

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
www.flmb.uscourts.gov

In re:

ROBB & STUCKY LIMITED LLLP,  
a Florida Limited Liability Limited Partnership,<sup>1</sup>

Case No.  
Chapter 11

Debtor.

---

**DEBTOR'S EMERGENCY MOTION (I) FOR AUTHORIZATION TO OBTAIN  
POSTPETITION SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362,  
AND 364; (II) FOR ORDER GRANTING ADEQUATE PROTECTION TO  
PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND  
364, AND (III) TO SCHEDULE A FINAL HEARING PURSUANT TO BANKRUPTCY  
RULE 4001**

Robb & Stucky Limited LLLP (the “**Debtor**”), by and through proposed undersigned counsel, move this Court for the entry of an Interim Order (i) authorizing the Debtor to obtain postpetition financing, (ii) granting adequate protection to prepetition secured parties, and (iii) scheduling a final hearing in the form attached hereto as **Exhibit 1** (the “**Interim Order**”) on an *emergency* basis pursuant to Sections 105(a), 361, 362, 363 and 364(c) and (d) of the Bankruptcy Code, and Bankruptcy Rule 4001. In addition, the Debtor requests that the Court schedule interim and final hearings on this motion (the “**Motion**”).<sup>2</sup> In support of this Motion, the Debtor relies upon *The Declaration of Kevin Regan in Support of First Day Pleadings* (the “**First Day Declaration**”) filed contemporaneously herewith, and respectfully states the following:

---

<sup>1</sup> The last four digits of the taxpayer identification number for the Debtor are 6415. The mailing address for the Debtor is 14550 Plantation Road, Fort Myers, FL 33912.

<sup>2</sup> Capitalized terms not defined in this Motion have the meanings ascribed in the proposed Interim Order attached as **Exhibit 1**.

## I. JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding, as defined in 28 U.S.C. § 157(b).

2. The bases for the relief requested herein are 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507, and Bankruptcy Rules 2002, 4001, 6004 and 9014.

## II. BACKGROUND

3. On the date hereof (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

4. The Debtor is operating their business and managing its affairs as debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

5. The Debtor is a Florida limited liability limited partnership and has operated as one of the largest, if not the largest, retailers of upscale, high-end, interior-design-driven home furnishings in the country. The Company was founded in 1915, some 96 years ago, by a predecessor entity as a one-store general merchandise emporium. Over time, the Company has grown to include 24 locations in five states consisting of interior showrooms, patio showrooms, warehouses, and its corporate office. The Debtor has consistently received awards for its pioneering use of visual marketing, and has been ranked as high as 34th out of all furniture retailers nationwide by well known industry rankings. Due to the economic recession, high unemployment rate, and low present demand for housing in the markets in which the Debtor's retail showrooms operate, the Debtor faces liquidity shortfalls that triggered its petition for bankruptcy protection. The Debtor commenced this Chapter 11 case in order to stabilize its operations and to facilitate a sale of its assets or enterprise as a going concern for the benefit of its customers, its secured creditors, its employees, its vendors, and its other unsecured creditors.

6. For a detailed description of the Debtor and its operations, the Debtor respectfully refers the Court and parties in interest to the First Day Declaration.

### **III. SUMMARY OF RELIEF REQUESTED**

7. The Debtor seeks the entry of the proposed Interim Order in the form attached hereto as **Exhibit 1**, as well as a Final Order, authorizing the Debtor to:

- a. Obtain post-petition financing from the DIP Lender pursuant to the terms of the DIP Loan Documents and the Interim Budget and the Final Budget, not to exceed approximately \$25 million;
- b. Grant to the DIP Lender DIP Liens on all of the Collateral, with such liens to prime certain other liens based upon the contractual consent of the creditors to be primed;
- c. Grant to the DIP Lender super-priority administrative claims having recourse to all prepetition and postpetition personal property of the Debtor's estate, now owned or hereafter acquired, excluding Avoidance Claims and Avoidance Proceeds;
- d. Grant to the Prepetition First Lien Lender various forms of adequate protection liens and administrative claims;
- e. Grant to the Prepetition Second Lien Lender various forms of adequate protection liens and administrative claims junior to the DIP Lender and Prepetition First Lien Lender; and
- f. Grant to the Prepetition Third Lien Lender various forms of adequate protection liens and administrative claims junior to the DIP Lender, Prepetition First Lien Lender and the Prepetition Second Lien Lender.

