

the other Loan Documents, and (c) subject to the entry by the Bankruptcy Court of the interim Order (or the Final Order, when applicable), have all requisite corporate power and authority and the legal right to own, pledge, mortgage and operate their Properties, to lease the Properties they operate as lessee and to conduct its business as now or currently proposed to be conducted.

3.2 Due Execution; Binding Obligation. Upon entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the execution, delivery and performance by each of the other Loan Documents to which it is a party, and the commencement of the Bankruptcy Case are within the power of Borrowers and have been duly authorized by all necessary corporate action. Upon entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), this Agreement has been duly executed and delivered by Borrowers. This Agreement is, and each of the other Loan Documents to which Borrowers are or will be a party, when delivered hereunder or thereunder, will be, a legal, valid and binding obligation of Borrowers, enforceable against such Borrowers in accordance with its terms and the Orders, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

3.3 Financial Statements. Any financial statements delivered pursuant to this Agreement or the other Loan Documents, taken as a whole and in light of the circumstance in which made, contain no untrue statement of a material fact and do not omit to state a material fact necessary to make such statements not misleading.

3.4 Stipulation of Pre-Petition Indebtedness. Borrowers agree and acknowledge the Prepetition Indebtedness and that the Prepetition Obligations are due and owing to the Lender without offset, defense or counterclaim, and are secured by first-priority perfected Liens in the pre-petition Collateral except the Non-Primed Interests to which Borrowers make no representation.

3.5 Waiver of Surcharge. The Borrowers waive the right to surcharge property securing its Obligations to Lender under 11 U.S.C. § 506(c).

3.6 Title to Assets. Borrowers own and have on the date hereof good and marketable fee or leasehold title to, or a right or license to use, the Properties (subject only to Permitted Liens) that are necessary for the operation and conduct of their respective businesses. There are no Liens of any nature whatsoever on any assets of Borrowers other than: (i) Liens granted pursuant to the Orders and this Agreement, and (ii) the other Permitted Liens.

3.7 The Orders. As of the date of the making of the Initial Advance hereunder, the Interim Order has been entered and has not been stayed, amended, vacated, reversed, rescinded or otherwise modified in any respect. As of the date of the making of any Subsequent Advance hereunder, the Interim Order and/or the Final Order, as the case may be, have been entered and have not been stayed, amended (except in accordance with the terms hereof or as consented to by Lender), reversed, vacated, rescinded or otherwise modified (except in accordance with the terms hereof or as consented to by Lender) in any respect.

3.8 Insurance. All policies of insurance of any kind or nature owned by or issued to Borrowers, including, without limitation, policies of life, fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation, employee health and welfare, title, property and liability insurance, are in full force and effect and are of a nature and provide such coverage as in the reasonable opinion of such Borrowers, are sufficient and as are customarily carried by companies of the size and character of such Borrowers.

3.9 Licenses, etc. Subject to Bankruptcy Code § 365, Borrowers have obtained and holds in full force and effect, either directly or through an Affiliate, all franchises, licenses, permits, certificates, authorizations, qualifications, accreditations, easements, rights of way and other rights, consents and approvals which are necessary for the operation of their businesses as presently conducted, except where the failure to so obtain the foregoing could not, individually or in the aggregate, have a Material Adverse Effect.

3.10 ERISA. Borrowers are in compliance in all material respects with all applicable provisions of ERISA. No ERISA Event has occurred with respect to any ERISA Plan or is reasonably expected to occur with respect to any ERISA Plan.

SECTION 4. CONDITIONS PRECEDENT

4.1 Conditions to Initial Borrowing. The obligation of Lender to make the Initial Advance is subject to the satisfaction, immediately prior to or currently with the making of such Loan, of the following conditions precedent, unless Lender has previously waived any such condition precedent in writing:

(a) Loan Documents. Lender shall have received (i) this Agreement, executed and delivered by a duly authorized officer of Borrowers, (ii) a Note conforming to the requirements hereof and executed by a duly authorized officer of Borrowers, and (iii) such other documents, including, without limitation, security agreements, pledge agreements and other related collateral documents, that are customary in such transactions, in form and substance satisfactory to Lender.

