents or under any agreements between the Administrative Agent, Lenders and any of the Independent Consultants.

SECTION 5.3.6 No Restriction. No order, judgment or decree of any court, arbitrator or Governmental Instrumentality shall purport to enjoin or restrain Obligors, the Administrative Agent and/or any of the Lenders from making the Borrowing to be made by it or the Borrower accepting the proceeds thereof on the date such Borrowing is made by the Lenders pursuant to the Borrowing Request.

SECTION 5.3.7 Satisfactory Form and Substance. All documents, closing certificates, resolutions and/or certificates executed or submitted with respect to such Borrowing shall be reasonably satisfactory in form and substance to the Administrative Agent, the Lenders and their respective counsel.

SECTION 5.3.8 Orders. (A) The Interim Order or the Final Order, as applicable, shall (i) be in full force and effect and (ii) not have been reversed, vacated, modified, amended (in a manner that is adverse to the interests of the Lenders, without the consent of the Administrative Agent and the Lenders) or subject to a stay pending appeal and (B) the Debtors shall be in compliance in all respects with the Interim Order or the Final Order, as applicable.

SECTION 5.3.9 Approved Budget. With regard to any Budget Period during which a Borrowing is to occur, the Administrative Agent and the Lenders shall have approved the Budget for such Budget Period in accordance with the provisions of Section 7.1.3 hereof.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders and the Administrative Agent to enter into this Agreement and to make the Commitments hereunder, the Obligors represent and warrant unto the Administrative Agent and each Lender as set forth in this Article VI.

SECTION 6.1 Organization, etc. The Obligors are validly organized and existing and in good standing under the laws of the state or jurisdiction of their respective organization, are duly qualified to do business and are in good standing in each jurisdiction where the nature of their business requires such qualification and where failure to do so could reasonably be expected to result in a Material Adverse Effect; and have full power and authority and hold all requisite governmental licenses, permits and other approvals to enter into and perform their respective Obligations under this Agreement and each of the other Loan Documents to which they are a party and to own, hold and, if applicable, lease their property and to conduct their business substantially as currently conducted by it the absence of which could reasonably be expected to result in a Material Adverse Effect.

SECTION 6.2 Due Authorization, Non-Contravention, etc. The execution, delivery and performance by the Obligors of this Agreement and each of the other Loan Documents to which it is a Party, and participation by them, in the consummation of all aspects of the Transaction, and the execution, delivery and performance by them of the other material agreements executed and delivered in connection with the Transaction are, in each case, within the such Person's powers, have been duly authorized by all necessary action, and do not

- (a) contravene any Organizational Documents of such Person;
- (b) contravene any of the Loan Documents or Property Documents binding on or affecting such Person;

(c) contravene any contractual restriction (other than those referenced in clause (b) of this Section 6.2) binding on or affecting such Person in a manner that could reasonably be expected to result in a Material Adverse Effect;

(d) contravene in any material respect (i) any court decree or order binding on or affecting any such Person or (ii) any Legal Requirement binding on or affecting any such Person; or

(e) result in, or require the creation or imposition of, any Lien on any of such Person's properties (other than Permitted Liens).

SECTION 6.3 Government Approval, Regulation, etc. After giving effect to the Interim Order or the Final Order, as applicable, no material authorization or approval or other action by, and no material notice to or filing with, any Governmental Instrumentality or regulatory body or other Person (other than those that have been, or on the Effective Date will be, duly obtained or made and which are, or on the Effective Date will be, in full force and effect) is required for the due execution, delivery or performance by the Obligors of this Agreement and any other Loan Document to which they are a party, in each case, by the parties thereto, or the consummation of the Transaction.

SECTION 6.4 Validity, etc. After giving effect to the Interim Order or the Final Order, as applicable, this Agreement and each of the Loan Documents will, on the due execution and delivery thereof by the Obligors party thereto, constitute the legal, valid and binding obligation of such Person enforceable against it in accordance with its terms (except, in any case above, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by principles of equity).

SECTION 6.5 Budget. The Budget:

(a) sets forth the amount allocated to each line item during the Budget Period covered by such Budget and the total amounts which are anticipated to be incurred through the end thereof;

(b) is consistent in all material respects with the provisions of the Loan Documents and the Orders, and, after delivery thereof, the plan of reorganization;

(c) has been prepared in good faith, is based upon reasonable assumptions and to the best knowledge of the Borrower, fairly represents its current expectation as to the matters covered thereby.

SECTION 6.6 Financial Information. The financial statements of the Obligors and the Real Property Collateral furnished or to be furnished to the Administrative Agent, pursuant to Section 7.1.1(a) have been prepared in accordance with the Borrower's past practice prior to the Effective Date with respect thereto, and pursuant to Section 7.1.1(b) and (c) have been prepared in accordance with GAAP consistently applied, and, collectively, all financial statements furnished pursuant to Section 7.1.1 or otherwise present fairly in all material respects the financial condition of the Obligors and the Real Property Collateral as at the dates thereof and the results of their operations for the periods to which such financial statements relate. All

balance sheets, all statements of operations, equity amounts, cash flow and all other financial information of the Obligors and the Real Property Collateral furnished or to be furnished, pursuant to Section 7.1.1(a) have been prepared in accordance with the Borrower's past practice prior to the Effective Date with respect thereto, and pursuant to Section 7.1.1(b) and (c) have been and will be, for periods to which such statements relate following the Effective Date, prepared in accordance with GAAP consistently applied, and all financial statements furnished pursuant to Section 7.1.1 or otherwise present fairly in all material respects the financial condition of the Obligors and the Real Property Collateral as at the dates thereof and the results of their operations for the periods then ended, except that quarterly financial statements may not include footnote disclosure and may be subject to ordinary year-end adjustment.

SECTION 6.7 No Material Adverse Effect. There does not exist, nor has there been on and after the Effective Date, any Material Adverse Effect.

SECTION 6.8 Litigation, Labor Controversies, etc. There is no pending material litigation, action, proceeding, or labor controversy which could reasonably be expected to result in a Material Adverse Effect or which purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document or Property Document, except for the Cases and as disclosed in Item 6.8 of the Disclosure Schedule.

SECTION 6.9 Representations and Warranties. As of the Effective Date, all representations and warranties of the Obligors contained in the Loan Documents are true, correct and complete in all material respects and the Obligors hereby confirm each such representation and warranty made by it with the same effect as if set forth in full herein.

SECTION 6.10 Ownership of Properties. The Obligors do not own, lease or hold any option to own or lease any Real Property other than the Real Property Collateral, the Easements, the Improvements and the properties listed in Item 6.10 of the Disclosure Schedule. Each of the Obligors (x) in the case of Real Property owned by it or them, has good and marketable fee title to such owned Real Property, (y) in the case of Real Property leased by it or them, holds valid and enforceable leasehold interests in all of such leased Real Property and (z) has good legal and beneficial title to the property (including, without limitation, the Real Property Collateral), assets and revenues on which each purports to grant Liens pursuant to the Loan Documents, in each case, free and clear of all Liens or claims, except for Permitted Liens. Each of the Obligors (x) in the case of personal property owned by it or them, has good and valid title to, and (y) in the case of personal property leased by it or them, holds valid and enforceable leasehold interests in, all of such material personal properties and assets, tangible and intangible, of any nature whatsoever, free and clear in each case of all Liens or claims other than Permitted Liens. None of the Obligors are a party to any agreement which grants an option to any person to purchase or lease any Real Property or any personal property owned or leased by any of the Obligors.

SECTION 6.11 Taxes. (a) The Obligors have filed, or caused to be filed, all material Tax and informational returns that are required to have been filed by it in any jurisdiction, and have paid all material Taxes shown to be due and payable on such returns and all other Taxes and assessments payable by it or them, to the extent the same have become due and payable (other than those Taxes that it is contesting in good faith and by appropriate proceedings, with adequate, segregated reserves established for such Taxes) and, to the extent such Taxes are not

due, has established reserves therefor by allocating amounts that are adequate for the payment thereof and are required by GAAP, consistently applied.

(b) None of the Obligors has incurred any material Tax liability in connection with the Real Property Collateral, the Easements or the Improvements thereon or the Transaction which has not been disclosed in writing to, and approved by, the Administrative Agent, except as set forth in Item 6.11(b) of the Disclosure Schedule.

SECTION 6.12 Pension and Welfare Plans. Prior to the Effective Date and prior to the date of any Loan hereunder, no steps have been taken to terminate any Pension Plan, and no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under section 302(f) of ERISA, unless such Lien is not valid pursuant to the Bankruptcy Code. Except as disclosed in Item 6.12 of the Disclosure Schedule, no condition exists or event or transaction has occurred with respect to any Pension Plan which would reasonably be expected to result in the incurrence by any Obligor of any material liability, fine or penalty. Except as disclosed in Item 6.12 of the Disclosure Schedule none of the Obligors has any material Contingent Liability with respect to any post-retirement benefit under a Welfare Plan, other than liability for continuation coverage described in Part 6 of Title I of ERISA.

SECTION 6.13 Permits. There are no material Permits that are required or will become required for the ownership or operation of the Real Property Collateral, the Easements, the Improvements thereon or the Obligors' businesses other than the Permits disclosed to the Administrative Agent. Each Permit required to be obtained by the date that this representation is deemed to be made is in full force and effect and is not at such time subject to any appeals or further proceedings (other than with respect to renewal of such Permit from time to time) or to any unsatisfied condition that may allow modification or revocation. Each Permit not required to have been obtained by the date that this representation is deemed to be made is of a type that is routinely granted on application or the failure to obtain would not reasonably be expected to result in a Material Adverse Effect. The Obligors have no reason to believe that any required Permit will not be obtained or that obtaining such Permit will result in undue expense or delay. None of the Obligors is in material violation of any condition in any Permit.

SECTION 6.14 Reorganization Matters. The Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and proper notice of the hearings to consider entry of the Interim Order has been given and proper notice of the hearing to consider entry of the Final Order will be given.

(a) After the entry of the Interim Order and the Final Order, as applicable, except for the Carve-Out the Obligations will constitute allowed administrative expense claims in each of the Cases having priority over all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising, of any kind whatsoever, to the extent provided and as more fully set forth in the Interim Order and the Final Order.

(b) The Interim Order (with respect to the Interim Period) or the Final Order (with respect to the period following the Interim Period), as the case may be, is in full

force and effect and has not been reversed, stayed, modified, varied or amended without the consent of the Administrative Agent and the Lenders.

(c) After the entry of the Interim Order (with respect to the Interim Period) or the Final Order (with respect to the period following the Interim Period), notwithstanding the provisions of Section 362 of the Bankruptcy Code, upon the DIP Facility Termination Date (whether by acceleration or otherwise) of any of the Obligations, the Administrative Agent and the Lenders shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder and under the other Loan Documents with respect to the First Lien Collateral, without further application to or order by the Bankruptcy Court, as more fully set forth in, and subject to, the Interim Order and the Final Order.

SECTION 6.15 Environmental Warranties. Except as set forth in Item 6.15 in the Disclosure Schedule:

(a) all facilities, property, Real Property and the Real Property Collateral owned or leased by one or more of the Obligors are owned or leased by such Person in material compliance with all Environmental Laws;

(b) there are no pending or, to the knowledge of the Obligors, threatened

(i) claims, complaints, written notices or written requests for information received by any of the Obligors with respect to any alleged material violation of any Environmental Law, or

(ii) complaints, written notices or written inquiries to any of the Obligors regarding potential material liability under any Environmental Law relating to such facilities and property;

(c) there have been no Releases of Hazardous Substances at, on or under any property, including, without limitation, the Real Property Collateral now owned or leased by one or more of the Obligors or relating to the Real Property Collateral, or any Easements or the Improvements thereon that could reasonably be expected to give rise to a remedial obligation that, singly or in the aggregate, have, or could reasonably be expected to result in a Material Adverse Effect;

(d) the Obligors are in material compliance with all Permits relating to environmental matters which are necessary for their businesses;

(e) to the knowledge of the Obligors, no property now owned or leased by any of the Obligors is listed on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list of sites requiring investigation or clean-up;

(f) to the knowledge of the Obligors, there are no underground storage tanks, active or, to the knowledge of any of the Obligors, abandoned, including petroleum storage tanks, on or under any property now owned or leased by one or more of the Obligors;

(g) to the knowledge of the Obligors, none of them has directly transported or directly arranged for the transportation of any Hazardous Substances to any location which is listed on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list or which is the subject of federal, state or local enforcement actions or other investigations which may lead to material claims against any of the Obligors for any remedial work, damage to natural resources or personal injury, including claims under CERCLA;

(h) to the knowledge of the Obligors, there are no polychlorinated biphenyls or friable asbestos present at any property now owned or leased by any of the Obligors; and

(i) to the knowledge of the Obligors, no conditions exist at, on or under any property owned or leased by one or more of the Obligors which, with the passage of time, or the giving of notice or both, would give rise to a material remedial obligation under any Environmental Law.

SECTION 6.16 Intellectual Property. The Obligors own or hold licenses (as the case may be) or will own or hold licenses for all such patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights and copyrights as is necessary for the conduct of their respective businesses without any infringement upon rights of other Persons and there is no individual patent, patent right, trademark, trademark right, trade name, trade name right, service mark, service mark right or copyright the loss of which could reasonably be expected to result in a Material Adverse Effect except as may be disclosed in Item 6.16 in the Disclosure Schedule.

SECTION 6.17 Regulations U and X. The Obligors are not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Loans will be used to purchase or carry margin stock or otherwise for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation U or X. Terms for which meanings are provided in F.R.S. Board Regulation U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section 6.17 with such meanings.

SECTION 6.18 Accuracy of Information. The factual information (including the Loan Documents and Schedule I), taken as a whole, heretofore or contemporaneously furnished by or on behalf of the Obligors to the Administrative Agent or any Lender for the purposes of, or in connection with, the Loan Documents is true and correct in all material respects. The projections that have been or will be made available to the Administrative Agent by or on behalf of the Obligors have been or will be prepared in good faith based upon reasonable assumptions.

SECTION 6.19 No Defaults. No Defaults have occurred and are continuing.

SECTION 6.20 Contingent Liabilities. None of the Obligors has any material Contingent Liabilities in respect of Indebtedness or obligations except those not prohibited by this Agreement.

SECTION 6.21 Business, Indebtedness, etc. None of the Obligors has conducted any business other than the business contemplated by the Loan Documents and the Property

Documents. None of the Obligors has any outstanding Indebtedness other than Indebtedness incurred or permitted under the Loan Documents.

SECTION 6.22 Fees and Enforcement. Other than amounts that have been paid in full or will have been paid in full by the Effective Date or the date thereafter when due for same, no material fees or Taxes, including stamp, transaction, registration or similar taxes, are required to be paid for the legality, validity or enforceability of the Loan Documents.

SECTION 6.23 ERISA Compliance. The Obligors and each member of the Controlled Group have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each Pension Plan in compliance in all material respects with the currently applicable provisions of ERISA and the Code relating to such minimum funding standards and have not incurred any material liability to the PBGC under Title IV of ERISA (other than liability for premiums due in the ordinary course). Unless otherwise permitted under the Bankruptcy Code, neither the execution of this Agreement or the other Loan Documents nor the consummation of the Transaction is reasonably expected to constitute a “prohibited transaction” on the part of any of the Obligors within the meaning of Section 406 of ERISA or Section 4975 of the Code which is not exempt under (i) Section 408 of ERISA, (ii) under Section 4975(d) of the Code, (iii) regulations thereunder or (iv) an individual or class exemption.

SECTION 6.24 Labor Disputes; Acts of God; Casualty and Condemnation. The Real Property Collateral, the Easements, the Improvements thereon and the businesses of the Obligors are not affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty, except as set forth in Item 6.24 in the Disclosure Schedule as in effect on the Effective Date or after the Effective Date as could not reasonably be expected to result in a Material Adverse Effect. As of the date that this representation is made or deemed to be remade, there are no casualty or condemnation proceedings pending or, to the best knowledge of the Obligors, threatened, affecting all or a portion of the Real Property Collateral, the Easements or the Improvements thereon.