8. In addition, the Debtor requests that the Court schedule interim emergency and final hearings to consider this Motion.

### **IV. SUMMARY OF TERMS OF DIP FINANCING**

9. Pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(1)(B) and (c)(1)(B), the Debtor submits the following list and summary of the material terms of that certain Post-Petition Loan and Security Agreement, dated as of February 18, 2011, and substantially in the form attached hereto as **Exhibit 2** together with such modifications as may be made by Debtor

and DIP Lender prior to, at or as a result of the Interim Hearing or that may be made as permitted amendments under the terms of the proposed Interim Order (as at any time amended, modified, or supplemented, the “**DIP Credit Agreement**”), and the proposed Interim Order, setting forth the location within the relevant documents of such material terms.<sup>3</sup>

<u><b>Material Provision</b></u>	<u><b>Summary Description and/or Location of Provisions in Relevant Documents</b></u>
DIP Lender	Bank of America, N.A.. <b>DIP Credit Agreement, p. 1.</b>
Borrower	Robb & Stucky Limited LLLP. <b>DIP Credit Agreement, p. 1.</b>
The purposes for the use of the DIP Facility	The proceeds of the Loans shall be used by the Borrower solely for (i) to pay the Pre-Petition Debt to the extent authorized by the Court, (ii) working capital to the extent set forth in the Budget, (iii) to pay certain adequate protection claims, (iv) to pay certain professional fees and fees owed to the Office of the United States Trustee, and (v) certain other specific purposes, to the extent set forth in the Budget and permitted by the DIP Credit Agreement. <b>DIP Credit Agreement, Section 2.10, pp. 22-23.</b>
Interest Rate	Prior to the occurrence of an Event of Default, (A) the greatest of (i) DIP Lender's Prime Rate for such day; (ii) the Federal Funds Rate for such day, plus 0.50%; or (iii) LIBOR Rate for a 30 day interest period as determined on such day, plus 1.0%, plus (B) 3.25%. <b>DIP Credit Agreement, Section 2.05, p. 21.</b>
Commitment Termination Date	The soonest to occur of: (i) the last day of the DIP Term (April 22, 2011), (ii) the effective date of any confirmed Acceptable Plan or the date of entry of a Confirmation Order with respect to any other Reorganization Plan, (iii) the effective date of any sale of all or a substantial part of the Collateral or the sale of Borrower's right to sell all or any substantial part of the Collateral to a Person authorized to sell such Collateral as an agent of Borrower, (iv) the effective date of Lender's termination of the DIP Facility pursuant to <b>Section 11.10</b> of the DIP Credit Agreement, (v) the date on which Lender is granted relief from the automatic stay, or (vi) the date on which the Chapter 11 Case is dismissed or converted to Chapter 7. <b>DIP Credit Agreement,</b>

<sup>3</sup> The following summary contains truncated descriptions of material terms and is qualified in its entirety by the actual terms of the proposed Interim Order and the DIP Credit Agreement themselves. Capitalized but undefined terms used in this summary shall have the meanings given to such terms in the DIP Loan Documents, the Interim Order, and/or this Motion, as applicable.