(b) Interim Order. Before the time of the making of the Initial Advance, and in any event no later than two (2) days after entry of the Interim Order, Lender shall have received a copy of the Interim Order approving this Agreement and the other Loan Documents and granting the Superpriority Claim status and Liens described herein and finding that Lender is extending credit to Borrowers in good faith within the meaning of Bankruptcy Code § 364(e), which Interim Order (i) shall be in form and substance satisfactory to Lender, (ii) shall have been entered upon an application of Borrowers in form and substance satisfactory to Lender, (iii) shall be in full force and effect, and (iv) shall not have been stayed, reversed, vacated, rescinded, modified or amended in any respect, and, if the Interim Order is the subject of a pending appeal in any respect, none of the making of such Loan, the granting of Liens and Superpriority Claims herein or the performance by Borrowers of any of their obligations hereunder or under the other Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

(c) Cash Collateral. Before the time of the making of the Initial Advance, and in any event no later than two (2) days after entry of the Interim Order, Lender shall have received a copy of an order or orders of the Bankruptcy Court, in form and substance satisfactory to Lender, which may be the Interim Order, pursuant to Bankruptcy Code §363(c)(2)(B), authorizing the use by Borrowers of any Cash Collateral and providing for Superpriority Claims, Liens and other adequate protection contemplated herein, which order(s) shall be in full force and effect and shall not have been stayed, reversed, vacated, rescinded, modified or amended in any respect without the prior written consent of Lender. The Liens and claim described in this Agreement and the other rights granted in respect of the use of Cash Collateral, may be contained in the Interim Order.

(d) No Material Adverse Change. Since the Motion Date, no event, act or condition shall have occurred in the business, assets, operations, prospects, or Properties of Borrowers which, in the reasonable judgment of Lender, has had or would have a Material Adverse Effect.

(e) No Injunction. Since the Motion Date, no law or regulation shall have been adopted, no order, judgment or decree of any Governmental Authority shall have been issued, and no litigation shall be pending or threatened, which in the judgment of Lender would enjoin, prohibit or restrain, or impose or result in the imposition of any material adverse condition upon, the making or repayment of the Loans.

(f) Budget. Lender shall have received and approved (in its sole and absolute discretion) the Budget.

(g) Additional Matters. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by this Agreement and the other Loan Documents, shall be in form and substance satisfactory to Lender, and Lender shall have received such other documents in respect of any aspect or consequence of the transactions contemplated hereby or thereby as it shall reasonably request.

(h) Representations. All representations contained in or pursuant to this Agreement and the other Loan Documents, or otherwise made in writing in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of each Loan hereunder with the same effect as if made on and as of such date (unless stated to relate to a specific earlier date, in which case, such representations shall be true and correct in all material respects as of such earlier date).

4.2 Conditions to Subsequent Borrowing. The obligation of Lender to make each or any Subsequent Advance is subject to the following conditions precedent, unless Lender has previously waived any such condition precedent in writing:

(a) Notice. Lender shall have received an Advance Request executed by an authorized representative of Borrowers. Borrowers agree that the delivery of any such Advance Request shall constitute a certification by Borrowers that (i) the requested Loan and the intended use thereof are consistent with the terms of this Agreement and is necessary for Borrowers to satisfy their obligations in the ordinary course of business or as otherwise permitted under this

Agreement, (ii) the proceeds of all prior Loans have been applied in conformity with the requirements of this Agreement, (iii) all of the representations contained in Section 3 are true and correct as required by Section 4.2(b), (iv) Borrowers shall have observed and performed in all material respects all applicable covenants and agreements contained herein and in the other Loan Documents and the Orders (as applicable), and satisfied each condition to such Loan contained herein or in the other Loan Documents or in the Orders (as applicable), to be observed, performed or satisfied by Borrowers, (v) the making of the requested Loan is in compliance with all provisions of this Agreement and the other Loan Documents, and (vi) such authorized officer has no knowledge of any Default or Event of Default.

(b) Representations. All representations contained in or pursuant to this Agreement and the other Loan Documents, or otherwise made in writing in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of each Loan hereunder with the same effect as if made on and as of such date (unless stated to relate to a specific earlier date, in which case, such representations shall be true and correct in all material respects as of such earlier date).

(c) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on such Borrowing Date or after giving effect to such Loan on such Borrowing Date.

(d) Material Adverse Effect. Since the Motion Date there shall not have been any Material Adverse Effect.