SECTION 6.25 Liens. Except for Permitted Liens, none of the Obligors has secured or agreed to secure any Indebtedness by any Lien upon any of its or their present or future revenues or assets or Equity Interests of their Subsidiaries. Except for Permitted Liens, none of the Obligors has any outstanding Lien or obligation or agreement to create Liens on or with respect to the Real Property Collateral, any of its other properties or revenues.

SECTION 6.26 Offices; Location of Collateral. The “location” (as such term is used in Section 9-307 of the Uniform Commercial Code as in effect in the State of New York from time to time) of each of the Obligors and the federal employer identification number of each such Person is set forth in Item 6.26 of the Disclosure Schedule.

SECTION 6.27 Government Regulation. None of the Obligors is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act or the Interstate Commerce Act or registration under 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.

SECTION 6.28 No Brokers. The Obligors represent that no broker or finder was responsible for or involved with the parties in connection with the Transaction and that there is no obligation for the payment of any brokerage commission, compensation or fee of any kind with respect to this Agreement or any other Loan Document except those set forth in Item 6.28 in the Disclosure Schedule.

SECTION 6.29 Subsidiaries. (a) The Borrower represents that:

- (i) it has no Subsidiaries other than the Subsidiary Guarantors; and
- (ii) 100% of its Capital Stock is collectively owned directly or indirectly by Parking Company of America Airports Holdings, LLC, Frank Lemieux and/or Richard West.

(b) Each Subsidiary Guarantor represents that:

- (i) it has no Subsidiaries; and
- (ii) 100% of its Capital Stock is owned directly or indirectly by the Borrower.

SECTION 6.30 Legal Requirements. The Obligors represent that:

(a) they are in compliance with all Legal Requirements applicable to them, except for any non-compliance that could not reasonably be expected to result in a Material Adverse Effect;

(b) except as set forth in Item 6.30 of the Disclosure Schedule, none of the Obligors has received any notice from any Governmental Instrumentality stating that a violation exists or has occurred under or with respect to any material Legal Requirement applicable to the Real Property Collateral owned by it, the Easements, the Improvements thereon or other property owned by it or them; and

(c) except as set forth in Item 6.30 of the Disclosure Schedule, no order, judgment or decree of any Governmental Instrumentality purports to enjoin or restrain the Obligors (i) from engaging in the businesses at the Real Property Collateral owned by them as presently conducted or (ii) from entering into this Agreement or any of the other Loan Documents to which any Obligor is a party.

SECTION 6.31 Prepetition Security Interests. The Obligors recognize, acknowledge and affirm that the credit extended by the Prepetition Agent and the Prepetition Lenders pursuant to the Prepetition Loan Agreement is secured by valid, perfected, enforceable first-priority Liens and security interests in the Prepetition Collateral granted by the Prepetition Borrowers to the Prepetition Agent for the benefit of the Prepetition Lenders, which Liens and security interests are not subject to challenge, subordination, defense, disallowance and are not otherwise avoidable liens.

SECTION 6.32 No Offsets. None of the Obligors has any offsets or defenses to their obligations under the Loan Documents or any claims or counterclaims against the Administrative Agent or the Lenders.

SECTION 6.33 Foreign Person. None of the Obligors is a “foreign person” within the meaning of Sections 1445 or 7701 of the Code.

SECTION 6.34 Anti-Terrorism Laws. None of the Obligors is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

SECTION 6.34.1 Executive Order No. 13224. None of the Obligors is any of the following (each a “**Blocked Person**”):

- (a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;
- (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;
- (c) a Person or entity with which any bank or other financial institution is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
- (d) a Person or entity that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224;
- (e) a Person or entity that is named as a “specially designated national” on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list; or
- (f) a Person who is affiliated with a Person listed above.

None of the Obligors (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

SECTION 6.35 OFAC. None of the Obligors is in violation of any rules or regulations promulgated by OFAC or of any economic or trade sanctions or engages in any transaction administered and enforced by OFAC or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any rules or regulations promulgated by OFAC.

ARTICLE VII

COVENANTS

SECTION 7.1 Affirmative Covenants. The Obligors agree with the Administrative Agent and each Lender that, until all Commitments have terminated and all Obligations have been indefeasibly paid and performed in full (other than indemnification Obligations surviving the expiration or earlier termination of this Agreement), the Obligors will perform or cause to be performed the obligations set forth in this Section 7.1.

SECTION 7.1.1 Financial Information, Reports, Notices, etc. Each of the Obligors will furnish, or will cause to be furnished, to the Administrative Agent copies of the following financial statements, reports, notices and information:

- (a) as soon as available and in any event within ten (10) Business Days after the end of each month other than the last month of any Fiscal Quarter, a consolidated income statement, a balance sheet and a statement of earnings and cash flow of the Borrower and the other Obligors, in each case, as of the end of such month, certified as complete and correct by the chief financial or accounting Authorized Representative of each such Person;
- (b) as soon as available and in any event within forty-five (45) days after the end of each Fiscal Quarter, a copy of the quarterly consolidated financial statements, consolidated balance sheet and consolidated statement of earnings and cash flow for such Fiscal Quarter of the Borrower and the other Obligors as of the end of such Fiscal Quarter and for the period commencing at the end of the previous year and ending with the end of such Fiscal Quarter certified as complete and correct by the chief financial or accounting Authorized Representative of each such Person;
- (c) as soon as available and in any event within ninety (90) days after the end of each Fiscal Year, a copy of the annual consolidated financial statements for such Fiscal Year, consolidated balance sheet and consolidated statement of earnings and cash flow for such Fiscal Year for the Borrower and the other Obligors certified as complete and correct by the chief financial or accounting Authorized Representative of each such Person;
- (d) as soon as available and in any event within twenty (20) days after the end of each calendar month, a Compliance Certificate, executed by the chief financial or accounting Authorized Representative of the Borrower and each other Obligor, showing compliance with its covenants set forth herein;
- (e) at or before 5:00 PM New York time on each Tuesday after the end of each Budget Variance Review Period, a report (with a copy to the Prepetition Agent) setting forth (x) the amount of Available Cash at the end of the immediately preceding Budget Variance Review Period and (y) the then current amount of Excess Available Cash, each as determined on a book basis;

(f) as soon as possible and in any event within five (5) days after any of the Obligors obtain knowledge of the occurrence of a Default under the Loan Documents, a statement of the chief executive, financial or accounting Authorized Representative of each of the Obligors setting forth details of such Default and the action which such Person has taken and proposes to take with respect thereto;

(g) as soon as possible and in any event within five (5) Business Days after any of the Obligors obtain knowledge of (x) the occurrence of any material adverse development with respect to any litigation, action, proceeding or labor controversy of the type and materiality described in Section 6.8, or (y) the commencement or threatening in writing, of any litigation, action, proceeding or labor controversy of the type and materiality described in Section 6.8, notice thereof and, to the extent the Administrative Agent or the Lenders reasonably requests, copies of all documentation relating thereto, except to the extent that such delivery would breach any confidentiality agreement or affect adversely the privileged nature of any such document;

(h) promptly after the sending or filing thereof, copies of all material reports, registration statements and financial statements delivered to any Governmental Instrumentality with respect to the Real Property Collateral;

(i) as soon as possible and in any event within five (5) Business Days after becoming aware of (v) the institution of any steps by any of the Obligors or any other Person to terminate any Pension Plan if termination of such plan would reasonably be expected to result in a liability to any of the Obligors in excess of \$1,000,000, (x) the failure to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA, (y) the occurrence of any event with respect to any Pension Plan which could reasonably be expected to result in the incurrence by any of the Obligors of any material liability, fine or penalty, notice thereof and copies of all documentation relating thereto or (z) any material increase in the Contingent Liability of any of the Obligors with respect to any post-retirement Welfare Plan benefit, notice thereof and copies of all documentation relating thereto;

(j) any change in the Authorized Representatives of any of the Obligors and such notice shall include a certified specimen signature of any new Authorized Representative so appointed and, if requested by the Administrative Agent, satisfactory evidence of the authority of such new Authorized Representative;

(k) the occurrence or existence of any material Environmental Matter requiring written notice to a Governmental Instrumentality or with respect to which written notice is received from a Governmental Instrumentality;

(l) any Event of Loss or any other event or development known to any Obligor which could reasonably be expected to result in a Material Adverse Effect; and

(m) promptly, but in no event later than five (5) days after the receipt thereof by any of the Obligors, copies of (x) any material document or agreement entered into on or after the Effective Date, relating to the maintenance or operation of the Real Property

Collateral and any Permits obtained or entered into by any of the Obligors after the Effective Date, (y) any amendment, supplement or other modification to any Permit received by any of the Obligors after the Effective Date and (z) all material notices relating to the Real Property Collateral, Permits or any of the Obligors, received by or delivered to the Borrower or any other Obligor from any Governmental Instrumentality or any other Person.

All factual information furnished to the Administrative Agent or any Lender after the Effective Date in connection with any Loan Document, Property Document, or with respect to any Obligor will be true and correct in all material respects.

SECTION 7.1.2 Compliance with Laws, etc. Each of the Obligors shall comply with all applicable Legal Requirements, including:

- (a) the post-petition maintenance and preservation of the corporate or other organizational existence of such Person and each of their material rights, privileges and contractual obligations; and
- (b) the payment, before the same become delinquent, of all material post-petition obligations, including material Taxes, assessments and charges imposed upon it or upon its property by any Governmental Instrumentality, except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves, if any, in accordance with GAAP, consistently applied, shall have been set aside on its books;

except for any non-compliance that could not reasonably be expected to result in a Material Adverse Effect.

SECTION 7.1.3 Budget and Variance, as Modified or Approved by Agent.

- (a) From and after the Effective Date, all uses and anticipated uses of the DIP Facility, revenues projected to be received and all expenditures proposed to be made during any Budget Period and other cash flow and financial projections of each of the Obligors shall be set forth in the line items of the applicable Budget for such Budget Period.
- (b) Within ten (10) Business Days prior to the end of the each Budget Period, the Obligors shall deliver to the Administrative Agent and the Lenders an updated Budget covering their respective businesses for the thirteen (13) weeks commencing on the first Business Day after the end of the current Budget Period (the “**Amended Budget**”) which Budget shall be subject to the approval of the Lenders. If there is no approval to such Amended Budget from all Lenders within two (2) Business Days, such Amended Budget shall be deemed to be disapproved by the Lenders and the then existing Budget as modified and projected on a rolling basis pursuant to the weekly Budget Update and Variance Reports shall, until there is an agreement between the Borrower and the Lenders on a new Amended Budget, be deemed to be in force and effect as the Budget.

(c) As soon as available but not later than 5:00 PM New York time on Wednesday of each calendar week (or, if such Wednesday is not a Business Day, on the next succeeding Business Day), in form and substance that is acceptable to the Administrative Agent and the Lenders, the Obligors shall deliver to the Administrative Agent and the Lenders each of the following items in a report certified by the chief financial or accounting authorized officer of the Borrower (such report, the “**Budget Update and Variance Report**”):

(i) a comparative reconciliation, on a line by line basis, for the immediately preceding Budget Variance Review Period and the Cumulative Budget Variance Review Period to date, of (A) Actual Net Cash Flow against the Budget Net Cash Flow forecasted in the initial Budget, together with the Net Cash Flow Variance thereof, (B) Actual Receipts against the Budget Receipts forecasted in the initial Budget, together with the Receipt Variance thereof, and (C) Actual Expenditures against the Budget Expenditures forecasted in the initial Budget, together with the Expenditure Variance thereof;

(ii) a written explanation of any such variance that is (A) less than 90% of the related amount set forth in the initial Budget, in the case of the Net Cash Flow Variance or the Receipt Variance, and (B) in excess of 110% of the related amount set forth in the initial Budget, in the case of the Expenditure Variance; and

(iii) rolling projections for the following thirteen (13) week period, including rolling forecasted Budget Receipts, Budget Disbursements and Budget Net Cash Flow for such period with all changes to the then applicable Budget reflected in a redline format.

(d) Each Thursday (or as soon as practicable thereafter) after the end of each Budget Variance Review Period, the Borrower, and any other Obligors or Persons as are reasonably requested from time to time, shall participate on a regularly scheduled conference call with the Administrative Agent, their advisors and any available Lender to discuss the operations and finances of the Obligors, the Budget Update and Variance Report, and other matters as the Administrative Agent or Lenders may reasonably request.

(e) Notwithstanding anything to the contrary in this Section 7.1.3, the line items in any Budget specifying the amount of anticipated expenses included within the Carve-Out shall neither limit the Obligors’ expenditures in respect of such line items nor reduce or limit the Carve-Out.

SECTION 7.1.4 Carve-Out. The Carve-Out shall be reflected in (but not limited by) the Budget.

(a) On the day on which a Carve-Out Trigger Notice is given to the Borrower, the Borrower shall fund a segregated account (the “**Carve-Out Account**”) in an aggregate amount equal to the Carve-Out on such date.

(b) Amounts on deposit in the Carve-Out Account shall be used solely to pay the amounts included in the definition of Carve-Out and the balance in the Carve-Out Account shall not be available to pay the principal amount of the Loans or to pay any pre-petition or other post-petition obligations until such time as the amounts included in the definition of Carve-Out have been paid in full, notwithstanding any purported or asserted Lien, claim or right to such balance.

(c) Nothing herein shall constitute a waiver by the Prepetition Agent, the Prepetition Lenders, the Administrative Agent or the Lenders of their rights to object to the fees and expenses of any Professional retained by the Debtors or any Committee, all such rights being specifically reserved.

(d) The DIP Facility, the Prepetition Collateral, the DIP Collateral, all cash, cash collateral and Available Cash and the Carve-Out (including any proceeds on deposit in the Carve-Out Account) shall not be available for any fees or expenses incurred by any party, including any Debtor or any Committee, or its or their Professionals, in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings, contested matter, objection, other litigation or discovery against any of the Prepetition Agent, the Prepetition Lenders, the Administrative Agent, the Lenders, or their advisors, agents or subagents, including, without limitation, challenging the amount, validity, perfection, priority or enforceability of, or asserting any defense, counterclaim or offset to, the Obligations and the Liens and claims granted hereunder in favor of the Prepetition Agent, the Prepetition Lenders, the Administrative Agent and the Lenders; provided, however, that notwithstanding the foregoing, if a Creditors' Committee is appointed in the Cases, it may spend up to an aggregate amount not to exceed \$10,000 of proceeds of the DIP Facility or the Carve-Out, as the case may be, to investigate potential claims arising out of, or in connection with, the Prepetition Loans or the security interests and liens of the Prepetition Agent and Prepetition Lenders under the Prepetition Collateral with respect thereto.

SECTION 7.1.5 Maintenance of Properties; Reserves. The Obligors shall maintain, preserve, protect and keep the Real Property Collateral in good repair, working order and condition (ordinary wear and tear excepted), and make necessary and proper repairs, renewals and replacements so that their businesses carried on in connection therewith may be properly conducted at all times. The Obligors shall maintain adequate working capital reserves and other reserves as set forth in the Budget to be delivered from time to time by the Borrower in accordance with clause (b) of Section 7.1.3.

SECTION 7.1.6 Insurance. The Prepetition Borrowers shall maintain the insurance required under the Prepetition Loan Agreement and shall comply in all material respects with the Insurance Requirements. Each of the Obligors shall maintain, with respect to the First Lien Collateral and Second Lien Collateral, insurance comparable to that required under the Prepetition Loan Agreement and shall comply in all material respects with the Insurance Requirements with respect thereto.