<u>Material Provision</u>	<u>Summary Description and/or Location of Provisions in Relevant Documents</u>
	<b>p. 6.</b>
Events of Default Under DIP Credit Agreement and Termination Events	The DIP Credit Agreement includes such events of default (each, an “ <b>Event of Default</b> ”) as are usual and customary for debtor-in-possession financings of this kind. <b>DIP Credit Agreement, Section 10.01, pp. 50-53. See, also, Commitment Termination Event section, above</b>
Liens	Senior subject only to certain perfected and unavoidable pre-petition liens other liens of the Prepetition First Lien Lender. <b>Interim Order, ¶ 3, pp. 12-13.</b>
Loan Amount	Up to \$25,000,000 upon entry of Final Order; in each case minus the aggregate outstanding Pre-Petition Debt. <b>DIP Credit Agreement, Section 2.01, p. 20.</b>
Superpriority and Priming Lien	<p>Subject to certain valid, enforceable, non-avoidable security interests in existence as of the Petition Date (the “<b>Permitted Liens</b>”), the DIP Lender shall receive a fully perfected, first priority security interest in all of the existing and after acquired personal property of Debtor, both tangible and intangible, and all substitutions, accessions and proceeds of the foregoing, wherever located; provided, however, that the DIP Liens should not attach to Avoidance Claims and Avoidance Proceeds (the “<b>Collateral</b>”). <b>Interim Order, ¶ 3, pp. 12-13.</b></p> <p>Superpriority administrative claim status pursuant to 364(c)(1) with priority over any and all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise (the “<b>Superpriority Claims</b>”); provided, however, that the Superpriority Claims shall not attach to nor be payable from Avoidance Claims or Avoidance Proceeds <b>Interim Order, ¶ 4(a), p. 14.</b></p> <p>As provided by the express terms of certain intercreditor agreements and subordination agreements, the DIP Liens shall prime and shall be senior in priority to all pre-petition and replacement liens in favor of certain contractually subordinated creditors. <b>Interim Order, ¶ 3, pp. 12-13.</b></p>
Adequate Protection	Prepetition First Lien Lender will receive (i) replacement liens on all personal property of the Debtor, other than Avoidance Claims and Avoidance Proceeds, which shall be subject only to the DIP Liens and certain perfected and unavoidable pre-petition liens, and (ii) a

<u>Material Provision</u>	<u>Summary Description and/or Location of Provisions in Relevant Documents</u>
	<p>superpriority administrative expense claim pursuant to Section 507(b) of the Bankruptcy Code that shall not attach to or be payable from Avoidance Claims or Avoidance Proceeds. In addition, Prepetition First Lien Lender will be entitled to apply proceeds of its prepetition collateral to its prepetition debt. <b>Interim Order at ¶ 7, pp. 16-19.</b></p> <p>Prepetition Second Lien Lender will receive replacement liens on all personal property of the Debtor that are of the same type and nature as the Prepetition Second Lien Lender's Prepetition Collateral, which shall be subject to the DIP Liens and the First Lien Adequate Protection Liens, the Prepetition First Lien Secured Facility Liens and any Prepetition Senior Permitted Encumbrances. The rights of Prepetition Second Lien Lender shall be at all times subject to the terms and conditions of the Intercreditor Agreement. Neither the Second Lien Adequate Protection Liens nor the Second Lien Adequate Protection Claim shall attach to, or be payable from, Avoidance Claims or Avoidance Proceeds. <b>Interim Order at ¶ 7, pp. 16-19.</b></p> <p>Prepetition Third Lien Lender will receive replacement liens on all personal property of the Debtor that are of the same type and nature as the Prepetition Third Lien Lender's Prepetition Collateral, which shall be subject to the DIP Liens, the First Lien Adequate Protection Liens, the Second Lien Adequate Protection Liens, the Prepetition First Lien Secured Facility Liens and any Prepetition Senior Permitted Encumbrances. The rights of Prepetition Third Lien Lender shall be at all times subject to the terms and conditions of the Intercreditor Agreement and the Subordination Agreement. Neither the Third Lien Adequate Protection Liens nor the Third Lien Adequate Protection Claim shall attach to, or be payable from, Avoidance Claims or Avoidance Proceeds. <b>Interim Order at ¶ 7, pp. 16-19.</b></p>
Findings and Determination as to validity, enforceability, priority, or amount of Prepetition Secured Facilities	<p>The Interim Order and the Final Order shall each contain a determination by the Bankruptcy Court that, subject to an investigation period for the Committee equal to the lesser of 30 days (calculated from the date of entry of the Interim Order) or the date on which any sale of substantially all of Debtor's assets is approved by the Court, the claims in respect of the Prepetition First Lien Secured Facilities constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms and not subject to avoidance, recharacterization, recovery, attack, off-set, counterclaim, defenses or claims of any kind pursuant to the Bankruptcy Code or other applicable law and that the Prepetition First Lien Secured Facilities Liens are legal, valid, perfected, enforceable and non-avoidable. <b>Interim Order at ¶</b></p>