(e) Bankruptcy Court Approval. The Interim Order shall be in full force and effect and shall not have been stayed, reversed, vacated, rescinded, or, without the consent of Lender, modified (other than by the Final Order) or amended in any respect or, if the date of such requested Loan is more than thirty (30) days after the Motion Date, the Final Order shall have been entered, which Final Order shall be in full force and effect and shall not have been stayed, reversed, vacated, rescinded or, without the consent of Lender, modified or amended in any respect and, if the Interim Order or the Final Order, as the case may be, is the subject of a pending appeal in any respect, none of the making of such Loan, the grant of Liens and Superpriority Claims pursuant hereto or the performance by Borrowers of any of their obligations hereunder or under the other Loan Documents or under any other instrument or agreement referred to herein or therein shall be the subject of a then effective stay pending appeal.

(f) Budget. Lender shall have received and approved (in its sole and absolute discretion) any necessary subsequent Budget.

(g) Pleadings. No pleading shall have been filed in the Bankruptcy Court by any party which is not withdrawn, dismissed or denied within thirty (30) days after such filing seeking (i) to dismiss or convert any of the Bankruptcy Case to Chapter 7 Case, (ii) the appointment of a Chapter 11 trustee in any of the Bankruptcy Case, (iii) the appointment of an examiner having enlarged powers relating to the operation of the businesses of Borrowers (beyond those set forth under Bankruptcy Code § 1106(b) or §§ 1106(a)(3) and (4), (iv) the allowance of a Superpriority Claim or a Lien pari passu or senior to that of Lender granted

hereunder pursuant to Bankruptcy Code § 364(c)(3), (v) to stay, reverse, vacate or otherwise modify the Interim Order or the Final Order without the prior written consent of Lender, or (vi) relief from the automatic stay so as to allow a third party to proceed against any material Property or asset of Borrowers (except with respect to a third party proceeding against Property or assets of Borrowers in which such third party has a perfected first-priority Permitted Lien).

SECTION 5.
AFFIRMATIVE COVENANTS

Borrowers hereby agree that, so long as any Loan remains outstanding and unpaid or any other amount is owing to Lender hereunder or under any other Loan Document, Borrowers shall:

5.1 Financial Statements, Etc. Until the Termination Date and upon request from the Lender, the Borrowers will deliver to Lender: (i) unaudited financial statements for the calendar month which shall be presented in a form consistent with generally accepted accounting principals, consistently applied, or in a form otherwise acceptable to Lender, and (ii) as soon as available, the monthly operating report required to be provided to the United States Trustee. All such financial statements delivered pursuant to this Section 5.1 shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP (other than the inclusion of footnotes and year-end adjustments) applied consistently throughout the periods reflected therein.

5.2 Other Information. Furnish to Lender:

(a) promptly following the delivery thereof to Borrowers or to the Board of Directors or management of Borrowers, a copy of any management letter or report by independent public accountants with respect to the financial condition, operations, business or prospects of Borrowers;

(b) promptly after the same is available, copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of Borrowers with the Bankruptcy Court or the United States Trustee in the Bankruptcy Case, or distributed by or on behalf of Borrowers to any official committee appointed in the Bankruptcy Case; and

(c) concurrently with the delivery to Lender of the above monthly financial statements and reports, Borrowers shall provide Lender with monthly variance reports, in form satisfactory to Lender, which reports shall include a detailed accounting of any variance between the actual monthly operating results versus the projected results in each category described in the Budget.

5.3 Maintenance of Property; Insurance. Keep all of their respective Property in good working order and condition, subject to ordinary wear and tear and damage by casualty or governmental taking or action in lieu thereof, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; maintain their pre-Petition Date insurance policies on their respective Property, which policies shall name Lender as an additional insured and the loss payee for the proceeds of any such policy; and furnish to Lender, upon

written request, certificates evidencing such insurance in form and substance acceptable to Lender.

5.4 Inspection of Property Books and Records; Discussions. Keep proper books of records and accounts in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to their respective businesses and activities; and permit representatives of Lender, upon reasonable advance notice to Borrowers, to visit and inspect any of their respective Properties and examine and make abstracts from any of their respective books and records at any reasonable time or times and to discuss the business, operations, Properties and financial and other condition of such Borrowers with officers and employees of such Borrowers and with their accountants.