SECTION 7.1.7 Books and Records. Each of the Obligors shall maintain adequate books, accounts and records with respect to the Real Property Collateral and the other

property owned by it in compliance in all material respects with the regulations of any Governmental Instrumentality having jurisdiction thereof and, with respect to financial statements, in accordance with GAAP, consistently applied. The Obligors shall permit (at the their sole cost and expense) employees, agents and accountants of the Administrative Agent at any reasonable times and upon reasonable prior notice to inspect the Real Property Collateral and the other property owned by them, to examine or audit all of the books, accounts and records pertaining or related thereto or to the Obligors or any of them, to make copies and memoranda thereof and, with respect to any Environmental Matters, to perform any tests or studies and prepare any reports reasonably required by the Administrative Agent. So long as no Event of Default has occurred and is continuing, each Obligor shall not be obligated to pay for more than one inspection, examination and audit requested of it by the Administrative Agent during each calendar quarter.

SECTION 7.1.8 Environmental. Each of the Obligors shall:

- (a) use and operate the Real Property Collateral in material compliance with all Environmental Laws, keep all necessary Permits relating to environmental matters in effect and remain in material compliance therewith, and handle all Hazardous Substances in material compliance with all applicable Environmental Laws;
- (b) promptly notify the Administrative Agent and provide copies upon receipt of all material written claims, complaints, notices or inquiries relating to potential liability under or non-compliance with, Environmental Laws in connection with the Real Property Collateral, and shall promptly resolve or diligently undertake to resolve any material non-compliance with Environmental Laws and keep its property free of any Lien imposed by any Environmental Law; and
- (c) provide such information and certifications which the Administrative Agent may reasonably request from time to time to evidence compliance with this Section 7.1.8.

SECTION 7.1.9 Additional Collateral. The Obligors shall cause the Administrative Agent to have at all times a first priority perfected security interest (subject only to Permitted Liens) in all of the First Lien Collateral and a second priority perfected security interest (subject only to Permitted Liens) in all of the Second Lien Collateral and a perfected security interest (subject only to Permitted Liens) in all of the property (real and personal) owned by any of the Obligors from time to time hereafter.

SECTION 7.1.10 Use of Proceeds / Available Cash and Cash Collateral.

- (a) The proceeds of the DIP Facility will be used in accordance with the applicable Budget to, inter alia, provide working capital and for other general corporate purposes during the administration of the Cases to bridge to a 363 Sale Transaction, the proceeds of which, inter alia, will repay the Obligations in full and which shall be consummated pursuant to or in connection with a Chapter 11 Plan.

(b) The use of Available Cash by the Obligors (i) shall be used in accordance with the applicable Budget and (ii) shall terminate from and after acceleration of the DIP Facility in accordance with Section 8.2.

SECTION 7.1.11 Repayment of Indebtedness. The Obligors shall repay or cause to be repaid all Indebtedness due under this Agreement and the other Loan Documents in accordance with the terms hereof and thereof, as the case may be. In the case of any Indebtedness of the Obligors under any of the Property Documents, the repayment of which is limited by any term of such Property Documents, the Obligors shall repay or cause to be repaid such Indebtedness in accordance with the confirmed plan of reorganization under Chapter 11.

SECTION 7.1.12 Compliance with Legal Requirements. The Obligors shall (x) own or lease, as the case may be, and maintain and operate the Real Property Collateral in compliance in all material respects with all applicable Property Documents and in all material respects with all applicable Legal Requirements, including the Permits and the Environmental Laws and (y) procure, maintain and comply, or cause to be procured, maintained and complied with, in all material respects, all Permits required for any ownership, financing, maintenance or operation of the Real Property Collateral or any part thereof at or before the time each such Permit becomes necessary for the ownership, financing, maintenance or operation thereof, as the case may be, except that the Obligors may, at their expense, contest by appropriate proceedings conducted in good faith the validity or application of any such Legal Requirements; provided, however, that (1) none of the Administrative Agent, the Lenders, or any of the Obligors would be subject to any liability for failure to comply therewith, (2) all proceedings to enforce such Legal Requirements against the Administrative Agent, the Lenders, or any of the Obligors are effectively stayed during the entire pendency of such contest and (3) the Real Property Collateral may each be operated for their intended purpose.

SECTION 7.1.13 Security Interest in Newly Acquired Property. If any of the Obligors shall at any time acquire any interest in property not covered by the Loan Documents or enter into any material document or agreement after the Effective Date, relating to the development, construction, maintenance or operation of any Real Property Collateral, then, subject to the requirements of the Bankruptcy Code, promptly upon such acquisition or execution such Person so acquiring or executing, as the case may be, shall give notice thereof to the Administrative Agent and, if requested by the Administrative Agent, shall or shall cause any Subsidiaries of such Person to execute, deliver and record a supplement to the Loan Documents, reasonably satisfactory in form and substance to the Administrative Agent and the Lenders, subjecting such interests to the Lien and security interests created by the applicable Loan Documents (with the priority contemplated thereby in favor of each Lender) and deliver to the Administrative Agent, on behalf of the Lenders, any required consents (reasonably acceptable to the Administrative Agent) with respect to the collateral assignment of any such Property Document (it being expressly understood that the Obligors shall only be obligated to use commercially reasonable efforts to the extent this provision requires delivery of a required consent from a third party not an Affiliate of any of the Obligors) and shall supplement, modify and amend all Schedules and Exhibits to this Agreement and all Property Documents, as required by the Administrative Agent and the Lenders in their sole discretion, to reflect such acquisition (each of which shall be in form and substance satisfactory to the Administrative Agent and the Lenders in their sole discretion).

SECTION 7.1.14 Proper Legal Forms. Each of the Obligors shall take all action within their control required or advisable to ensure that each of the Loan Documents and Property Documents is in proper form for the enforcement thereof.

SECTION 7.1.15 Preserving the DIP Collateral; Further Assurances. Each of the Obligors shall undertake all actions and execute all further documents and instruments which are necessary or appropriate in the reasonable judgment of the Administrative Agent and as may be required by the Bankruptcy Code to (x) effectuate the Transaction and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Loan Documents; (y) maintain the Lenders' respective security interests under the Loan Documents in the DIP Collateral in full force and effect at all times (including the priority thereof) and (z) preserve and protect the DIP Collateral and protect and enforce such Person's rights and title and the respective rights of the Lenders to the DIP Collateral, including as the Administrative Agent shall reasonably request to evidence compliance with this Section, the payments of fees and other charges, the issuance of supplemental documentation, the discharge of all claims or other Liens (other than the Permitted Liens) adversely affecting the respective rights of the Lenders to and under the DIP Collateral. The Obligors agree to provide such evidence as the Administrative Agent or any Lender shall reasonably request as to the perfection and priority status of each such security interest and Lien.

SECTION 7.1.16 Application of Insurance and Condemnation Proceeds.

(a) As a material inducement to the Lenders to enter into this Agreement, if any Event of Loss shall occur with respect to the Real Property Collateral or any part thereof, the Obligors shall (x) promptly upon discovery or receipt of notice thereof provide written notice thereof to the Administrative Agent, (y) diligently pursue all its rights to compensation against all relevant insurers, reinsurers and/or Governmental Instrumentalities, as applicable, in respect of such event and (z) not, without consent of the Administrative Agent and the Lenders (which consent shall not be unreasonably withheld or delayed), compromise or settle any claim involving an amount in excess of \$100,000 per claim or such lesser amount applicable to the Second Lien Collateral under the Prepetition Loan Agreement.

(b) All awards, amounts, damages, compensation, payments, settlements and proceeds (including instruments) in respect of any Event of Loss including the proceeds of any insurance policy required to be maintained by the Obligors hereunder and awards or settlements from any condemnation (collectively, "**Loss Proceeds**") shall be applied as a Mandatory Prepayment in accordance with item (iii) of clause (b) of Section 3.1.1 hereof within two (2) Business Days of receipt thereof. If any Loss Proceeds are paid directly to any Obligor by any insurer, reinsurer, Governmental Instrumentality or such other payor, (x) such Loss Proceeds shall be received in trust for application in accordance with this Section, (y) such Loss Proceeds shall be segregated from other funds of such Person and (z) such Person shall pay such Loss Proceeds over to the Administrative Agent in the same form as received (with any necessary endorsement).

SECTION 7.1.17 Compliance with Property Documents. The Obligors shall comply duly and promptly, in all material respects, with their obligations, and enforce all of their respective rights, under all Property Documents.

SECTION 7.1.18 Available Cash. On or before the date that the report of Available Cash is delivered to the Administrative Agent as required under clause (e) of Section 7.1.1, the Obligors shall deliver to the Administrative Agent for application in accordance with Section 3.1.2 the Excess Available Cash required to be paid pursuant to Section 3.1.1(b)(i).

SECTION 7.1.19 Cash Management. Subject to the Budget and Section 3.1, the Obligors shall maintain a cash management system substantially identical to the cash management system that they maintained immediately prior to the Petition Date, including but not limited to, the maintenance of the accounts established in connection with the Prepetition Loan Agreement and the related agreements. In connection with the foregoing, the Bankruptcy Court shall have entered First Day Orders, satisfactory to the Lenders in their reasonable discretion, providing for the continuation of the cash management system.

SECTION 7.1.20 Reorganization Matters. Each Debtor will submit to the Administrative Agent all pleadings, motions and applications, in each case filed by or on behalf of such Debtor with the Bankruptcy Court or provided by or to the Trustee (or any information officer, examiner or interim receiver, if any, appointed in any Case) or any Committee, at the time such document is filed with the Bankruptcy Court, or provided by or, to the Trustee (or any information officer, monitor or interim receiver, if any, appointed in any Case) or such Committee.

SECTION 7.1.21 Preservation of Corporate Existence; Restrictions. Each of the Obligors shall preserve and maintain its legal existence, rights (charter and statutory), material licenses and franchises.

SECTION 7.2 Negative Covenants. Each of the Obligors agrees with the Administrative Agent and each Lender that, until all Commitments have terminated and all Obligations have been indefeasibly paid and performed in full (other than indemnification Obligations that survive the expiration or earlier termination of this Agreement and are not then due and payable), the Obligors will perform the obligations set forth in this Section 7.2.

SECTION 7.2.1 Business Activities. The Borrower will not engage in any business activity except the ownership of the Subsidiary Guarantor Membership Interests, the performance of the Obligations and such activities as are reasonably incidental or substantially similar thereto. The Subsidiary Guarantors will not engage in any business activity, except the ownership and operation of the Real Property Collateral, the performance of the Obligations relating thereto and such activities as are reasonably incidental or substantially similar thereto.

SECTION 7.2.2 Indebtedness. (a) The Obligors will not, directly or indirectly, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness or issue any shares of Preferred Stock, other than, without duplication, the following:

- (i) Indebtedness in respect of the Loans;

(ii) Existing Indebtedness; and

(iii) intercompany Indebtedness permitted pursuant to Section 7.2.4(d) and the intercompany indebtedness identified on Schedule 7.2.2 of the Disclosure Schedule, but only to the extent the same has been subordinated in a manner satisfactory to the Administrative Agent, determined in its sole discretion, to the Liens securing the DIP Facility and the Adequate Protection Liens of the Prepetition Agent and the Prepetition Lenders.

(b) Accrual of interest, the accretion of the accreted value of principal and the payment of interest in the form of additional Indebtedness will not be deemed to be an incurrence of Indebtedness for purposes of this covenant.

SECTION 7.2.3 Liens. None of the Obligors shall create, incur, assume or suffer to exist any Lien upon any of their property, revenues or assets, whether now owned or hereafter acquired, or any proceeds, income or profits therefrom, or assign or convey any right to receive income therefrom, excluding, however, Permitted Liens.

SECTION 7.2.4 Investments. None of the Obligors shall make, incur, assume or suffer to exist any Investment in any other Person, except, as set forth in the applicable Budget, and provided that no Default has occurred and is continuing or could reasonably be expected to result therefrom, the following:

(a) Cash Equivalent Investments;

(b) without duplication, Investments permitted as Capital Expenditures pursuant to Section 7.2.6; and

(c) Investments constituting (x) accounts receivable arising, (y) trade debt granted or (z) deposits made in connection with the purchase price of goods or services, in each case, in the ordinary course of business;

(d) intercompany loans made by any one or more Subsidiary Guarantors to APM but only to the extent the same (i) are required for the payment of expenses by APM on behalf of such Subsidiary Guarantor for expenses incurred in the ordinary course of such Subsidiary Guarantor's business, (ii) do not exceed in the aggregate \$2,000,000 and (iii) have been subordinated in a manner satisfactory to the Administrative Agent, determined in its sole discretion, to the Liens securing the DIP Facility and the Adequate Protection Liens of the Prepetition Agent and the Prepetition Lenders;

(e) Investments listed on Item 7.2.4(d) of the Disclosure Schedule.

SECTION 7.2.5 Restricted Payments, etc. On and at all times after the date hereof:

(a) None of the Obligors shall declare, pay or make any dividend or distribution (in cash, property or obligations) on any Equity Interest (now or hereafter outstanding) of such Person or on any warrants, options or other rights with respect to

any Equity Interests (now or hereafter outstanding) of such Person or apply any of its funds, property or assets to the purchase, redemption, sinking fund or other retirement of any shares of any Equity Interests (now or hereafter outstanding) of such Person, or warrants, options or other rights with respect to any shares of any Equity Interests (now or hereafter outstanding) of such Person, except that any Subsidiary Guarantor may declare and pay to the Borrower dividends or distributions on any Equity Interests (now or hereafter outstanding) of such Subsidiary Guarantor in such amounts and at such times as may be necessary to enable the Borrower to pay amounts owing by it hereunder and under the other Loan Documents;

(b) Except for the Indebtedness under item (i) of clause (a) of Section 7.2.2. and as set forth in the Budget, none of the Obligors shall:

(i) make any payment or prepayment of principal of, or make any payment of interest on, any Indebtedness; or

(ii) redeem, purchase or defease any Indebtedness or any subordinated debt or make any payment for purposes of funding any of the foregoing;

(the foregoing prohibited acts referred to in clauses (a) and (b) being herein collectively referred to as “**Restricted Payments**”).

SECTION 7.2.6 Limitation on Expenditures. None of the Obligors shall make or commit to make any Capital Expenditures, Investments or other expenditures other than those of a type identified in the Budget; and (ii) on the last Business Day of any week, such Capital Expenditures, Investments and other expenditures for the Cumulative Budget Variance Review Period to date shall not exceed 110% (on a book value basis) of the amounts, on an aggregate basis, set forth for such Cumulative Budget Variance Review Period to date in the initial Budget; provided, however, that such 110% variance test will not become effective for the first week of the initial Budget Period but will become effective for the second week of the Cumulative Budget Variance Review Period and will remain effective thereafter repayment in full of all Obligations hereunder. Notwithstanding anything herein to the contrary, the Obligors shall be authorized to make or commit to make, to the extent practicable, any Capital Expenditure not set forth in the Budget that the Obligors determine to be, upon consultation with the Administrative Agent, reasonably necessary in connection with an emergency situation.

SECTION 7.2.7 Rental Obligations. None of the Obligors shall enter into at any time any arrangement which involves the leasing by such Person from any lessor of any real or personal property (or any interest therein), which does not create a Capitalized Lease Liability, except (y) the Existing Operating Leases set forth in Item 7.2.7 of the Disclosure Schedule and (z) other Operating Leases, the payments for which are approved by the Administrative Agent and incorporated into the applicable Budget, provided, however, that payments made or to be made by any Obligor with respect to Operating Leases, including the Existing Operating Leases, shall not exceed the applicable amounts therefor set forth in the applicable Budget.

SECTION 7.2.8 Take or Pay Contracts. None of the Obligors shall enter into or be a party to any arrangement for the purchase of materials, supplies, other property or services if

such arrangement by its express terms requires that payment be made by such Person regardless of whether such materials, supplies, other property or services are in fact or can be required to be delivered or furnished to it.

SECTION 7.2.9 Management Agreement and Management Services Agreement.

Except for the agreements set forth in Item 7.2.9 of the Disclosure Schedule, none of the Obligors shall, enter into or be a party to any management contract, management services agreement, advisor agreement, any agreement covering FF&E or any other contract material to the operation and management of the Real Property Collateral without the prior approval of the Lenders in their sole discretion.