<u>Material Provision</u>	<u>Summary Description and/or Location of Provisions in Relevant Documents</u>
	<b>18, pp. 31-33.</b>
Waiver or modification of Code provisions or applicable rules relating to the automatic stay	<p>Following the occurrence of an Event of Default, DIP Lender shall have the right to seek relief from the automatic stay, upon expedited notice to the Debtor, the Committee and the United States Trustee, to foreclose on all or any portion of the Collateral, collect accounts receivable and apply the proceeds thereof to the DIP Obligations, occupy the Debtor's premises to sell or otherwise dispose of the Collateral or otherwise exercise remedies against the Collateral permitted by applicable nonbankruptcy law. At any hearing to consider the DIP Lender's request to terminate or modify the automatic stay, the Borrower and any statutory committee shall be entitled to contest whether an Event of Default has occurred. Unless during such hearing the Bankruptcy Court determines that an Event of Default has not occurred and/or is not continuing, the automatic stay, as to the DIP Lender, shall automatically terminate at the end of such hearing, without further notice or order. <b>Interim Order at ¶ 14, pp. 28-29.</b></p>
Limitation on Use of Proceeds	<p>No portion of the DIP Loan Facility loan proceeds, cash collateral or other Collateral proceeds may be used for the payment of the fees and expenses of any person incurred challenging, or in relation to the challenge of, (i) the liens or claims of any or all of the Prepetition First Lien Lender or DIP Lender, or the initiation or prosecution of any claim or cause of action against any or all of Prepetition First Lien Lender or DIP Lender, including any claim under Chapter 5 of the Bankruptcy Code or (ii) any claims or causes of action (including any claims or causes of action under Chapter 5 of the Bankruptcy Code) against the Prepetition First Lien Lender. <b>Interim Order at ¶ 8, pp. 20-21.</b></p> <p>In addition, neither the proceeds of the DIP Facility, nor cash collateral or other Collateral proceeds shall be used in connection with preventing, hindering or delaying the DIP Lender's enforcement or realization upon the Collateral once a default or Event of Default has been determined by the Court to have occurred and is continuing under the DIP Documentation. <b>Interim Order at ¶ 8, pp. 20-21.</b></p> <p>Provided that the Committee shall be entitled to use not more than \$10,000 for investigation purposes only. <b>Interim Order at ¶ 8, pp. 20-21.</b></p>