5.5 Notices. Promptly, and in any event within three Business Days after Borrowers acquire knowledge thereof, give notice to Lender of: (a) the occurrence of any Default or Event of Default, (b) the occurrence of any default or event of default under any post-Petition Date Contractual Obligation of Borrowers, (c) litigation, investigation or proceeding which may exist at any time between Borrowers and any Governmental Authority, which in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect, (d) any post-Petition Date litigation or proceeding affecting Borrowers an adverse determination in which could reasonably be expected to have a Material Adverse Effect or in which injunctive or similar relief is sought; and (e) any development or event which has had or would reasonably be expected to have a Material Adverse Effect. Each notice pursuant to this Section 5.5 shall be accompanied by a statement of an authorized officer setting forth details of the occurrence referred to therein and stating what action the applicable Borrower has taken or proposes to take with respect thereto.

5.6 Further Assurances. At the cost and expense of Borrowers, execute and file all such further documents and instruments, and perform such other acts, as Lender may reasonably determine are necessary or advisable to maintain the Liens granted to Lender in connection with this Agreement, the other Loan Documents and the Orders and to maintain the priority of such Liens purported to be granted pursuant to this Agreement and the Orders. Without limiting the generality of the foregoing, Borrowers shall assist Lender in the preparation and filing of any UCC financing statements required by Lender.

5.7 Approval of Agreement. Use Borrowers' best efforts to obtain approval from the Bankruptcy Court of this Agreement.

5.8 Bank Accounts. Borrowers shall maintain deposit accounts as is required by Lender from time to time and agrees that, without Lender's prior written consent, it shall not close any of the deposit accounts or open or maintain any additional deposit accounts.

SECTION 6. NEGATIVE COVENANTS

Borrowers hereby agree that during the Exclusivity Period the Borrowers shall not, directly or indirectly, without the written consent of Lender:

6.1 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness in favor of Lender under this Agreement and the other Loan Documents;
- (b) Indebtedness outstanding on the Petition Date; and
- (c) Indebtedness first incurred after the Petition Date in respect of Liens permitted under Section 6.2.

6.2 Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of their respective Properties, whether now owned or hereafter acquired, except for

- (a) Liens existing on the Petition Date;
- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords' or other similar Liens arising in the ordinary course of business which are not overdue or which are being contested in good faith by appropriate proceedings;
- (c) pledges or deposits in connection with workers' compensation, general liability insurance and/or claims or unemployment insurance;
- (d) Liens imposed by any Governmental Authority for taxes, assessments or charges not yet due or that are being contested in good faith and by appropriate proceedings if, unless the amount thereof is not material with respect to its financial condition, adequate reserves with respect thereto are maintained on the books of a Borrowers in accordance with GAAP;
- (e) Liens created pursuant to this Agreement and the Orders; and
- (f) Any extension, renewal or replacement of any of the foregoing, provided that the Liens permitted by this paragraph shall not extend to or cover any additional Indebtedness or Property (other than substitution of like Property).

6.3 Limitation on Guaranty Obligations. Create, incur or assume any Guaranty Obligation.

6.4 Prohibition on Fundamental Changes. Enter into any acquisition, merger, consolidation or amalgamation, or liquidate, wind up or dissolve (or suffer any liquidation or dissolution), or make any material change in their present methods of conducting business or create or acquire any new Subsidiaries.

6.5 Limitation on Sale of Assets. Except as agreed by Lender, convey, sell, lease, assign, transfer or otherwise dispose of any of their respective Properties or businesses, whether now owned or hereafter acquired, outside of the ordinary course of business unless such transaction is authorized by the Bankruptcy Court after notice and hearing.

6.6 Limitation on Investments, Loans and Advances. Make any advance, loan, extension of credit or capital contribution to, or purchase any stock, bonds, notes, debentures or other securities of or any assets constituting a business unit of or make any other investment (each, an "Investment") in, any Person, except:

- (a) Investments in cash equivalents;
- (b) Investments existing on the Petition Date;
- (c) extensions of trade credit and prepaid expenses made in the ordinary course of business; and
- (d) Investments received in connection with the creation and collection of Accounts in the ordinary course of business.

6.7 Transactions with Affiliates. Sell or transfer any Property or assets to, or otherwise engage in any other transactions with, any Affiliate, except that any Borrower may engage in any such transaction which is otherwise permitted under this Agreement, is consistent with past practices, or otherwise in the ordinary course of business at prices and on terms and conditions not less favorable than could be obtained in a comparable arm's-length transaction from unrelated third parties.