SECTION 7.2.10 Consolidation, Merger, etc. None of the Obligors shall

liquidate, dissolve, consolidate with, merge into or with, enter into a joint venture or other combination with, any other Person, or purchase or otherwise acquire any Person (by any means) all or substantially all of the assets of any Person (or of any division thereof).

SECTION 7.2.11 Restrictions on Dispositions. None of the Obligors shall, sell,

transfer, lease, contribute or otherwise convey (including by way of merger), or grant options, warrants or other rights with respect to, any of the DIP Collateral to any Person (each such conveyance, an “**Asset Sale**”) without the prior written consent of the Administrative Agent and the Lenders; provided, however, that, other than with respect to Real Property Collateral, the Obligors may, without the prior consent of the Administrative Agent or the Lenders, (x) make dispositions in the ordinary course of their business as set forth in the Budget and (y) dispose of obsolete, worn out or surplus assets or assets no longer used or useful in their business, so long as (A) such disposition is set forth in the Budget, (B) such disposition does not materially and adversely affect the ability of the applicable Obligor to own and operate the DIP Collateral in accordance with this Agreement, (C) the net proceeds of First Lien Collateral which have not otherwise been used to fund replacement assets that constitute First Lien Collateral are to be applied in accordance with clause (b) of Section 3.1.1 within two (2) Business Days of receipt thereof, (D) the consideration received for the disposition thereof shall be in an amount at least equal to the fair market value thereof as reasonably determined by the Administrative Agent and (E) such disposed property shall be replaced with other property of substantially equal utility and a value at least substantially equal to that of the replaced property when first acquired and free from any Liens other than Permitted Liens and shall be deemed to be part of the DIP Collateral. Each disposition set forth in the proviso of this Section 7.2.11 shall constitute a “**Permitted Asset Sale**”.

SECTION 7.2.12 Modification of Property Documents and Certain Agreements.

(a) None of the Obligors shall, directly or indirectly, enter into, make, amend, modify, terminate, supplement, assume, assign, reject or waive a right under or permit or consent to the amendment, modification, termination, supplement, assumption, assignment, rejection or waiver of any of the provisions of, or grant any consent under the Property Documents without the consent of the Lenders; provided, however, that no such consent shall be required with respect to any such amendment, modification or supplement that (x) is non-material or (y) does not materially affect (i) the value of the DIP Collateral, (ii) the ability of the Obligors to perform in all material respects their obligations under the Loan Documents and Property Documents and (iii) the ability of the Obligors to own and operate the Real Property Collateral in the manner owned and

operated prior to any such amendment. If the Administrative Agent withholds its consent with respect to any amendment for which its consent is required hereunder, the Administrative Agent shall provide the applicable Obligor with the reasons therefore in accordance with Section 12.17.

(b) Without the prior written consent of the Lenders (not to be unreasonably withheld or delayed), none of the Obligors shall directly or indirectly, enter into, amend, modify, terminate, supplement or waive a right under or permit or consent to the amendment, modification, termination, supplement or waiver of any of the provisions of, or grant any consent under (x) any Permit, the effect of which could reasonably be expected to have a Material Adverse Effect, or (y) any Contract having a value in excess of Fifty Thousand (\$50,000) Dollars.

SECTION 7.2.13 Transactions with Affiliates. None of the Obligors shall, directly or indirectly, sell, lease, transfer or otherwise dispose of any of their properties or assets to, or purchase any property or assets from, or enter into, make, amend modify, terminate, supplement, assume, reject or waive a right under or permit or consent to the amendment, modification, termination, supplement, assumption, assignment, rejection or waiver of any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any of their respective Affiliates (each of the foregoing, an “**Affiliate Transaction**”). Except as disclosed in Item 7.2.13 of the Disclosure Schedule, none of the Obligors shall enter into, or be a party to, an Affiliate Transaction without the prior written approval of the Administrative Agent in its sole discretion.

SECTION 7.2.14 Negative Pledges, Restrictive Agreements, etc. None of the Obligors shall enter into any agreement (excluding, however, this Agreement and any other Loan Document) governing any Indebtedness prohibiting

(a) the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired; or

(b) the ability of the Obligors to amend or otherwise modify any Loan Document or Property Document.

SECTION 7.2.15 Sale and Leaseback. Except as set forth in the applicable Budget, none of the Obligors shall enter into any agreement or arrangement with one another or any other Person providing for the leasing by it of any real or personal property. None of the Obligors shall enter into any agreement or arrangement with one another or any other Person providing for the leasing by one or more of the Obligors of real or personal property which has been or is to be sold or transferred by one or more of the Obligors, to such other Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of such Obligor or Obligors as the case may be.

SECTION 7.2.16 Capital Stock. Except as disclosed in Item 7.2.16 of the Disclosure Schedule, none of the Obligors shall issue, transfer or sell any of their Capital Stock or Capital Stock of its or their Subsidiaries (whether for value or otherwise) to any Person, without the prior consent of the Lenders in their sole discretion.

SECTION 7.2.17 Creation of Subsidiaries. From and after the Effective Date, none of the Obligors shall create any Subsidiary without the prior consent of the Lenders in their sole discretion.

SECTION 7.2.18 Hazardous Substances. None of the Obligors shall, release, emit or discharge into the environment any Hazardous Substances in material violation of any Environmental Law, Legal Requirement or Permit.

SECTION 7.2.19 No Other Powers of Attorney. None of the Obligors shall, execute or deliver any agreement creating any Lien (other than Permitted Liens), powers of attorney (other than powers of attorney for signatories of documents permitted or contemplated by the Property Documents or provided for in the Property Documents), or similar documents, instruments or agreements, except to the extent such documents, instruments or agreements comprise part of the Loan Documents or the Prepetition Loan Documents.

SECTION 7.2.20 Modification of Subordinate Indebtedness. None of the Obligors shall, (i) directly or indirectly, amend, modify, terminate, supplement or waive a right under, or permit or consent to the amendment, modification, termination, supplement or waiver of, any of the provisions of, or grant any consent under any debt instrument subordinate to the Loans, (ii) make any payment or prepayment of principal of, or make any payment of interest on, the Indebtedness thereunder regardless of when due or (iii) redeem, purchase or defease the Indebtedness thereunder, in each case, without the prior consent of the Lenders in their sole discretion.

SECTION 7.2.21 Chapter 11 Claims. None of the Obligors shall, agree to, incur, create, assume, suffer to exist or permit (a) any administrative expense, unsecured claim, or other Superpriority Claim or Lien which is pari passu with or senior to the claims or liens of the Lenders against the Obligors hereunder or the Prepetition Loan Parties, or apply to the Bankruptcy Court for authority to do so, except for the Carve-Out or as otherwise provided in the Orders or (b) any payment of pre-petition claims except as provided in the Orders.

SECTION 7.2.22 Orders. None of the Obligors shall make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Loan Documents or the Orders.

SECTION 7.2.23 No Changes in Fiscal Year. The fiscal year of each of the Obligors ends on December 31 of each year and none of them shall change its fiscal year from its present basis, unless the Administrative Agent shall have approved such change.

SECTION 7.3 Post-Closing Covenant. Each of the Obligors agrees with the Administrative Agent and each Lender that the Obligors will promptly comply with all reasonable recommendations made by the Insurance Consultant in the Insurance Consultant's Report when such report is delivered to the Administrative Agent to cause all insurance to be in compliance with Section 7.1.6 hereof.

ARTICLE VIII

EVENTS OF DEFAULT

SECTION 8.1 Listing of Events of Default. Each of the following events or occurrences described in this Section 8.1 shall constitute an “**Event of Default**”.

SECTION 8.1.1 Non-Payment of Obligations. The Obligors shall default in the payment or prepayment when due of

(a) any principal of or interest on any Loan, and, with respect to any Default in the payment of interest, such Default shall continue unremedied for a period of three (3) Business Days; or

(b) any fee described in Article III or of any other Obligation and such Default shall continue unremedied for a period of three (3) Business Days.

SECTION 8.1.2 Breach of Warranty. Any representation or warranty of any of the Obligors made hereunder, in any other Loan Document executed by any such Person or in any other writing or certificate furnished by or on behalf of any such Person to the Administrative Agent or any Lender for the purposes of or in connection with this Agreement or any such other Loan Document (including any certificates delivered pursuant to Article V hereof) is or shall be incorrect when made or deemed to have been made in any material respect.

SECTION 8.1.3 Non-Performance of Certain Covenants and Obligations. Any of the Obligors shall default in the due performance and observance of any of its obligations under Sections 7.1.6, 7.1.10, 7.2 (except for Section 7.2.18) and 7.3 herein.

SECTION 8.1.4 Non-Performance of Other Covenants and Obligations. Except as provided in Sections 8.1.1 and 8.1.3 hereof, any of the Obligors shall default in the due performance and observance of any Loan Document executed by it, and such default (i) shall continue unremedied for a period of twenty (20) days (or such other period of time during which performance is required under the applicable Loan Document) after notice thereof shall have been given to such Person by the Administrative Agent, or (ii) shall continue unremedied for a period of three (3) Business Days in the case of defaults under Sections 7.1.1 and 7.1.3.

SECTION 8.1.5 Default on Other Indebtedness. A post-petition default shall occur in the payment when due (subject to any applicable grace period), whether by acceleration or otherwise, of any Indebtedness of one or more of the Obligors (other than Indebtedness described in Section 8.1.1) or unsecured Indebtedness of one or more of the Obligors in excess of \$200,000 (subject to any applicable grace period) if the effect of such Default is to accelerate the maturity of any such Indebtedness or such Default shall continue unremedied for any applicable period of time (subject to any applicable grace period) sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause or declare such Indebtedness to become due and payable or to require such Indebtedness to be prepaid, redeemed, purchased or defeased, or to cause an offer to purchase or redeem such Indebtedness to be required to be made, prior to its expressed maturity.

SECTION 8.1.6 Judgments. Any judgment or order entered after the Petition Date with respect to a claim arising after the Petition Date for the payment of money in excess of \$200,000 individually or in the aggregate (excluding, however, any amounts fully covered by insurance (less any applicable deductible) or indemnification and as to which the insurer or the indemnifying party, as the case may be, has acknowledged its responsibility to cover such judgment or order) shall be rendered against any of the Obligors or any of the DIP Collateral and such judgment shall not have been vacated or discharged or stayed or bonded pending appeal within forty-five (45) days after the entry thereof.

SECTION 8.1.7 Pension Plans. Any of the following events shall occur with respect to any Pension Plan

(a) termination of a Pension Plan if, as a result of such termination, any of the Obligors would reasonably be required to make a contribution to such Pension Plan, or would reasonably expect to incur a liability or obligation to such Pension Plan, in excess of \$200,000; or

(b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under section 303(k) of ERISA and such failure continues for thirty (30) days or more.

SECTION 8.1.8 Change of Control. The occurrence of any Change of Control.

SECTION 8.1.9 Bankruptcy Matters. The occurrence of any of the following events:

(a) the Final Order shall not have been entered by the Bankruptcy Court by the date that is thirty (30) days after the date on which the Interim Order is entered by the Bankruptcy Court or, in any event, the Final Order is not entered immediately following the expiration of the Interim Order, whichever occurs earlier, that is in form and substance satisfactory to the Administrative Agent and the Lenders on a motion by the Obligors that is in form and substance satisfactory to the Administrative Agent and the Lenders, approving and authorizing on a final basis the matters and containing the provisions described below with respect to the Interim Order and prohibiting the assertion of claims arising under Section 506(c) of the Bankruptcy Code against the Administrative Agent or the Lenders;

(b) any of the Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; a trustee, receiver, interim receiver or receiver and manager shall be appointed in any of the Cases, or a responsible officer or an examiner with enlarged powers shall be appointed in any of the Cases (having powers beyond those set forth in Section 1106(a)(3) of the Bankruptcy Code); or the entry of an order granting any other super-priority administrative expense claim or lien (other than the Carve-Out) which is pari passu with or senior to the claims, charges or liens of the Administrative Agent or the Lenders;

(c) any of the Obligors shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-

petition indebtedness or payables, other than (i) payments authorized by the Bankruptcy Court in respect of First Day Orders or other orders entered upon pleadings in form and substance satisfactory to the Administrative Agent and the Lenders (including without limitation payments of prepetition obligations to employees and payroll taxes, sales and use taxes and similar taxes, each to the extent approved by order of the Bankruptcy Court) and (ii) payments of franchise Taxes incurred prior to the Petition Date necessary to maintain their existence and qualification or good standing in their respective jurisdictions of formation and other jurisdictions in which they conduct business;

(d) except for the Orders, the Bankruptcy Court shall enter an order granting relief from the automatic stay to any creditor or party in interest (i) to permit such party to proceed against or enforce a Lien on, by foreclosure (or the granting of a deed in lieu of foreclosure or otherwise) on any assets of the Obligors with value greater than \$500,000, (ii) with respect to any Lien of or the granting of any Lien on any DIP Collateral to any state or local environmental or regulatory agency or authority that would have a Material Adverse Effect or priority over any Lien of the Lenders or (iii) to permit other actions that would have a Material Adverse Effect on the Obligors take as a whole or their estates;

(e) an order shall be entered reversing, amending, supplementing, staying, vacating or otherwise modifying the Interim Order or the Final Order, or any of the Obligors shall apply for authority to do so, without the prior written consent of the Lenders;

(f) the Bankruptcy Court shall fail to enter an order, in form and substance satisfactory to the Administrative Agent and the Lenders, approving certain bidding procedures for the sale of the Obligors' assets and operations in the 363 Sale Transaction (the "**Sales Process**") within thirty (30) days after the Petition Date or such order shall have been stayed, reversed, vacated or otherwise modified in a manner adverse to the interests of the Lenders or the Prepetition Lenders, without the approval of the Lenders;

(g) the Bankruptcy Court shall fail to enter an order, in form and substance satisfactory to the Administrative Agent and the Lenders, approving the 363 Sale Transaction within one hundred fifty (150) days after the Petition Date or such order shall have been stayed, reversed, vacated or otherwise modified;

(h) (1) a plan shall be proposed or confirmed in any of the Cases that (a) is not satisfactory in all respects to the Administrative Agent and the Lenders or (b) does not provide for termination of the DIP Facility and payment in full in cash of the Obligors' obligations under the Loan Documents on the effective date of such plan of reorganization, compromise, arrangement or liquidation or (2) any order shall be entered which dismisses any of the Cases and which order does not provide for termination of the DIP Facility and payment in full in cash of the Obligors' obligations under the Loan Documents, or (3) any of the Obligors shall seek, support, or fail to contest in good faith the filing or confirmation of such a plan described in item (1) above or the entry of such an order described in item (2) above;

(i) any of the Obligors shall fail to comply with the Interim Order or Final Order;

(j) the filing of a motion, pleading or proceeding by any of the Obligors or their Affiliates which could reasonably be expected to result in a material impairment of the rights or interests of the Lenders, as determined in the sole discretion and in good faith of the Lenders, provided, however, that the Obligors have five (5) Business Days to cure such material impairment after receiving written notice from the Lenders of the same or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in a material impairment of the rights or interests of the Lenders; and

(k) the Obligors or their Affiliates shall take any action in support of any of the foregoing, or any Person other than the Obligors do so and such application is not contested in good faith by the Obligors and the relief requested is granted in an order that is not stayed pending appeal;

(l) the entry of an order under Section 506(c) of the Bankruptcy Code surcharging the DIP Collateral or the Prepetition Collateral;

(m) the entry of an order in any of the Cases avoiding or requiring the return by the Administrative Agent or the Lenders of any portion of the funds received or payments made on account of the Obligations;

(n) the sale without the consent of the Administrative Agent, of all or substantially all of any Debtor's assets (either through the Sales Process or otherwise) that does not provide for payment in full of the Obligations and termination of the Lenders' Commitment to make Loans or other extensions of credit hereunder; or

(o) failure of the Debtors to file a Chapter 11 Plan prior to the expiration of their exclusivity periods, as they may be extended by court order.