<u>Material Provision</u>	<u>Summary Description and/or Location of Provisions in Relevant Documents</u>
Limitation of Rights of Parties under § 506(c)	Subject to entry of the Final Order, no costs or expenses of administration of the Case or any Successor Case shall be charged against or recovered from or against any or all of the DIP Lender, the Prepetition First Lien Lender, the DIP Collateral and the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise. <b>Interim Order at ¶ 4, pp. 14-15.</b>
Unwind Expense Commitment	If so requested in writing by Debtor within thirty (30) days after the Commitment Termination Date, DIP Lender shall be obligated (the " <b>Unwind Expense Commitment</b> ") to make one or more DIP Loans to Debtor in an aggregate amount equal to the lesser of the Unwind Reserve (less any professional fees that have been previously funded) or an amount sufficient to pay the following (and such DIP Loans shall be used solely for the payment of the following) (collectively the " <b>Unwind Expenses</b> "): (i) unpaid Professional Expenses (whether or not accrued prior to the Commitment Termination Date) that are approved at any time for payment by final order of the Court, not to exceed in aggregate the Borrower Professional Expense Reserve (as defined in the DIP Loan Agreement on the date hereof) for payments to Debtor Professionals and the Committee Professional Expense Reserve (as defined in the DIP Loan Agreement) for payments to Committee Professionals; (ii) any fees required to be paid to the Clerk of the Court (whether or not accrued prior to the Commitment Termination Date); and (iii) unpaid quarterly fees that are required to be paid to the U.S. Trustee pursuant to 28 U.S.C. §1930(a)(6) and that accrued prior to the Commitment Termination Date. <b>Interim Order at ¶ 9, pp. 22-23.</b>
Indemnification of DIP Lender	Borrower shall protect, indemnify, pay and hold DIP Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) which DIP Lender may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit or the provision of any credit support or enhancement in connection with the DIP Credit Agreement. <b>(DIP Credit Agreement, Sections 11.06, 11.12, pp. 57-59.)</b>

## V. PREPETITION SECURED INDEBTEDNESS

10. The Debtor is a party to a senior secured credit facility (the "**Prepetition First Lien Secured Facility**") provided by Bank of America (the "**Prepetition First Lien Lender**") pursuant to the Loan Agreement, dated as of September 19, 2000 (as amended or otherwise



modified, the “**Prepetition First Lien Credit Agreement**”), consisting of a revolving senior credit facility (collectively, with all loans and liabilities in respect of the Prepetition First Lien Secured Facility, the “**Prepetition First Lien Secured Obligations**”). The Prepetition First Lien Secured Obligations are secured by first priority liens and security interests on substantially all of the Debtor’s assets (the “**Prepetition First Lien Secured Facility Liens**”), which liens and security interests are subject, solely with respect to priority, to the Permitted Liens (under and as defined in the Prepetition First Lien Credit Agreement), if any.

11. The Debtor is a party to a secured credit facility (the “**Prepetition Second Lien Secured Facility**”) provided by CIRS Financing, LLC, and CIRS Management, LLC (together, the “**Prepetition Second Lien Lender**”) pursuant to the (a) Secured Note and Option Purchase Agreement dated as of September 30, 2009, and (b) Secured Note and Option Purchase Agreement dated as of October 20, 2010 (as amended or otherwise modified, collectively, the “**Prepetition Second Lien Credit Agreement**”), consisting of two senior secured second lien term loans in the aggregate amount of approximately \$13.5 million. All loans and other liabilities in respect of the Prepetition Second Lien Secured Facility are referred to herein as the “Prepetition Second Lien Secured Obligations”. All Prepetition Second Lien Secured Obligations are secured by second priority liens and security interests encumbering substantially all of the Debtor’s assets (the “**Prepetition Second Lien Secured Facility Liens**”).

12. The Debtor is a party to a secured loan facility (the “**Prepetition Third Lien Secured Facility**” and, together with the Prepetition First Lien Facility and the Prepetition Second Lien Secured Facility, the “**Prepetition Secured Facilities**”) provided by Clive Lubner, the Bob and Linda Taylor Foundation, Inc., Fred Berkelbaugh, Entrust Freedom, LLC f/b/o Allen G. Ten Broek, Robert F. Anderson Irrevocable Trust u/a/d, Curtis Bostick, Daniel Lubner,

Brian F. Crowley, J. Robert Gould and Lawrence Cunningham (collectively, the “**Prepetition Third Lien Lender**”); and together with the Prepetition First Lien Lender and the Prepetition Second Lien Lender, the “**Prepetition Secured Parties**”) pursuant to a Purchase Agreement dated as of September 30, 2009 (the “**Prepetition Third Lien Credit Agreement**”), under which the Prepetition Third Lien Lender advanced \$2,500,000 to the Debtor. All liabilities in respect of the Prepetition Third Lien Secured Facility are referred to herein as the “Prepetition Third Lien Secured Obligations”; and together with the Prepetition First Lien Secured Obligations and the Prepetition Second Lien Secured Obligations, the “Prepetition Secured Obligations.” All Prepetition Third Lien Secured Obligations are secured by third priority liens and security interests in substantially all of the Debtor’s assets (the “**Prepetition Third Lien Secured Facility Liens**”; and together with the Prepetition First Lien Secured Facility Liens and the Prepetition Second Lien Secured Facility Liens, the “**Prepetition Secured Facility Liens**”).