6.8 Lines of Business. Engage to any substantial extent in any line or lines of business activity other than businesses of the same general type as those in which Borrowers are engaged on the date of this Agreement or which are related thereto.

6.9 Chapter 11 Claims; Payment of Pre-Petition Date Claims. Incur, create, assume, suffer to exist or permit any other Superpriority Claim or Lien which is pari passu with or senior to the claims of Lender granted pursuant to this Agreement and the Orders, or make any payments of pre-Petition Date obligations other than (a) as permitted under the Orders, (b) as permitted by the Bankruptcy Court under the "first-day" orders including pre-Petition Date wages and benefits and other employee-related claims, and (c) as otherwise permitted or required under this Agreement.

6.10 Capital Expenditures. Make or commit to make any Capital Expenditure that is not approved by the Lender.

6.11 Use of Proceeds. Use the proceeds of the Loans, the Collateral, or any Cash Collateral to commence or prosecute any investigation, action or objection with respect to the Superpriority Claims or Liens granted to Lender pursuant to this Agreement and the Orders or any other claims of any kind against Lender.

SECTION 7. EVENTS OF DEFAULT

7.1 Event of Default. If one or more of the following events (each an "Event of Default") shall occur and be continuing:

(a) Borrowers shall fail to (i) pay any principal under the Note or under this Agreement when due in accordance with the terms thereof or hereof, or (ii) pay any interest under the Note or under this Agreement, or any other amount payable hereunder or under any other Loan Document, within five (5) Business Days after any such interest or other amount becomes due in accordance with the terms thereof or hereof; or

(b) any representation made or deemed made by Borrowers herein or in any other Loan Document or which is contained in any certificate, document or financial or other statement furnished at any time under or in connection with this Agreement shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or

(c) Borrowers shall default in the observance or performance of any covenant or other agreement contained in this Agreement (other than as provided in subsections (a) and (b) of this Section), and such default shall continue unremedied for a period of ten (10) days after Lender provides written notice of such default to Borrowers; or

(d) Any of the Bankruptcy Cases are dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or a trustee or other responsible officer under Chapter 11 of the Bankruptcy Code shall be appointed in any of the Bankruptcy Cases; or

(e) An order of the Bankruptcy Court shall be entered granting another Superpriority Claim or Lien pari passu with or senior to that granted to Lender pursuant to this Agreement and the Orders, or an order of a court of competent jurisdiction shall be entered reversing, staying, vacating or rescinding either of the Orders, or an order of a court of competent jurisdiction shall be entered amending, supplementing or otherwise modifying either of the Orders without the consent of Lender; or

(f) An order of the Bankruptcy Court shall be entered under Bankruptcy Code § 1106(b) in any of the Bankruptcy Case appointing an examiner having enlarged powers relating to the operation of the business of any Borrower (i.e., powers beyond those set forth under Bankruptcy Code §§ 1106(a)(3) and (4)); or

(g) Borrowers shall make any payments relating to pre-Petition Date obligations other than (i) as permitted under the Orders or the "first-day" orders, (ii) as otherwise permitted under this Agreement, or (iii) as required by an order of the Bankruptcy Court, or

(h) An order granting relief from the automatic stay so as to allow a third party to proceed against any Borrowers' assets or an order under Section 506(c) of the Bankruptcy Code awarding recovery of any costs and expenses of the Collateral shall be entered; or

(i) Any Borrower or any other party in interest files a motion after the Motion Date and during the Exclusive Period without the consent of Lender to use Cash Collateral or to approve financing pursuant to Section 364 of the Bankruptcy Code that would grant an additional security interest or lien on any of the Collateral;

(j) An order is entered over the objection of the Lender granting an administrative claim in the Bankruptcy Case that is equal or superior to the administrative claim granted to the Lender pursuant to the Orders; or

(k) Any pleading by any Borrower seeking, or otherwise consenting to, any of the matters set forth in subsections (e), (f), (g), (h), (i) and (j) of this Section 7 shall be filed; or

(l) The occurrence of any event, including, without limitation, any change in the financial condition of any Borrower, after the Motion Date which results in, or could reasonably be expected to have, a Material Adverse Effect, or

(m) The entry of the Final Order shall not have occurred within thirty (30) days after the Motion Date; or

(n) The commencement of any proceeding seeking, or otherwise consenting to, (i) the invalidation, subordination or other challenging of the Superpriority Claims and Liens granted to secure the Obligations, or (ii) any relief under Bankruptcy Code § 506(c) with respect to any Collateral; or (iii) if any action or proceeding is commenced against Lender arising out of or in connection with its pre-Petition Date loans and liens or seeking a monetary judgment against Lender.