SECTION 8.1.10 Impairment of DIP Collateral, etc. Any Loan Document, or any Lien granted thereunder, shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of the Obligors party thereto or any such Person shall, directly or indirectly, repudiate any Loan Document or contest in any manner such effectiveness, validity, binding nature or enforceability or, except as permitted under any Loan Document, any Lien securing any Obligation shall, in whole or in part, cease to be (x) a perfected first priority Lien on the First Lien Collateral, subject only to the Permitted Liens, (y) a perfected second priority Lien on the Second Lien Collateral, subject only to Permitted Liens, and (z) perfected Adequate Protection Liens on the Prepetition Collateral, subject only to the Carve-Out, the Liens securing the DIP Facility and the Permitted Liens.

SECTION 8.1.11 Breach of Property Documents. Except for breaches and defaults that exist as of the Effective Date or as otherwise set forth in Section 8.1.3, any of the Obligors or any other Person shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Property Document to

which such Person is a party and such breach or default shall continue unremedied for the period of time set forth in the applicable Property Documents or twenty (20) days, whichever is shorter, after the earlier of (x) the date on which any officer of any Obligor acquires knowledge of such breach or default or (y) the date on which notice is given of such breach or default by the Administrative Agent to the applicable Obligor or other Person, as applicable; provided, however, that in the case of any Property Document,

(a) the cure period shall be extended beyond such twenty (20) day period during such time as the applicable Obligor is contesting or undertaking the cure of such alleged breach or default in good faith promptly and diligently conducted and (1) such reserve or appropriate provisions, if any, as shall be required in conformity with GAAP, consistently applied, shall have been made therefor and (2) in case of any charge or claim which has or may become a Lien against any of the DIP Collateral, such Lien is subject and subordinate in all respects to the Liens held by the Administrative Agent (unless bonded) and such contested proceedings conclusively operate to stay the sale of any portion of the DIP Collateral to satisfy such charge or claim which has or may become a Lien against any of the DIP Collateral);

(b) if the breach or default is reasonably susceptible to cure within sixty (60) days but cannot be cured within such twenty (20) day period despite the applicable Obligor's good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such twenty (20) day period (but in no event longer than sixty (60) days) if remedial action reasonably likely to result in cure is promptly instituted within such twenty (20) day period and is thereafter diligently pursued until the breach or default is corrected; and

(c) if the breach is by a Person other than an Obligor or an Affiliate thereof controlled by an Obligor, then no Event of Default shall be deemed to have occurred as a result of such breach if not later than two (2) Business Days after the Borrower becomes aware of such breach, the Borrower provides written notice thereof to the Administrative Agent and such breach has not had and could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.1.12 Termination or Invalidity of Property Documents:
Abandonment of Real Property Collateral.

(a) If any Property Document shall have terminated, become invalid or illegal, or otherwise ceased to be in full force and effect; provided, however, that no Event of Default shall be deemed to have occurred as a result of such termination if the Obligor affected thereby provides written notice to the Administrative Agent immediately upon such termination (but in no event more than two (2) Business Days after such Obligor becomes aware of such termination) and such termination has not had and could not reasonably be expected to result in a Material Adverse Effect;

(b) Any of the Obligors shall cease to own and lease all portions of the DIP Collateral which are material and necessary for the purpose of owning, maintaining and

operating its business or the Real Property Collateral in the manner that they are maintained and operated on the date of this Agreement; or

(c) Any of the Obligors shall sell or otherwise dispose of their interests in the DIP Collateral owned by it other than Permitted Asset Sales.

SECTION 8.1.13 Government Authorizations. Any Permit necessary for the ownership, maintenance, financing or operation of the DIP Collateral shall be lawfully modified, refused, rejected, suspended, revoked or canceled, or allowed to lapse or a notice of a material violation is issued under any Permit, by the issuing agency or other Governmental Instrumentality having jurisdiction, or any proceeding is commenced by any Governmental Instrumentality for the purpose of modifying, suspending, revoking or canceling any Permit and such modification, refusal, rejection, revocation or loss of such Permit or such notice of a material violation or proceeding is reasonably likely to result in a Material Adverse Effect.

SECTION 8.1.14 Material Adverse Effect. The occurrence of a Material Adverse Effect.

SECTION 8.2 Action if Event of Default. If any Event of Default shall occur for any reason, whether voluntary or involuntary, and be continuing, the Administrative Agent may, and after direction by the Required Lenders shall, by written notice to the Borrower, terminate the DIP Facility, declare all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable or the Commitments (if not theretofore terminated) to be terminated, whereupon the full unpaid amount of such Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment, or, as the case may be, the Commitments shall terminate. The Bankruptcy Court shall retain exclusive jurisdiction with respect to all matters relating to the exercise of rights and remedies under the DIP Facility, the Interim Order, the Final Order and with respect to the Prepetition Collateral and the DIP Collateral. In addition to the foregoing, the Administrative Agent may, and after direction by the Required Lenders shall, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands being waived (to the extent permitted by applicable law), exercise any or all rights and remedies at law or in equity (in any combination or order that the Lenders may elect, subject to the foregoing), including, without prejudice to the Lenders' other rights and remedies, the following:

(a) exercise the right (after providing five (5) Business Days' prior notice to the Debtors and any Committee of the occurrence of the DIP Facility Termination Date) to realize on all First Lien Collateral without the necessity of obtaining any further relief or order from the Bankruptcy Court;

(b) suspend or terminate the Lenders' obligation to make additional Borrowings, to process requests by the Borrower and to perform any other obligations of the Lenders, which obligations are expressly conditioned upon the absence of a Default under this Agreement;

(c) commence, appear in and/or defend any action or proceedings purporting to affect the DIP Collateral, and/or any additional or other security therefor, the interests, rights, powers or duties of the Lenders hereunder, whether brought by or against one or more of the Obligor or the Lenders;

(d) pay, purchase, contest or compromise any claim, debt, Lien, charge or encumbrance that in the judgment of the Lenders may impair or reasonably appear to impair the security of the DIP Collateral or the other Loan Documents, the interests of the Lenders or the rights, powers and/or duties of the Lenders hereunder and any sums expended for such purposes shall become part of the Indebtedness evidenced and secured by the Loan Documents;

(e) the Lenders (and their nominee and/or designee) are authorized either by themselves or by their agents or by a receiver appointed by a court of competent jurisdiction, to enter into and upon and take and hold possession of any portion or all of the First Lien Real Property and/or the Improvements thereon, both real and personal, and exclude the Obligor and all other Persons therefrom and thereupon the Lenders (or their nominee or designee) may, (u) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the First Lien Real Properties and conduct business thereat, (v) take possession of all materials, supplies, tools, equipment and construction facilities and appliances located on the First Lien Real Properties and perform any and all work and labor existing at the time the Lenders (or their nominee and/or designee) enter into possession of the First Lien Real Properties and perform any and all work and labor necessary to operate and maintain the First Lien Real Properties and all sums expended in so doing, together with interest on such total amount at the rate set forth in Section 3.1.5, shall be repaid by the Obligor to the Lenders upon demand and shall be secured by the Loan Documents, (w) employ watchmen to protect the First Lien Real Properties, (x) make alterations, additions, renewals, replacements and improvements to the First Lien Real Properties (y) exercise all rights and powers of the applicable Obligor with respect to the First Lien Real Properties and pursuant to or under the Property Documents or any agreements relating to the First Lien Real Properties, whether in the name of any of the Obligor or otherwise, including the right to make, cancel, enforce or modify any agreements relating to the First Lien Real Properties, obtain and evict tenants and other Persons, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income from the First Lien Real Properties and all parts thereof and (z) apply the receipts therefrom to the payment of the Indebtedness evidenced and secured by the Loan Documents in accordance with this Agreement, after deducting therefrom all expenses (including reasonable attorneys' fees and costs and expenses) incurred in connection with the aforesaid operations and all amounts to pay the Impositions, assessments, insurance and other charges in connection with the First Lien Real Properties as well as just and reasonable compensation for the services of the Administrative Agent, the Lenders and their counsel, agents and employees;

(f) institute an action, suit or proceeding in equity for the specific performance by the Obligor of any covenant, condition, or agreement contained herein or in any of the other Loan Documents;

(g) apply for the appointment of a custodian, receiver, liquidator or conservator of the First Lien Real Properties without regard for the adequacy of the security for the Indebtedness evidenced and secured by the Loan Documents;

(h) set off and apply all monies on deposit in any account or any other monies of any of the Obligors on deposit with the Administrative Agent to the satisfaction of the Obligations under all of the Loan Documents; and

(i) exercise any and all rights and remedies available to it under applicable law or any of the Loan Documents or Property Documents.

Except as otherwise set forth herein, all sums expended by the Lenders for any of the purposes described above shall be deemed to have been advanced to the Obligors under and pursuant to the provisions of this Agreement, shall bear interest at the rate of interest set forth in Section 3.1.5 and shall be secured by the DIP Collateral. The Administrative Agent or the Lenders (or their nominee or designee) may at any time discontinue any action or remedy commenced by it or them, as the case may be, or change any course of action undertaken by it or them, and in such event, the Administrative Agent and the Lenders (or their nominee or designee) shall not be bound by any requirements or limitations of time contained in the Loan Documents. For the foregoing purposes, each of the Obligors, to the fullest extent permitted by law, hereby constitutes and appoints the Administrative Agent (or its nominee or designee) as the true and lawful agent and attorney-in-fact of such Person with full power of substitution and hereby empower the Administrative Agent (and its nominee or designee) to take such action and require such performance as it deems necessary or desirable. This agency and power of attorney shall be deemed to be coupled with an interest and shall be irrevocable.

ARTICLE IX

THE ADMINISTRATIVE AGENT

SECTION 9.1 Designation of Administrative Agent. Each Lender hereby makes the following designations:

(a) Each Lender hereby designates ING to act as the Administrative Agent under and for purposes of this Agreement and the other Loan Documents and authorizes ING, in its capacity as the Administrative Agent, to act on behalf of such Lender under this Agreement and the other Loan Documents. Subject to the terms and conditions hereof, ING accepts such appointment and agrees to act as the Administrative Agent on behalf of the Lenders and to perform the duties of the Administrative Agent in accordance with the provisions of this Agreement and the other Loan Documents. In the exercise of its administrative duties, the Administrative Agent shall use the same diligence and standard of care that is customarily used by the Administrative Agent with respect to similar instruments held by the Administrative Agent solely for its own account. Each Lender agrees that the Administrative Agent, at its option, may delegate its duties, rights and powers, and that each sub-agent shall implement all such duties, rights and powers on behalf of the Administrative Agent that are required of the Administrative Agent on behalf of the Lenders. The Administrative Agent and such sub-

agent may perform any and all of their duties and exercise their rights and powers through their respective Affiliates, directors, officers, employees, agents and advisors. The exculpatory provisions of Section 9.3 shall apply to such sub-agent and each such Affiliate, director, officer, employee, agent and advisor and to their respective activities. The Administrative Agent may replace such sub-agent upon consent of the Required Lenders and the exculpatory provisions of Section 9.3 shall apply to such replacement sub-agent.

(b) Each Lender authorizes the Administrative Agent to act on behalf of such Lender under this Agreement and the other Loan Documents and, in the absence of other written instructions from the Required Lenders received from time to time by the Administrative Agent (with respect to which the Administrative Agent agrees that it will comply, except as otherwise provided in this Section or as otherwise advised by counsel in order to avoid contravention of applicable law), to exercise such powers hereunder and thereunder as are specifically delegated to or required of the Administrative Agent, by the terms hereof and thereof, together with such powers as may be reasonably incidental thereto.

(c) Each Lender hereby indemnifies (which indemnity shall survive any termination of this Agreement) the Administrative Agent, pro rata according to such Lender's Percentage (unless the Commitments have been reduced to zero in which case such amount shall be such Lender's pro rata interest in the Loans), from and against any and all liabilities, obligations, losses, damages, claims, costs or expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against, the Administrative Agent in any way relating to or arising out of this Agreement or the other Loan Documents, including reasonable attorneys' fees, consultants' fees and as to which the Administrative Agent is not reimbursed by or on behalf of the Obligors; provided, however, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, claims, costs or expenses (i) which are determined by a court of competent jurisdiction in a final proceeding to have resulted solely from the gross negligence or willful misconduct of the Administrative Agent or (ii) which arise from the failure of another Lender to make its portion of the Commitment Amount available or to advance such Lender's Percentage of any Loans to be made to the Borrower (in which case such other Lender shall have responsibility for indemnification therefor). The Administrative Agent shall not be required to take any action hereunder or under any other Loan Document, or to prosecute or defend any suit in respect of this Agreement or any other Loan Document, unless the Administrative Agent is indemnified hereunder to its satisfaction. If any indemnity in favor of the Administrative Agent shall be or become, in the respective determination of the Administrative Agent, inadequate, the Administrative Agent may call for additional indemnification from the Lenders and cease to do the acts indemnified against hereunder until such additional indemnity is given.

SECTION 9.2 Funding Reliance, etc. Unless the Administrative Agent shall have been notified by telephone, confirmed in writing, by any Lender by 5:00 p.m., New York City time, on the Business Day prior to a Borrowing that such Lender will not make available the amount which would constitute its Percentage of such Borrowing on the date specified therefor, the

Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent and, in reliance upon such assumption, make available to the Borrower a corresponding amount. If and to the extent that such Lender shall not have made such amount available to the Administrative Agent, such Lender and the Borrower severally agree to repay the Administrative Agent forthwith on demand such corresponding amount, together with interest thereon, for each day from the date the Administrative Agent made such amount available to the Borrower to the date such amount is repaid to the Administrative Agent, at the interest rate applicable at the time to Loans comprising such Borrowing. Nothing in this Section shall affect or impair the rights or remedies of the Borrower against such Lender so long as such amount and interest, if any, has been repaid by the Borrower to the Administrative Agent.

SECTION 9.3 Exculpation. The Administrative Agent shall have no duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing neither the Administrative Agent nor any of the Administrative Agent's directors, officers, employees or agents (i) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (ii) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other Lenders as shall be required by Section 12.1), (iii) except as expressly set forth herein, shall have any duty to disclose, and shall not be liable for failure to disclose any information relating to any of the Obligors that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates, (iv) shall be liable for any action taken by the Administrative Agent with the consent or at the request of the Required Lenders (or such other number of Lenders as shall be required by Section 12.1), (v) shall be deemed to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by any of the Obligors or a Lender, (vi) shall be liable to any Lender for any action taken or omitted to be taken by it under this Agreement or any other Loan Document, or in connection herewith or therewith, except for the Administrative Agent's own bad faith, willful misconduct or gross negligence, (vii) shall be responsible for any recitals or warranties herein or therein, nor for the effectiveness, enforceability, validity or due execution of this Agreement or any other Loan Document, (viii) shall be responsible for the creation, perfection or priority of any Liens purported to be created by any of the Loan Documents, (ix) shall be responsible for the validity, genuineness, enforceability, existence, value or sufficiency of any collateral security or (x) shall have any duty to make any inquiry respecting the performance by the Obligors of their obligations hereunder or under any other Loan Document. Any inquiry which may be made by the Administrative Agent shall not obligate the Administrative Agent to make any further inquiry or take any action. The Administrative Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any notice, consent, certificate, statement or writing which the Administrative Agent believes to be genuine and to have been presented by a proper Person.