13. The Debtor, the Prepetition First Lien Lender and the Prepetition Second Lien Lender are parties to that certain Intercreditor Agreement, dated as of October 1, 2009 (the “**Intercreditor Agreement**”) that governs the respective rights, obligations and priorities of the Prepetition First Lien Lender and the Prepetition Second Lien Lender with respect to their relative interests in the Prepetition Collateral and certain other matters. Pursuant to the Intercreditor Agreement, the Prepetition First Lien Security Interests are senior in priority to the Prepetition Second Lien Security Interests on all Prepetition Collateral.

14. The Debtor and the Prepetition Secured Parties are parties to a Subordination Agreement dated October 1, 2009, and as amended on October 20, 2010 (the “**Subordination Agreement**”), pursuant to which the Prepetition Third Lien Lender subordinated its rights in

respect of the Prepetition Collateral to the rights of the Prepetition First Lien Lender and the Prepetition Second Lien Lender.

15. As of the Petition Date, the Debtor was indebted to the Prepetition First Lien Lender in the approximate amount of \$ 20,000,000.00.

16. As of the Petition Date, the Debtor was indebted to the Prepetition Second Lien Lender in the approximate amount of \$ 13,500,000.

17. As of the Petition Date, the Debtor was indebted to the Prepetition Third Lien Lender in the approximate amount of \$ 2,500,000.

18. Alleged Judgment Lien. JBC Investments, Inc. ("JBC") may assert a judgment lien against certain assets of Debtor pursuant to an alleged judgment entered on or about January 13, 2011, against Debtor by a Florida state court. On or about February 10, 2011, JBC filed a garnishment action against BofA, as garnishee, styled JBC Investments, Inc. v. R & S Home of Fine Decorators, LLC and Robb & Stucky Limited LLLP, Bank of America Corporation, Garnishee, Case No. 08-51681 (02), In the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the "Garnishment Action"). In response to the Garnishment Action, BofA has set aside \$157,400 (the "Garnishment Reserve Funds") in proceeds of Pre-Petition Collateral. Neither Debtor nor BofA concedes that JBC has any valid, effective or unavoidable judgment lien or other interest in the Garnishment Reserve Funds, BofA affirmatively asserts that its security interest in the Garnishment Reserve Funds is senior in priority to the interest of JBC (if any) therein, and each of Debtor and BofA reserves all of its rights, remedies, claims and defenses with respect to any claim or lien that has been or may be asserted by JBC.

19. Parties Who May Assert Interests in Specific Inventory. Debtor believes, but does not stipulate or concede, that the following creditors may assert interests in specific

inventory of Debtor: Heirloom Rug Gallery, Ltd. (Florida UCC Financing Statement No. 200704921713 filed on February 27, 2007); Artistica, a California corporation (Florida UCC Financing Statement No. 200704921713 filed on July 17, 2009); O.W. Lee Company Inc. (Florida UCC Financing Statement No. 201003608777 filed on November 22, 2010); and Hilco Merchant Resources, LLC (Florida UCC Financing Statement No. 201003705292 filed on December 9, 2010) (collectively, the "Specific Inventory Creditors"; and the specific inventory described in such UCC financing statements (if any is in the possession of Debtor) is hereinafter referred to as the "Specified Inventory"). Debtor represents that, to the best of its knowledge, there are no other security interests or liens asserted against any of the Pre-Petition Collateral other than by Pre-Petition First Lien Lender, Collier, the Investors, certain creditors who may assert interests in specific equipment of Debtor, the Specific Inventory Creditors and JBC.