(o) Subject to Bankruptcy Code § 365, any Borrower shall fail to obtain, maintain or comply in all material respects with any order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any Governmental Authority and such failure could reasonably be expected to have a Material Adverse Effect; or

(p) This Agreement, the other Loan Documents and the Orders shall, for any reason, cease to create a valid Lien on any of the Collateral purported to be covered thereby or such Lien shall cease to be a perfected Lien having the priority provided herein pursuant to Bankruptcy Code § 364 against any Borrower, or any Borrower shall so allege in any pleading filed in any court, or any material provision of any Loan Document shall, for any reason, cease to be valid and binding on Borrowers or Borrowers shall so state; or

(q) Either of the Orders is modified without Lender's consent or is vacated, stayed or is for any reason not binding on Borrowers; or

(r) Borrowers or any other party in interest file a Reorganization Plan that purports to affect the Lender's claims, to which plan the Lender has not consented in writing; or

(s) Borrowers or any other party in interest file a motion to approve a sale of Borrowers or any Collateral (other than the sale of Inventory in the ordinary course of business) on terms to which Lender has not given its prior written consent; or

(t) An order is entered for the sale of Borrowers or any Collateral (other than the sale of Inventory in the ordinary course of business) to which the Lender objects; or

then, and in every such event and at any time thereafter during the continuance of such Event of Default, Lender may take one or more of the following actions, at the same or different times: (i) declare the Loans then outstanding to be forthwith due and payable, whereupon the principal of the Loans together with accrued interest thereon and all other Obligations of Borrowers accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding; (ii) after obtaining relief from the automatic stay, set off amounts in any accounts of Borrowers and apply such amounts to the Obligations; and (iii) after obtaining relief from the automatic stay, exercise any and all remedies under this Agreement, the other Loan Documents, the Orders and applicable law available to Lender.

SECTION 8. ADDITIONAL REMEDIES; APPLICATION OF PROCEEDS

8.1 Remedies; Obtaining the Collateral Upon Default. Upon the occurrence and during the continuance of an Event of Default, and after obtaining relief from the automatic stay, Lender shall have all rights as provided by law and this Agreement to enforce all of its rights and remedies.

8.2 Remedies; Disposition of the Collateral. Upon the occurrence and during the continuance of an Event of Default, and after obtaining relief from the automatic stay, any Collateral may be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the Property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as Lender may do so in compliance with any Requirements of Law.

8.3 Application of Proceeds. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, any payment by Borrowers on account of principal of and interest on the Loans and any Proceeds arising out of any realization (including after foreclosure) upon the Collateral shall be applied as follows: first, to the payment in full of all costs and expenses (including without limitation, reasonable attorney fees and disbursements) paid or incurred by Lender in connection with any such realization upon the Collateral, and second, to the payment in full of the Loans (including any accrued and unpaid interest thereon, and any fees and other Obligations in respect thereto). It is understood that Borrowers shall remain liable to the extent of any deficiency between the amount of the Proceeds of the Collateral and the amount of the Obligations.

8.4 WAIVER OF CLAIMS. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, BORROWERS HEREBY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH LENDER'S TAKING POSSESSION OF, OR LENDER'S DISPOSITION OF ANY OF, THE COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT WHICH BORROWERS WOULD OTHERWISE HAVE UNDER ANY REQUIREMENTS OF LAW.

8.5 Remedies Cumulative. Each and every right, power and remedy hereby specifically given to Lender shall be in addition to every other right power and remedy specifically given under this Agreement, the other Loan Documents, the Orders or now or hereafter existing at law or in equity, or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lender. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of Lender in the exercise of any such right, power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence therein. In the event that Lender shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit Lender may recover reasonable expenses, including attorney fees, and the amounts thereof shall be included in such judgment.

8.6 Discontinuance of Proceedings. In case Lender shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to Lender, then and in every such case Borrowers, Lender and each holder of any of the Obligations shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the Liens granted under this Agreement and the Orders, and all rights, remedies and powers of Lender shall continue as if no such proceeding had been instituted.