SECTION 9.4 Successors. The Administrative Agent may resign as such at any time upon at least thirty (30) days' prior notice to the Borrower and the Lenders. If the Administrative Agent at any time shall resign, the Required Lenders may appoint another Lender as a successor to the Administrative Agent which shall thereupon become the Administrative Agent hereunder. If no successor for the Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within thirty (30) days after the

retiring Administrative Agent's giving notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders appoint a successor to act in the capacity of such retiring Administrative Agent which shall be one of the Lenders or a commercial banking institution organized under the laws of the U.S. (or any State thereof) or a U.S. branch or agency of a commercial banking institution and having (x) a combined capital and surplus of at least \$250,000,000 and (y) a credit rating of AA or better by Moody's or a comparable rating by S&P; provided, however, that if, after expending all reasonable commercial efforts, such retiring Administrative Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth in item (y), such retiring Administrative Agent shall be permitted to appoint as its successor from all available commercial banking institutions willing to accept such appointment such institution having the highest credit rating of all such available and willing institutions. Upon the acceptance of any appointment by a successor Administrative Agent hereunder, such successor Administrative Agent shall be entitled to promptly receive from the retiring Administrative Agent such documents of transfer and assignment as such successor Administrative Agent may reasonably request, and shall thereupon succeed to and become vested with all rights, powers, privileges and duties of such retiring Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Administrative Agent's resignation, the provisions of

(a) this Article IX shall inure to its benefit as to any actions taken or omitted to be taken by such retiring Agent while it was the Administrative Agent under this Agreement, as applicable; and

(b) Section 12.3 and Section 12.4 shall continue to inure to its benefit.

SECTION 9.5 Loans by the Administrative Agent. The Administrative Agent shall have the same rights and powers with respect to the Loans made by it or any of its Affiliates as any other Lender and may exercise the same as if it were not the Administrative Agent hereunder. The Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with any of the Obligors or any Subsidiary or Affiliate thereof as if such Person was not the Administrative Agent hereunder.

SECTION 9.6 Credit Decisions. Each Lender acknowledges that it has, independently of the Administrative Agent and each other Lender, and based on such Lender's review of the financial information of the Obligors, this Agreement, the other Loan Documents (the terms and provisions of which being satisfactory to such Lender) and such other documents, information and investigations as such Lender has deemed appropriate, made its own credit decision to extend its Commitments. Each Lender also acknowledges that it will, independently of the Administrative Agent and each other Lender, and based on such other documents, information and investigations as it shall deem appropriate at any time, continue to make its own credit decisions as to exercising or not exercising from time to time any rights and privileges available to it under this Agreement or any other Loan Document. Notwithstanding the foregoing or anything else to the contrary herein, with respect to any Default hereunder, no Lender shall exercise any independent rights, remedies or options against any of the Obligors (other than pursuant to Section 4.9) hereunder or any other action that is not pursuant to the Loan Documents.

SECTION 9.7 Copies, etc. The Administrative Agent shall give prompt notice to each Lender of each notice or request required or permitted to be given by or to the Administrative Agent by or on behalf of any of the Obligors in connection with or pursuant to the terms of this Agreement and the other Loan Documents (unless concurrently delivered to the Lenders by or on behalf of the Obligors). The Administrative Agent will promptly distribute to each Lender each document or instrument received for its account and copies of all other communications received by the Administrative Agent from or on behalf of any of the Obligors for distribution to the Lenders by the Administrative Agent in accordance with the terms of this Agreement or any other Loan Document.

SECTION 9.8 Consultants and Reports. (a) The Administrative Agent, with approval by the Lenders, may remove from time to time the Independent Consultants and shall appoint replacements as the Lenders may choose in accordance with this Agreement. As soon as practicable, notice of any replacement Independent Consultant shall be given by the Administrative Agent to the Lenders, and the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by or on behalf of the Obligors.

(b) Each of the Independent Consultants shall be contractually obligated to the Administrative Agent, for the benefit of the Lenders to carry out the activities required of it in the Loan Documents and as otherwise requested by the Administrative Agent and the Lenders. The Obligors acknowledge that they will not have any cause of action or claim against any Independent Consultant resulting from any decision made or not made, any action taken or not taken or any advice given by such Independent Consultant in the due performance in good faith of its duties except for the gross negligence and willful misconduct of the Independent Consultant; provided, however, the foregoing standard of care shall not affect the standard of care which is required under any letter or agreement pursuant to which an Independent Consultant was engaged or the rights, remedies and options of the Lenders under any such letter or agreement.

ARTICLE X

SUPERPRIORITY CLAIMS; DIP COLLATERAL; ADEQUATE PROTECTION

SECTION 10.1 Grant of Superpriority Claims. Subject to the Carve-Out, in accordance with Section 364(c)(1) of the Bankruptcy Code, pursuant to the Orders and pursuant to this Agreement, the Administrative Agent and the Lenders are granted, and all of the Obligations hereunder shall constitute, an allowed superpriority administrative claim over any and all administrative claims of the type specified or ordered pursuant to any provisions of the Bankruptcy Code including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 and 1114 (the “**Superpriority Claims**”). Except for the Carve-Out, the Superpriority Claims of the Administrative Agent and the Lenders hereunder shall at all times be senior to the rights of the Debtors, any Chapter 11 trustee and any Chapter 7 trustee, or any creditor (including, without limitation, post-petition counterparties and other post-petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any Chapter 7 cases if any of the Cases are converted to cases under Chapter 7 of the Bankruptcy Code.

SECTION 10.2 Grant of Liens; Collateral. Subject to the Carve-Out, the Administrative Agent for the benefit of the Lenders is granted, pursuant to the Orders and pursuant to this Agreement, as collateral for the Loans and security for the full and timely payment and performance of all Obligations when due (whether at stated maturity, by acceleration or otherwise), the following:

(a) pursuant to Section 364(c)(2) of the Bankruptcy Code, a perfected first-priority lien on all now owned or hereafter acquired assets and property of the Debtors and the proceeds thereof (including, without limitation, all cash, cash equivalents, accounts, payment intangibles, promissory notes, consignments, commercial tort claims, tax refunds, inventory, goods, chattel paper, documents, deposit accounts, documents, instruments, investment property, letter-of-credit rights, general intangibles, contracts, contract rights, all causes of action and proceeds thereof (including Avoidance Actions (as defined in the Orders)), computer hardware and software, motor vehicles, intellectual property, real and personal property, plant and equipment of the Debtors) that are not subject to valid, perfected and non-avoidable liens as of the commencement of the Cases (collectively, the “**First Lien Collateral**”); and

(b) pursuant to Section 364(c)(3) of the Bankruptcy Code, a perfected junior lien on all property of the Debtors and proceeds thereof (including, without limitation, all cash, cash equivalents, accounts, payment intangibles, promissory notes, consignments, commercial tort claims, tax refunds, inventory, goods, chattel paper, documents, deposit accounts, documents, instruments, investment property, letter-of-credit rights, general intangibles, contracts, contract rights, all causes of action and proceeds thereof, computer hardware and software, motor vehicles, intellectual property, real and personal property, plant and equipment of the Debtors) that is subject to valid, perfected and non-avoidable liens in existence at the time of the commencement of the Cases or to valid liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code, including,

without limitation, the Prepetition Collateral, other than as set forth below (collectively, the “**Second Lien Collateral**”).

SECTION 10.3 No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim Order and, when applicable, the Final Order. The Administrative Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, any other Loan Document or the Orders.

SECTION 10.4 Adequate Protection. Pursuant to Sections 361 and 363(e) of the Bankruptcy Code, the Prepetition Agent, for the benefit of the Prepetition Lenders shall be granted pursuant to the Orders the following adequate protection (collectively, the “**Adequate Protection**”) equal in amount to the aggregate diminution in the value (each such diminution, a “**Diminution in Value**”) of the first-priority liens on all security interests in the Prepetition Collateral (including the Prepetition Cash Collateral) (the “**Prepetition Security Interests**”), including, without limitation, any such Diminution in Value resulting from the sale, lease or use by the Debtors (or other decline in value) of the Prepetition Collateral (including the Prepetition Cash Collateral), and the imposition of the automatic stay pursuant to Section 362 of the Bankruptcy Code, or otherwise:

(a) As security for and solely to the extent of any Diminution in Value of the prepetition security interests, the Prepetition Agent shall be granted for its benefit and the benefit of the Prepetition Lenders, effective and perfected as of Interim Order Entry Date and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements, a security interest in the Prepetition Collateral (together, the “**Adequate Protection Liens**”), subject and subordinate only to (x) the Carve-Out, (y) the Liens securing the DIP Facility and any liens on the Prepetition Collateral that are senior to, or *pari passu* with, the Liens securing the DIP Facility and (z) the Adequate Protection Liens granted to the Other Adequate Protection Parties solely with respect to the Prepetition Collateral in which such parties have valid, perfected, and non-avoidable liens as of the commencement of the Cases.

(b) To the extent of any Diminution in Value of the prepetition security interests, the Prepetition Agent, for the benefit of the Prepetition Lenders, shall be granted, subject to the payment of the Carve-Out, a superpriority administrative expense 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 Administrative Agent and the Lenders, which superpriority claim shall, respectively among Prepetition Lenders, rank in the same right and priority as do the respective claims thereof as of the Petition Date; provided, however, that the Prepetition Loan Parties 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 with respect to the Prepetition Security Interests unless and until the Obligations have indefeasibly been paid in cash in full and the Lenders shall have no remaining Commitment or as otherwise agreed by the Lenders or as provided in the Loan Documents.

(c) The Prepetition Agent shall receive (for the benefit of itself and the Prepetition Lenders) from the Debtors current cash payments of all reasonable professional fees and expenses payable to the Prepetition Agent and the Prepetition Lenders under the Prepetition Loans, including, without limitation, the reasonable fees and disbursements of counsel and financial advisors for the Prepetition Agent and the Prepetition Lenders promptly upon receipt of invoices therefor (subject in all respects to applicable privilege or work product doctrines) and without the necessity of filing motions or fee applications, including such amounts arising before and after the Petition Date.

(d) The Prepetition Agent shall be permitted to retain expert consultants and financial advisors, the reasonable costs and expenses of which shall be paid by the Debtors. The Debtors shall provide any such consultants and advisors reasonable access to Debtors' premises.

(e) The Debtors shall continue to provide the Prepetition Agent with financial and other reporting substantially in compliance with the Prepetition Loans and any reporting described herein; provided, however, that within ten (10) Business Days after the end of each fiscal month following the Petition Date, the Debtors shall provide monthly financial statements as of the close of such fiscal month.

(f) All affiliate and/or intercompany loans of the Debtors shall be deemed subordinated to the DIP Facility, DIP Liens, Adequate Protection and to the Adequate Protection Liens.

Adequate protection to other holders of valid, perfected and non-avoidable liens in existence as of the commencement of the Cases (the "**Other Adequate Protection Parties**") shall be permitted to the extent such adequate protection is limited to adequate protection liens in an amount equal to the aggregate diminution in the value of the liens granted to the Other Adequate Protection Parties in connection with the respective prepetition loan facilities, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of the collateral of such the Other Adequate Protection Parties (including their cash collateral), and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. Any such adequate protection liens shall be subject and subordinate to (x) the Carve-Out and (y) the Liens securing the DIP Facility and any liens on the Prepetition Collateral that are senior to, or *pari passu* with, the Liens securing the DIP Facility.

ARTICLE XI

GUARANTY

SECTION 11.1 Guaranty. To induce the Lenders to provide the credits described herein and in consideration of benefits expected to accrue to the Borrower by reason of the Commitments, and for other good and valuable consideration, receipt of which is hereby acknowledged, each Subsidiary Guarantor party hereto hereby unconditionally and irrevocably guarantees jointly and severally to the Administrative Agent and the Lenders the due and punctual payment of all present and future Obligations, including, but not limited to, the due and

punctual payment of principal of and interest on the Loans and the due and punctual payment of all other Obligations now or hereafter owed by the Borrower under the Loan Documents, in each case as and when the same shall become due and payable, whether at stated maturity, by acceleration, or otherwise, according to the terms hereof and thereof (including interest as set forth in the Orders). In case of failure by the Borrower or other Obligor punctually to pay any Obligations guaranteed hereby, each Subsidiary Guarantor hereby unconditionally agrees to make such payment or to cause such payment to be made punctually as and when the same shall become due and payable, whether at stated maturity, by acceleration, or otherwise, and as if such payment were made by the Borrower or such Obligor, it being agreed that this is a guaranty of payment as opposed to a guaranty of collection.

SECTION 11.2 Guaranty Unconditional. The obligations of each Subsidiary Guarantor under this Article XI shall be unconditional, irrevocable and absolute and, without limiting the generality of the foregoing, shall not be released, discharged, or otherwise affected by:

- (a) any extension, renewal, settlement, compromise, waiver, or release in respect of any obligation of the Borrower or other Obligor or of any other guarantor under this Agreement or any other Loan Document or by operation of law or otherwise;
- (b) any modification or amendment of or supplement to this Agreement or any other Loan Document;
- (c) any change in the corporate existence, structure, or ownership of, the Borrower or other Obligor, any other guarantor, or any of their respective assets, or any resulting release or discharge of any obligation of the Borrower or other Obligor or of any other guarantor contained in any Loan Document;
- (d) the existence of any claim, set-off, or other rights which the Borrower or other Obligor or any other guarantor may have at any time against the Administrative Agent, any Lender, or any other Person, whether or not arising in connection herewith;
- (e) any failure to assert, or any assertion of, any claim or demand or any exercise of, or failure to exercise, any rights or remedies against the Borrower or other Obligor, any other guarantor, or any other Person or Property;
- (f) any application of any sums by whomsoever paid or howsoever realized to any obligation of the Borrower or other Obligor, regardless of what obligations of the Borrower or other Obligor remain unpaid;
- (g) any invalidity or unenforceability relating to or against the Borrower or other Obligor or any other guarantor for any reason of this Agreement or of any other Loan Document or any provision of applicable law or regulation purporting to prohibit the payment by the Borrower or other Obligor or any other guarantor of the principal of or interest on any Loan or any other amount payable under the Loan Documents; or
- (h) any other act or omission to act or delay of any kind by the Administrative Agent, any Lender, or any other Person or any other circumstance whatsoever that might,

but for the provisions of this paragraph, constitute a legal or equitable discharge of the obligations of any Subsidiary Guarantor under this Article XI.

SECTION 11.3 Discharge Only upon Payment in Full; Reinstatement in Certain Circumstances. Each Subsidiary Guarantor's obligations under this Article XI shall remain in full force and effect until the Commitments are terminated and the principal of and interest on the Loans and all other amounts payable by the Borrower and the other Obligor under this Agreement and all other Loan Documents shall have been paid in full. If at any time any payment of the principal of or interest on any Loan or any other amount payable by the Borrower or other Obligor under the Loan Documents is rescinded, or otherwise, each Subsidiary Guarantor's obligations under this Article XI with respect to such payment shall be reinstated at such time as though such payment had become due but had not been made at such time.

SECTION 11.4 Subrogation. Each Subsidiary Guarantor agrees it will not exercise any rights which it may acquire by way of subrogation by any payment made hereunder, or otherwise, until all the Obligations shall have been paid in full subsequent to the termination of all the Commitments. If any amount shall be paid to a Subsidiary Guarantor on account of such subrogation rights at any time prior to the later of (x) the payment in full of the Obligations and all other amounts payable by the Borrower and the other Obligor hereunder and the other Loan Documents and (y) the termination of the Commitments, such amount shall be held in trust for the benefit of the Administrative Agent and the Lenders and shall forthwith be paid to the Administrative Agent for the benefit of the Lenders or be credited and applied upon the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement.

SECTION 11.5 Waivers. Each Subsidiary Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, and any notice not provided for herein, as well as any requirement that at any time any action be taken by the Administrative Agent, any Lender, or any other Person against the Borrower or other Obligor, another guarantor, or any other Person.

SECTION 11.6 Limit on Recovery. Notwithstanding any other provision hereof, the right of recovery against each Subsidiary Guarantor under this Article XI shall be limited to the maximum amount that can be guaranteed without rendering such Subsidiary Guarantor's obligations under this Article XI void or voidable under applicable law, including, without limitation, fraudulent conveyance law.

SECTION 11.7 Acceleration of Guaranty. Each Subsidiary Guarantor agrees that, in the event the DIP Facility is terminated pursuant to Section 8.2 and if such event shall occur at a time when any of the Obligations of the Borrower and each other Obligor may not then be due and payable, such Subsidiary Guarantor will pay to the Administrative Agent for the account of the Lenders forthwith the full amount which would be payable hereunder by such Borrower or Obligor if all such Obligations were then due and payable.