## **VI. RELIEF REQUESTED**

### **A. The Debtor's Need for Post-Petition Financing and Use of Cash Collateral**

20. The Debtor does not have working capital or financing to operate its business. Accordingly, it requires post-petition financing. The need for post-petition financing is immediate. In the absence of such use, serious and irreparable harm to the Debtor and its estate will occur.

21. The success of this chapter 11 case and the stabilization of the Debtor's operations and business at the outset thereof depend upon the Debtor's ability to continue to fund the operations of its business and permit it to meet payroll and other operating expenses, as well as the Debtor's ability to preserve the going concern value of its business.

22. In view of the foregoing, the relief sought herein is immediate, necessary, and essential in order for the Debtor to continue to meet its financial obligations to its employees, customers, vendors, and professionals, among others, and to maintain its operations and property

so as to maximize the value of its estate. For these same reasons, the relief sought herein is in the best interests of the Debtor and its estate.

23. The Debtor has been informed that the DIP Lender is willing to provide the Post-Petition Advances under the DIP Credit Agreement, subject to the conditions set forth in the Interim Order and in the DIP Loan Documents, including, without limitation, the provisions of the Interim Order assuring that the security interests and liens pursuant to section 364(c) and (d) of the Bankruptcy Code and the various claims, superpriority claims, and other protections granted pursuant to the Interim Order and the DIP Loan Documents will not be affected by any subsequent reversal or modification of the Interim Order, or by any other order that is applicable to the DIP Loan Documents (including with respect to the Cash Collateral), as provided in section 364(e) of the Bankruptcy Code.

24. The Debtor believes that the DIP Lender has acted in good faith in consenting to and in agreeing to provide the financing under the DIP Loan Documents, and the reliance of the DIP Lender on the assurances referred to above is in good faith. The DIP Lender and the Debtor has negotiated at arms' length and in good faith regarding the DIP Loan Documents and the Debtor's use of Cash Collateral to fund the continued operations of the Debtor. The DIP Lender will not agree to provide the DIP Loan Documents, or agree to the Debtor's use of Cash Collateral, absent the approval of the terms and conditions set forth in the DIP Loan Documents and the Interim Order.

25. Given the extent of outstanding secured and unsecured indebtedness owing by the Debtor and the extreme time constraints resulting from the Debtor's liquidity problems, the

Debtor's range of realistic financing alternatives is extremely limited.<sup>4</sup> The Debtor submits that the terms and conditions set forth in the DIP Loan Documents, taken as a whole, are fair and reasonable under the circumstances; reflect the Debtor's and its managements' exercise of prudent business judgment consistent with their fiduciary duties; and are supported by reasonably equivalent value and fair consideration.

26. The Prepetition Secured Parties are entitled to receive adequate protection, pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code, for any diminution in the value of the Prepetition Collateral, including Cash Collateral, resulting from, without limitation: (i) the Debtor's use of such Prepetition Collateral, (ii) the sale or lease of such Prepetition Collateral, (iii) the automatic stay imposed by section 362 of the Bankruptcy Code, (iv) the priming liens granted to the DIP Lender, and (v) the exclusion of Avoidance Claims and Proceeds from their collateral and superpriority claims. In view of the foregoing, the Debtor respectfully requests entry of an Interim Order in substantially the form attached hereto as Exhibit 1, together with such amendments and modifications as may be made by Debtor and DIP Lender prior to, at or as a result of the Interim Hearing.

## **VII. BASES FOR THE RELIEF REQUESTED**

### **A. Incurrence of Secured Debt Pursuant to Bankruptcy Code Section 364**

27. Section 364(c) of the Bankruptcy Code provides as follows:

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

---

<sup>4</sup> The Debtor submits that efforts to obtain financing from other sources would have been futile given (a) the Debtor's capital structure and the inability of the Debtor to successfully obtain financing that primes the liens of the Prepetition Lenders, as the Debtor could not establish adequate protection of such liens in that circumstance, and (b) the paucity of credit in the market generally.