SECTION 9. MISCELLANEOUS

9.1 Amendments, Modifications and Waivers. Neither this Agreement, any other Loan Document to which a Borrowers are a party nor any terms hereof or thereof may be amended, supplemented, modified or waived except in accordance with this Section. Lender and Borrowers may, from time to time, enter into written amendments, supplements, modifications or waivers for the purpose of adding, deleting, changing or waiving any provisions to this Agreement or the other Loan Documents. Any such amendment, supplement, modification or waiver shall apply to and shall be binding upon Borrowers, Lender and all future holders of the Note. In the case of any waiver, Borrowers and Lender shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing, but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

9.2 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission, email or similar writing) and shall be given to such party at its address, facsimile number or email address set forth below or at such other address, facsimile number or email address as such party may specify from time to time for this purpose by notice to Lender and Borrowers.

If to Lender: Wisconsin Community Bank
 Heartland Business Bank Branch

Attn: Louis J. Balen
1301 Central Avenue
Dubuque, IA 52001

Facsimile: (563) 584-2519

With a copy to: James A. Lodoen
Lindquist & Vennum P.L.L.P.
4200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402

Facsimile: (612) 371-3207

If to Borrowers: Premium Protein Products
4611 West Adams Street
Lincoln, NE 68524

Facsimile: ()

With a copy to: Robert V. Ginn
Husch Blackwell Sanders LLP
1620 Dodge Street, Suite 2100
Omaha, NE 68102

Telephone: (402) 964-5000

Facsimile: (402) 964-5050

Each such notice, request or other communication shall be effective (a) if given by facsimile or email, when such transmission to the number specified above and confirmation of transmission is received, (b) if given by mail, 72 hours after such communication is deposited in the U.S. Mail with first class postage prepaid, addressed as aforesaid, or (c) if given by any other means, when delivered at the address specified above.

9.3 No Waiver; Remedies Cumulative. No failure or delay on the part of Lender or any holder of a Note in exercising any right, power or privilege hereunder or under any other Loan Document and no course of dealing between Borrowers and Lender or the holder of any Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof of the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which Lender or the holder of any Note would otherwise have. No notice to or demand on Borrowers in any case shall entitle Borrowers to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender or the holder of any Note to any other or further action in any circumstances without notice or demand.

9.4 Survival of Representations. All representations and warranties made herein and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement, the Note and any other Loan Documents.

9.5 Payment of Expenses and Taxes. Borrowers agree (a) to pay or reimburse Lender for all its out-of-pocket costs and expenses reasonably incurred in connection with the development, preparation and execution of, any amendment, supplement or modification to, and the enforcement or preservation of any rights under, this Agreement, the Note, the other Loan Documents, the Orders and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including, without limitation the reasonable fees and disbursements of counsel to Lender and other professionals engaged by Lender, (b) to pay or reimburse Lender for all its costs and expenses reasonably incurred in connection with the enforcement or preservation of any rights under this Agreement, the Note, the other Loan Documents, the Orders and any such other documents following the occurrence and during the continuance of a Default or an Event of Default, including, without limitation, the reasonable fees and disbursements of counsel to Lender and other professionals engaged by Lender, (c) to pay, and indemnify and hold harmless Lender from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the Note, the other Loan Documents, the Orders and any such other documents, (d) to pay, and indemnify and hold harmless Lender (and its directors, officers, employees and agents) from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance, preservation of rights and administration of this Agreement, the Note, the other Loan Documents, the Orders or the use of the proceeds of the Loans (all the foregoing in this clause (d), collectively, the "Indemnified Liabilities"), provided that Borrowers shall have no obligation hereunder to Lender with respect to Indemnified Liabilities determined by the final judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of Lender or its directors, officers, employees or agents. The agreements in this Section shall survive repayment of the Loans and all other Obligations payable hereunder.

9.6 Successors and Assigns; Participations. This Agreement shall be binding upon and inure to the benefit of Borrowers, Lender, all future holders of the Note and their respective successors and assigns, except that Borrowers may not assign or transfer any of their rights or obligations under this Agreement without the prior written consent of Lender. Lender may, from time to time, sell participations in any Loan or assign its interest in the Loans and this Agreement, the Note and the other Loan Documents to any Persons without notice to or approval of Borrowers. Further, Lender may from time to time disclose to any participant, purchaser or prospective participant or purchaser such information as Lender may have regarding the financial condition, operations, and prospects of Borrowers.