SECTION 11.8 Benefit to Subsidiary Guarantors. The Borrower and the Subsidiary Guarantors are engaged in related businesses and integrated to such an extent that the financial strength and flexibility of the Borrower has a direct impact on the success of each Subsidiary Guarantor. Each Subsidiary Guarantor will derive substantial direct and indirect benefit from the extensions of credit hereunder.

SECTION 11.9 Subsidiary Guarantor Covenants. Each Subsidiary Guarantor shall take such action as the Borrower is required by this Agreement to cause such Subsidiary Guarantor to take, and shall refrain from taking such action as the Borrower is required by this Agreement to prohibit such Subsidiary Guarantor from taking.

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.1 Waivers, Amendments, etc. The provisions of this Agreement and of each other Loan Document may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Borrower and the Required Lenders; provided, however, that:

- (a) The consent of each Lender directly affected thereby shall be required with respect to:
 - (i) reductions in the amount or any extension of the DIP Facility Termination Date; provided, however, that any vote to rescind any acceleration made pursuant to Section 8.2 of amounts owing with respect to the Loans and other Obligations shall require the consent of all Lenders;
 - (ii) reductions in the rate of interest or any fee described in Article III or extensions of any due date thereof;
 - (iii) increases in the amount of any Commitment or Percentage;
 - (iv) reductions of the principal amount of or rate of interest on any Lender's Loan; or
 - (v) amendments or modifications to clause (b) of Section 3.1.1 or Section 3.1.2.
- (b) The consent of all Lenders is required with respect to:
 - (i) amendments or modifications to the definitions of "Commitment Termination Date";
 - (ii) amendments or modifications of this Section 12.1;
 - (iii) amendments or modifications of any of the voting percentages;
 - (iv) amendments or modifications to the definition of "**Required Lenders**" or any requirement hereunder that any particular action be taken by all Lenders;
 - (v) amendments or modifications of Section 4.8 hereunder;

(vi) any discharge or subordination of the Liens granted to the Lenders hereunder (unless in connection with a Permitted Asset Sale); or

(vii) any release of any Obligor.

(c) The consent of the Administrative Agent is required with respect to any amendment, modification or waiver that adversely affects the interests, rights or obligations of the Administrative Agent.

No failure or delay on the part of the Administrative Agent or any Lender in exercising any power or right under this Agreement or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on any of the Obligors in any case shall entitle them to any notice or demand in similar or other circumstances. No waiver or approval by the Administrative Agent or any Lender under this Agreement or any other Loan Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

SECTION 12.2 Notices. All notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing and addressed, delivered or transmitted to such party at its address or facsimile number set forth below its signature hereto or set forth in the Lender Assignment Agreement or at such other address or facsimile number as may be designated by such party in a notice to the other parties. All such notices and communications shall be deemed to have been properly given if (x) hand delivered with receipt acknowledged by the recipient; (y) if mailed, upon the fifth Business Day after the date on which it is deposited in registered or certified mail, postage prepaid, return receipt requested or (z) if by Federal Express or other nationally-recognized express courier service with instructions to deliver on the following Business Day, on the next Business Day after delivery to such express courier service. Notices and other communications given by facsimile shall be deemed to be received upon automatic facsimile confirmation of receipt thereof by the intended recipient machine therefor with the original of such notice or communication to be given in the manner provided in the second sentence of this Section; provided, however, that the failure to deliver a copy in accordance with the second sentence of this Section shall not invalidate the effectiveness of such facsimile notice.

SECTION 12.3 Payment of Costs and Expenses. The Obligors agree to pay on demand all reasonable expenses of the Administrative Agent and the Lenders (including the reasonable fees, charges, disbursements and out-of-pocket expenses of their respective counsel, local counsel and Independent Consultants whether retained the Administrative Agent, Lenders or their respective counsel) in connection with:

(a) the negotiation, preparation, execution, delivery and administration of this Agreement, the other Loan Documents and any and all other documents or instruments of further assurance, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to this Agreement or any other Loan

Document as may from time to time hereafter be required, whether or not the Transaction contemplated hereby or thereby is consummated;

- (b) the enforcement of this Agreement or any other Loan Document;
- (c) the preparation and review of the form of any document or instrument relevant or pertaining to this Agreement or any other Loan Document;
- (d) the Administrative Agent's and Lenders' participation in any Bankruptcy Court proceedings; and
- (e) the preparation of any information or response required with respect to any investigative request or inquiry, approval, findings of suitability or any other response or communication involving a Governmental Instrumentality arising out of this Agreement, any other Loan Documents or any Obligation evidenced and secured by the Loan Documents or the participation in any public or investigatory hearing or meeting.

SECTION 12.4 Indemnification. In consideration of the execution and delivery of this Agreement by each Lender and its Commitment, the Obligors hereby indemnify, exonerate and hold the Administrative Agent and each Lender, their respective Affiliates and the officers, directors, employees and agents thereof (collectively, the "**Indemnified Parties**") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages, and expenses incurred in connection therewith (irrespective of whether any such Indemnified Party is a party to the action for which indemnification hereunder is sought), including reasonable attorneys' fees and costs and expenses, whether incurred in connection with actions between or among the parties hereto or the parties hereto and third parties (collectively, the "**Indemnified Liabilities**"), incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to

- (a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Loan, or the use or the proposed use of such proceeds, including all Indemnified Liabilities arising in connection with the Transaction;
- (b) the entering into and performance of this Agreement and any other Loan Document by any of the Indemnified Parties (including any action brought by or on behalf of any of the Obligors as the result of any determination that the applicable conditions for funding in Article V have not been satisfied; provided, however, that any such action is resolved in favor of such Indemnified Party);
- (c) any investigation, litigation or proceeding related to any acquisition or proposed acquisition by any of the Obligors of all or any portion of the stock or assets of any Person or any Permitted Asset Sale or proposed Asset Sale, whether or not the Administrative Agent or any Lender is party thereto;
- (d) any investigation, litigation or proceeding related to any environmental cleanup, audit, compliance or other matter relating to the protection of the environment or the Release by any of the Obligors;

(e) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releases from, any Real Property owned, operated or occupied by any of the Obligors of any Hazardous Substances (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law), regardless of whether caused by, or within the control of, any of the Obligors; or

(f) each Lender's Environmental Liability (the indemnification herein for any Environmental Claim shall survive repayment of the Obligations and any transfer of the DIP Collateral by foreclosure or by a deed in lieu of foreclosure, regardless of whether caused by, or within the control of, any of the Obligors);

except for, in each case, (x) any such Indemnified Liabilities not based on facts in existence on the Effective Date or arising after the Petition Date, (y) any such Indemnified Liabilities arising for the account of a particular Indemnified Party by reason of the relevant Indemnified Party's bad faith, gross negligence or willful misconduct and (z) any such Indemnified Liabilities arising from actions, occurrences, or events that take place after conveyance of some, all or a portion of the Real Property Collateral by foreclosure or deed in lieu of foreclosure. The Obligors and all Persons claiming by, through or under any of the Obligors hereby waive, release and agree not to make any claim or bring any cost recovery action against the Administrative Agent or any Lender under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that any of the Indemnified Parties is strictly liable under any Environmental Laws, each Obligor's obligation to such Person under this indemnity shall likewise be without regard to fault on the part of any Obligor with respect to the violation or condition which results in liability of such Person. If and to the extent that the foregoing undertaking may be unenforceable for any reason, each Obligor hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

SECTION 12.5 Survival. The obligations of the Obligors under Sections 4.3, 4.4, 4.5, 4.6, 12.3 and 12.4, and the obligations of the Lenders under Section 9.1, shall, in each case, survive any assignment from one Lender to another (in the case of Sections 12.3 and 12.4) and any termination of this Agreement, the payment in full of all the Obligations and the termination of all the Commitments. The representations and warranties made by the Obligors in this Agreement and in each other Loan Document shall survive the execution and delivery of this Agreement and each such other Loan Document.

SECTION 12.6 Severability. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 12.7 Headings. The various headings of this Agreement and of each other Loan Document are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or such other Loan Document or any provisions hereof or thereof.

SECTION 12.8 Execution in Counterparts, Effectiveness, etc. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. This Agreement shall become effective when counterparts hereof executed on behalf of each of the Obligor, the Administrative Agent and each Lender (or notice thereof satisfactory to the Administrative Agent) shall have been received by the Administrative Agent, each of the Obligor and each Lender.

SECTION 12.9 Governing Law; Entire Agreement. THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT (INCLUDING PROVISIONS WITH RESPECT TO INTEREST, LOAN CHARGES AND COMMITMENT FEES) SHALL EACH BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF A SECURITY INTEREST OR DEED OF TRUST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK. This Agreement, the other Loan Documents and the Agent Fee Letter constitute the entire understanding among the parties hereto with respect to the subject matter hereof and thereof and supersede any and all prior agreements, written or oral, with respect thereto.

SECTION 12.10 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that:

(a) no Obligor may assign or transfer its rights or obligations hereunder without the prior written consent of the Administrative Agent and all Lenders; and

(b) the rights of sale, assignment and transfer of the Lenders are subject to Section 12.11.

SECTION 12.11 Sale and Transfer of Loans; Participations in Loans. Each Lender may assign, or sell participations in, its Loans and Commitments to one or more other Persons in accordance with this Section 12.11.

SECTION 12.11.1 Assignments. Upon prior notice to the Administrative Agent, and with the consent of the Lenders, any Lender may assign or sell all or any fraction of such Lender's total Loans and Commitments to an Eligible Assignee (each Person described in either of the foregoing clauses as being the Person to whom such assignment and delegation is to be made, being hereinafter referred to as an "**Assignee Lender**") in a minimum aggregate amount of \$1,000,000 with respect to the Loans (or, if less, the entire remaining amount of such Lender's Loans and Commitments) or such lesser amount approved by the Administrative Agent, provided, that such minimum aggregate amount shall not be applicable in the case of assignments by such Lender to another Lender, any Approved Fund or its Affiliate. The Obligor and the Administrative Agent shall be entitled to continue to deal solely and directly

with such Lender in connection with the interests so assigned and delegated to an Assignee Lender until

- (a) notice of such assignment and delegation, together with (i) payment instructions, (ii) the Internal Revenue Service Forms or other statements contemplated or required to be delivered pursuant to Section 4.6 and (iii) addresses and related information with respect to such Assignee Lender shall have been delivered to the Borrower and the Administrative Agent by such Lender and such Assignee Lender;
- (b) such Assignee Lender shall have executed and delivered to the Borrower and the Administrative Agent a Lender Assignment Agreement, accepted by the Administrative Agent;
- (c) the processing fees described below shall have been paid; and
- (d) the Lender Assignment Agreement has been registered in the Register in accordance with Section 2.6.

From and after the date that the Administrative Agent accepts such Lender Assignment Agreement and records the information therein in the Register, (x) the Assignee Lender thereunder shall be deemed automatically to have become a party hereto and to the extent that rights and obligations hereunder have been assigned and delegated to such Assignee Lender in connection with such Lender Assignment Agreement, shall have the rights and obligations of a Lender hereunder and under the other Loan Documents, and (y) the assignor Lender, to the extent that rights and obligations hereunder have been assigned and delegated by it in connection with such Lender Assignment Agreement, shall be released from its obligations hereunder and under the other Loan Documents thereafter arising. Within five (5) Business Days after its receipt of notice that the Administrative Agent has received and accepted an executed Lender Assignment Agreement and recorded such assignment in the Register in accordance with Section 2.6. Accrued interest on that part of each assigned Loan and Commitment, and accrued fees, shall be paid as provided in the Lender Assignment Agreement. Accrued interest and accrued fees shall be paid at the same time or times provided in this Agreement. Such assignor Lender or such Assignee Lender must also pay a processing fee in the amount of (i) \$500 in the case of an assignment via an electronic settlement system designated by the Administrative Agent or (ii) \$3,500 in all other cases to the Administrative Agent upon delivery of any Lender Assignment Agreement; provided, however, that only one fee shall be payable for simultaneous multiple assignments made by a Lender to or from its Affiliates; and further, provided, however, that no such fee shall be due from the assignor Lender or the Assignee Lender with respect to any Lender Assignment Agreement to which ING is a party or if the Administrative Agent, in its sole discretion, elects to waive such fee. Any attempted assignment and delegation not made in accordance with this Section 12.11.1 shall be null and void. Notwithstanding anything to the contrary set forth above, any Lender may (without requesting the consent of the Borrower or the Administrative Agent) pledge its Loans to a Federal Reserve Bank in support of borrowings made by such Lender from such Federal Reserve Bank, and any Lender that is an investment fund that invests in bank loans may, without the consent of the Administrative Agent or the Borrower, pledge all or any portion of its interest and rights (but may not delegate any of its duties or obligations hereunder or under any other Loan Document, including its

Commitment(s), if any) to any trustee or any other representative of holders of obligations owed or securities issued by such investment fund as security for such obligations or securities.

SECTION 12.11.2 Participations. Upon prior written notice to the Administrative Agent, any Lender may at any time sell to one or more commercial banks or other Persons (other than any of the Obligors or any of their Affiliates) (each of such commercial banks and other Persons being herein called a “**Participant**”) participating interests in any of the Loans, Commitments, or other interests of such Lender hereunder; provided, however, that

(a) no participation contemplated in this Section shall relieve such Lender from its Commitments or its other obligations hereunder or under any other Loan Document;

(b) such Lender shall remain solely responsible for the performance of its Commitments and such other obligations;

(c) the Obligors and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and each of the other Loan Documents;

(d) no Participant, unless such Participant is an Affiliate of such Lender or an Approved Fund or is itself a Lender, shall be entitled to require such Lender to take or refrain from taking any action hereunder or under any other Loan Document, except that such Lender may agree with any Participant that such Lender will not, without such Participant’s consent, take any actions of the type described in clauses (a)(i), (a)(ii), (a)(iii), (a)(iv), (b)(i), (b)(ii), (b)(v) or, to the extent requiring the consent of such Lender, clause (b)(iv) of Section 12.1;

(e) the Obligors shall not be required to pay any amount under this Agreement that is greater than the amount which they would have been required to pay had no participating interest been sold; and

(f) no sale of any participation interest shall be effective until such sale has been recorded in the Register in accordance with Section 2.6.

The Obligors acknowledge and agree that each Participant, for purposes of Sections 4.3, 4.4, 4.5, 4.6, 4.8 or 4.9 shall be considered a Lender. Each Participant shall only be indemnified for increased costs pursuant to Section 4.3, 4.4, 4.5 or 4.6 if and to the extent that the Lender which sold such participating interest to such Participant concurrently is entitled to make, and does make, a claim on the Obligors for such increased costs. Any Lender that sells a participating interest in any Loan, Commitment or other interest to a Participant under this Section 12.11.2 shall indemnify and hold harmless the Obligors and the Administrative Agent from and against any Taxes, penalties, interest or other costs or losses (including reasonable attorneys’ fees and expenses) incurred or payable by any such Person as a result of the failure of any Person to comply with its obligations to deduct or withhold any Taxes from any payments made pursuant to this Agreement to such Lender or the Administrative Agent, as the case may be, which Taxes would not have been incurred or payable if such Participant had been a Lender organized under the laws of a jurisdiction other than the United States that was entitled to deliver to the Borrower,

the Administrative Agent or such Lender, and did in fact so deliver, a duly completed and valid Form W-8BEN, Form W-8ECI or Form W-9 (or applicable successor form) entitling such Participant to receive payments under this Agreement without deduction or withholding of any United States federal taxes.

SECTION 12.12 Other Transactions. Nothing contained herein shall preclude the Administrative Agent or any other Lender from engaging in any transaction, in addition to those contemplated by this Agreement or any other Loan Document, with any of the Obligors or any of their Affiliates in which either the Obligors or any such Affiliates are not restricted hereby from engaging with any other Person.

SECTION 12.13 Execution by Authorized Representative. Any signature by any Authorized Representative on this Agreement, any Loan Document and any other instrument and certificate executed or to be executed pursuant to or in connection with this Agreement or such other Loan Documents is provided only in such Authorized Representative's capacity as an officer or member of the Person in question, and not in any way in such Authorized Representative's personal capacity.

SECTION 12.14 Waiver of Jury Trial. THE ADMINISTRATIVE AGENT, THE LENDERS, AND THE OBLIGORS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE LENDERS, OR ANY OF THE OBLIGORS IN CONNECTION HERewith OR THEREWITH. EACH OF THE OBLIGORS ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT AND THE LENDERS ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT.

SECTION 12.15 Maximum Rate of Interest. Nothing contained in this Agreement or in any other Loan Documents shall be construed to permit the Lenders to charge or receive at any time interest, fees or other charges in excess of the amounts which the Lenders are legally entitled to charge and receive under any law to which such interest, fees or charges are subject. In no contingency or event whatsoever shall the compensation payable to the Lenders by any Person, howsoever characterized or computed, hereunder or under any of the other Loan Documents, exceed the highest rate permissible under any law to which such compensation is subject. There is no intention that the Lenders shall contract for, charge or receive compensation in excess of the highest lawful rate, and, in the event it should be determined that the Lenders have contracted for any rate of interest in excess of the highest lawful rate, then ipso facto such rate shall be reduced to the highest lawful rate so that no amounts shall be charged or received which are in excess thereof, and, in the event it should be determined that any excess over such highest lawful rate has been charged or received, the Lenders shall promptly refund such excess

to the Person entitled thereto; provided, however, that, if lawful, any such excess shall be paid by the Obligors to the Lenders as additional interest (accruing at a rate equal to the maximum legal rate minus the rate provided for hereunder) during any subsequent period when regular interest is accruing hereunder at less than the maximum legal rate.

SECTION 12.16 Time of Essence. Time is of the essence as to all times and dates set forth in or applicable to this Agreement and the other Loan Documents; provided, however, that whenever any payment to be made under the Loan Documents shall be stated to be due on a day other than a Business Day, such payment may be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest payable hereunder.

SECTION 12.17 Consent or Approval of the Administrative Agent and the Lenders.

(a) Any request by the Borrower or any other Obligor for consent or approval by the Administrative Agent and/or the Lenders under this Agreement or any of the other Loan Documents shall be given in writing in accordance with Section 12.2. Except where a specific time period for response is otherwise provided in this Agreement, the Administrative Agent shall have five (5) Business Days and the Lenders shall have fifteen (15) Business Days to grant or deny any such request. If the Administrative Agent fails to respond to any such request in writing within such five (5) Business Day period or the Lenders fail to respond to any such request in writing within such fifteen (15) Business Day period, the Borrower's or other Obligor's request shall be deemed disapproved.

(b) No Claims may be made by any Obligor or other Person against the Administrative Agent, the Lenders, any Affiliate of the foregoing, or the officers, directors, employees, attorneys, consultants or agents of any of them for 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 Transaction, or an act, omission, or event occurring in connection therewith; and each Obligor, for itself and for all Persons claiming by, through and under it, waives, releases, and agrees not to sue upon any Claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

SECTION 12.18 No Third Party Beneficiary. All conditions of the obligations of the Lenders to make Loans hereunder are imposed solely and exclusively for the benefit of the Lenders, and no Person (x) shall have standing to require satisfaction of such conditions or be entitled to assume that the Lenders will refuse to make Loans in the absence of strict compliance with any or all of such conditions or (y) shall, under any circumstances, be deemed to be a beneficiary under this Agreement or of such conditions, any or all of which may be waived in whole or in part by the Administrative Agent or the Lenders at any time if they, in their sole discretion, deem it advisable to do so. The waiver by the Lenders at any time of any of such conditions shall be deemed to be made pursuant to, and not in modification of, this Agreement.

SECTION 12.19 Cumulative Remedies. No right or remedy conferred upon the Administrative Agent or the Lenders in this Agreement is intended to be exclusive of any other

right or remedy contained in the other Loan Documents or at law and equity and every such right and remedy shall be cumulative and shall be in addition to every other right or remedy contained in the other Loan Documents and as now or hereafter available to the Lenders at law or in equity, by statute or otherwise.

SECTION 12.20 Estoppel Certificates. Each of the Obligor shall, execute and deliver, or cause to be executed and delivered, to the Administrative Agent all instruments and certificates as the Administrative Agent may reasonably request (including estoppel certificates certifying that the Loans and each of the Loan Documents are in full force and effect and that there are no defenses or offsets, claims or counterclaims with respect thereto or if there are, stating the nature of such defenses, offsets, claims or counterclaims) to effect, confirm or assure the rights, remedies and Liens intended to be granted to the Administrative Agent for the benefit of the Lenders under the Loan Documents.

SECTION 12.21 Joint and Several Liability of the Obligors.

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

(b) Each of the Obligors, 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 Obligors, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 12.21), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of the Obligors without preferences or distinction between them.

(c) If and to the extent that any Obligor 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 Obligors will make such payment with respect to, or perform, such Obligation.

(d) The Obligations of the Obligors under the provisions of this Section 12.21 constitute the absolute and unconditional, full recourse obligations of each of the Obligors enforceable against each of them 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 of the Obligors hereby waives notice of acceptance of its joint and several liability, notice of any borrowings issued under or pursuant to this Agreement, notice of the occurrence of any Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or the 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 laws, all demands, notices and other

formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each of the Obligors 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 the Administrative Agent or the Lenders at any time or times in respect of any default by or any of the Obligors in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Administrative Agent or the 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 their Obligations or the addition, substitution or release, in whole or in part, of any of the Obligors. Without limiting the generality of the foregoing, each of the Obligors assents to any other action or delay in acting or failure to act on the part of the Administrative Agent or any Lender with respect to the failure by or any of the Obligors to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable Legal Requirements thereunder, which might, but for the provisions of this Section 12.21, afford grounds for terminating, discharging or relieving any of the Obligors, in whole or in part, from any of their Obligations under this Section 12.21, it being the intention of each of the Obligors that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each of the Obligors under this Section 12.21 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each of the Obligors under this Section 12.21 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any of the Obligors or the Administrative Agent or any of the Lenders. The joint and several liability of the Obligors hereunder shall continue in full force and effect notwithstanding any combination, merger, amalgamation or any other change whatsoever in the name, constitution or place of formation of any of the Persons composing any of the Obligors, the Administrative Agent or any of the Lenders.

(f) Each of the Obligors represents and warrants to the Administrative Agent and the Lenders that such Obligor is currently informed of the financial condition of the other Obligors and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each of the Obligors further represents and warrants to the Administrative Agent and the Lenders that such Obligor has read and understands the terms and conditions of the Loan Documents. Each of the Obligors hereby covenants that such Obligor will continue to keep informed of the other Obligors' 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) The provisions of this Section 12.21 are made for the benefit of the Administrative Agent, the Lenders and their respective successors and assigns, and may be enforced by it or them from time to time in accordance with this Agreement against any of the Obligors as often as occasion therefor may arise and without requirement on the part of the Administrative Agent on behalf of the Lenders, first to marshal any claims

or to exercise any rights against any of the Obligors or to exhaust any remedies available to the Administrative Agent for the benefit of the Lenders against any of the Obligors 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 12.21 shall remain in effect until all of the Obligations shall have been indefeasibly repaid in full in cash. If at any time and for any reasons whatsoever, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender, the provisions of this Section 12.21 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each of the Obligors agrees that it will not enforce any of its rights of contribution or subrogation against any of the other Obligors with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Administrative Agent or the Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been indefeasibly repaid in full in cash. Any claim which any of the Obligors may have against any of the other Obligors with respect to any payments to the Administrative Agent or the Lenders 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 indefeasible 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 either any of the Obligors, their debts or their assets, whether voluntary or involuntary, all such Obligations shall be indefeasibly repaid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any of the other Obligors therefor.

(i) Each of the Obligors agrees that the payment of any amounts due with respect to the Indebtedness owing by any of the Obligors to another Obligor are hereby subordinated to the prior indefeasible payment in full in cash of the Obligations. Each of the Obligors agrees that it will not demand, sue for or otherwise attempt to collect any indebtedness of any of the other Obligors owing to such Obligor until the Obligations shall have been indefeasibly repaid in full in cash. If, notwithstanding the foregoing sentence, any such Obligor shall collect, enforce or receive any amounts in respect of such Indebtedness, such amounts shall be collected, enforced and received by such Obligor as trustee for the Administrative Agent for the benefit of the Lenders for application to the Obligations in accordance with Section 3.1.2.

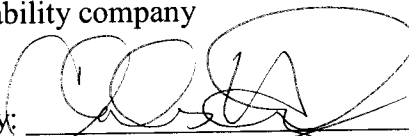
SECTION 12.22 USA PATRIOT Act Notice. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each of the Obligors that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each of the Obligors, which information includes the name and address of each of the Obligors and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each of the Obligors in accordance with the USA PATRIOT Act.

[No further text]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

BORROWER:

PCAA PARENT, LLC, a Delaware limited liability company

By: 

Name: Charles Huntzinger
Title: Chief Executive Officer

Address for Notices:

PCAA Parent, LLC
621 N. Governor Printz Boulevard
Essington, PA 19029
Facsimile: 888-507-6603
Attention: Mark Shapiro

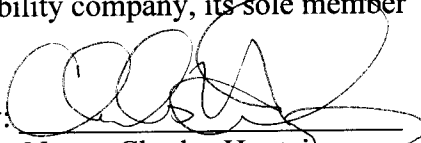
and:

Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10005-1413
Facsimile: (212) 530-5194
Attention: Matthew S. Barr, Esq.

SUBSIDIARY GUARANTORS:

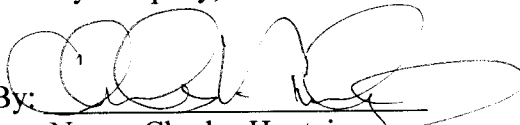
AIRPORT PARKING MANAGEMENT, INC.,
a Delaware corporation

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

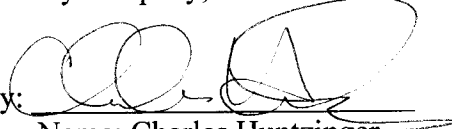
PARKING COMPANY OF AMERICA AIRPORTS, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

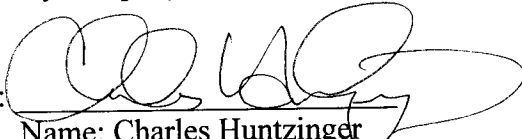
PARKING COMPANY OF AMERICA AIRPORTS PHOENIX, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

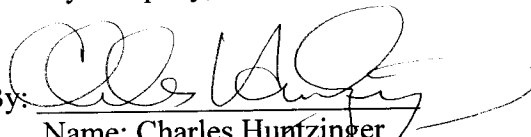
PCA AIRPORTS, LTD., a Texas limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

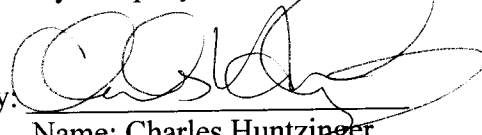
PCAA CHICAGO, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

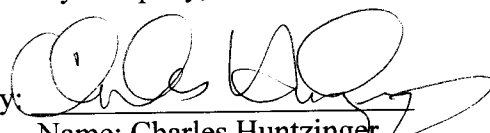
PCAA GP, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

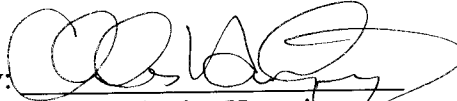
PCAA LP, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

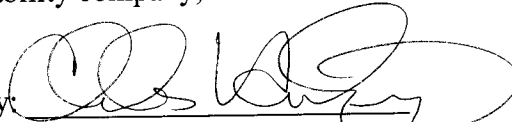
PCAA MISSOURI, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

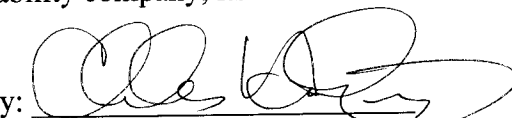
PCAA OAKLAND, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

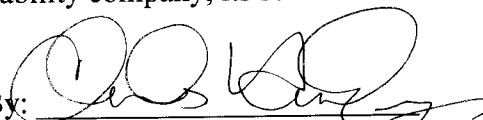
PCAA PROPERTIES, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

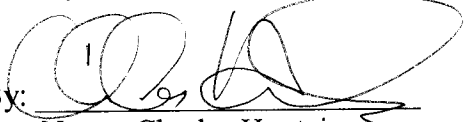
PCAA SP, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

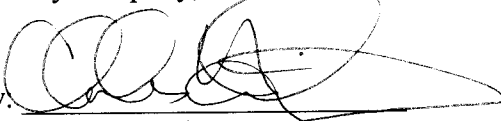
PCAA SP-OK, LLC, a Delaware limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

RCL PROPERTIES, LLC, a Pennsylvania limited liability company

By: PCAA Parent, LLC, a Delaware limited liability company, its sole member

By: 
Name: Charles Huntzinger
Title: Chief Executive Officer

Address for Notices:

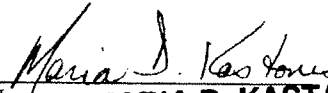
c/o PCAA Parent, LLC
621 N. Governor Printz Boulevard
Essington, PA 19029
Facsimile: 888-507-6603
Attention: Mark Shapiro

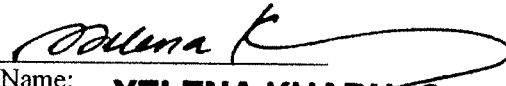
and:

Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10005-1413
Facsimile: (212) 530-5194
Attention: Matthew S. Barr, Esq.

ADMINISTRATIVE AGENT:

ING REAL ESTATE FINANCE (USA) LLC, a
Delaware limited liability company

By: 
Name: **MARIA D. KASTANIS**
Title: **SENIOR DIRECTOR**

By: 
Name: **YELENA KHARNAS**
Title: **VICE PRESIDENT**

Address for Notices:

ING Real Estate Finance (USA) LLC
230 Park Avenue, 9th Floor
New York, NY 10169
Facsimile: (212) 883-2936
Attention: Maria Kastanis, Senior Director

with a copy to:

Mayer Brown LLP
1675 Broadway
New York, New York 10019
Facsimile: (212) 849-5665
Attention: Douglas L. Wisner, Esq.

LENDER:

ING REAL ESTATE FINANCE (USA) LLC, a
Delaware limited liability company

By: *Maria D. Kastanis*
Name: **MARIA D. KASTANIS**
Title: **SENIOR DIRECTOR**

By: *Yelena Kharnas*
Name: **YELENA KHARNAS**
Title: **VICE PRESIDENT**

Address for Notices:

ING Real Estate Finance (USA) LLC
230 Park Avenue, 9th Floor
New York, NY 10169
Facsimile: (212) 883-2936
Attention: Maria Kastanis, Senior Director

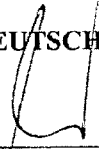
with a copy to:


Mayer Brown LLP
1675 Broadway
New York, New York 10019
Facsimile: (212) 849-5665
Attention: Douglas L. Wisner, Esq.

Commitment Amount:	\$ 2,500,000.00
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LENDER:

DEKABANK DEUTSCHE GIROZENTRALE

By: 
Name: **Burkhard Mau**
Title: **Executive Director**

By: 
Name: **Björn Kronsbein**
Title: **Senior Associate**

Address for Notices:

DekaBank
Deutsche Girozentrale
Transaction Management North America
76 02 01 - 10
Mainzer Landstrasse 16
60325 Frankfurt am Main
Germany
Attn: Bjoem Kronsbein
Facsimile: +49-69-71 47-28 75

with a copy to:

Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Facsimile: (646) 848-7606
Attention: Robert W. Fagiola, Esq.

Commitment Amount:	\$ 2,500,000.00
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