9.7 Right of Set-off. Subject to the giving of the notice as described in Section 7, notwithstanding the provisions of Bankruptcy Code § 362 and any other rights and remedies of Lender now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to Borrowers or to any other Person, any such notice being hereby expressly waived, to set-off any other indebtedness or other obligation at any time held or owing by Lender to or for the credit or the account of any Borrower against and on account of the Obligations of Borrowers to Lender under this Agreement or under any of the other Loan Documents, and all other claims of any nature or description arising out of or connected with this Agreement or any other Loan Document, irrespective of whether or not Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

9.8 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

9.9 **GOVERNING LAW.** THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF WISCONSIN AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

9.10 **SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.**

(A) EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE BANKRUPTCY COURT.

(B) EACH PARTY UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN CLAUSE (A) ABOVE AND ANY COUNTERCLAIM THEREIN.

9.11 Effectiveness. This Agreement shall become effective once (i) Lender and each Borrower shall have each signed a counterpart hereof and each Borrower shall have delivered the same to Lender and (ii) the Bankruptcy Court shall have entered the Interim Order.

9.12 Headings Descriptive. The headings of the several Sections and subsection, of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

9.13 Marshalling Recapture. Lender shall be under no obligation to marshal any assets in favor of Borrowers or any other party or against or in payment of any or all of the Obligations. To the extent Lender receives any payment by or on behalf of Borrowers, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Borrowers or their estates, trustees, receivers, custodians or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the liabilities of Borrowers to Lender as of the date such initial payment, reduction or satisfaction occurred.

9.14 Severability. In case any provision in or obligation under this Agreement, the Note or the other Loan Documents shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

9.15 Limitation of Liability. No claim may be made by Borrowers or any other Person against Lender or any of its Affiliates, lenders, investors, directors, officers, employees, attorneys or agents for any special, indirect, consequential or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any act, omission or event occurring in connection herewith; and each Borrower hereby 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.

9.16 Maximum Lawful Rate. Notwithstanding any provision of this Agreement, the Note or the other Loan Documents to the contrary, it is the intent of Lender and Borrowers, that neither Lender nor any subsequent holder of the Note shall be entitled to receive, collect, reserve or apply, as interest, any amount in excess of the amount determined by application of the Maximum Lawful Rate of Interest. In the event this Agreement, the Note or the other Loan Documents calls for an interest payment that exceeds the amount determined by application of the Maximum Lawful Rate of Interest, such interest shall not be received, collected, charged or reserved until such time as that interest together with all other interest then payable, falls within the amount determined by application of the Maximum Lawful Rate of Interest. In the event Lender, or any subsequent holder of the Note, receives any such interest in excess of the amount determined by the application of the Maximum Lawful Rate of Interest, such amount which would be excessive interest shall be deemed a partial prepayment of principal and treated hereunder as such, or, if the principal indebtedness evidenced by the Note is paid in full, any remaining excess funds shall immediately be paid to Borrowers. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the amount determined by application of the Maximum Lawful Rate of Interest, Borrowers and Lender shall, to the greatest extent permitted under applicable law, (i) exclude voluntary prepayments and the effects thereof, and (ii) amortize, prorate, allocate, and spread, in equal parts, the total amount of interest throughout the entire term of the indebtedness, provided, however, that if the indebtedness is paid in full then to the end of the full contemplated term hereof; and if the interest received for the actual period of existence hereof exceeds the amount determined by application of the

applicable Maximum Lawful Rate of Interest, the holder of this Note shall refund to Borrowers the amount of such excess or credit the amount of such excess against the principal portion of the indebtedness as of the date it was received, and, in such event, Lender shall not be subject to any penalties provided by any laws for contracting for, charging, reserving, collecting or receiving interest in excess of the amount determined by the application of the applicable Maximum Lawful Rate of Interest.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and the year first written.

BORROWERS:

Premium Protein Products, L.L.C.

By: _____
Title: _____

LENDER:

**WISCONSIN COMMUNITY BANK,
HEARTLAND BUSINESS BANK BRANCH**

By: _____
Title: _____

EXHIBIT A

Budget

[Exhibit to Debtor In Possession Loan Agreement]

EXHIBIT B

Form of Interim Order

[Exhibit to Debtor In Possession Loan Agreement]