- (1) with priority over any and all administrative expenses of the kind specified in § 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

28. In addition, section 364(d)(1), which governs the incurrence of post-petition debt secured by senior or “priming” liens, provides that, the Court may, after notice and a hearing:

- (1) authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if –
  - (A) the trustee is unable to obtain such credit otherwise; and
  - (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

29. Pursuant to section 364 of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. *See* 11 U.S.C. sections 364(c), (d); *In re Ames Dep’t Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to post-petition credit, courts “permit debtor[s]-in-possession to exercise their basic business judgment consistent with their fiduciary duties”); 3 COLLIER ON BANKRUPTCY 364.03, at 364-7-18 (15th ed. rev. 2001).

30. To satisfy the standards of section 364 of the Bankruptcy Code, a debtor is not required to seek credit from every possible source: “the statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v.*

*Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Rather, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of section 364(c). *Id.*; see also *In re Ames*, 115 B.R. 38, 40 (Bankr. S.D.N.Y. 1990). Where there are few lenders likely to be able and willing to extend the necessary credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988). In general, a bankruptcy court should defer to a debtor’s business judgment regarding the need for and proposed use of funds unless such judgment is arbitrary and capricious. *In re Curlew Valley Associates*, 14 B.R. 507, 511-14 (Bankr. D. Utah 1981).

31. The Debtor has satisfied the requirements of sections 364(c) and (d) because, under current circumstances, it is unable to obtain credit other than as provided herein. The liens granted to the DIP Lender shall, except as provided in the Interim Order, be (a) first priority liens on all property that is not subject to properly perfected liens, and (b) a second priority lien on all property that is subject to Prepetition Senior Permitted Encumbrances.

32. The Debtor firmly believes that the financing to be provided as contemplated by the DIP Credit Agreement represents the best — and only — financing available to them at this time, warranting approval of the DIP Loan Documents and proposed Interim Order on an emergency basis, pending a final hearing thereon (the “**Final Hearing**”).

33. In the exercise of its business judgment, the Debtor has concluded that the DIP Lender, due to its existing long-term relationship in its capacity as the Prepetition Lenders, is the only lender able to offer a post-petition credit facility that meets the Debtor’s working-capital needs on the terms, and within the time frame, required by the Debtor. Courts routinely defer to the business judgment of the debtors on most business decisions, including



borrowing decisions. *See, e.g., In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985) (“business judgments should be left to the board room and not to this Court”); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same); *In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981) (courts generally will not second-guess a debtor’s business decisions where those decisions constitute “a business judgment made in good faith, upon a reasonable basis, and within the scope of its authority under the Code”). “More exacting scrutiny would slow the administration of the debtor’s estate and increase its costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially.” *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

34. In the instant case, the Debtor’s granting of the priming liens to the DIP Lender (which will be subject to the certain perfected and unavoidable prepetition liens as set forth in the proposed Interim Order) are essential to maintain the value of the Prepetition Collateral and the Debtor’s estate. Further, access to the proceeds of the DIP Facility will preserve the value of the Debtor’s business to the greatest extent practicable under the circumstances.

35. More fundamentally, unless the Debtor has access to the DIP Credit Agreement, it will not have sufficient funds to continue to operate its business and to preserve its assets. Indeed, in the absence of such financing, it will not continue as a going concern, resulting in a dramatic decrease in the value of the Prepetition Collateral and the overall estate. Accordingly, the use of funds provided by the DIP Credit Agreement to avert an immediate shutdown and liquidation of the Debtor, and to enable the Debtor to effect a preservation of the value of the Prepetition Collateral is clearly in the best interests of the Debtor’s estate.

36. Based on the circumstances present here, and the grounds and authorities set forth above, the Debtor firmly believes that the financing sought is the best financing available, and that it is in the best interests of its estate and creditors to enter into the DIP Credit Agreement. It respectfully requests authority to do so.

**VIII. REQUEST FOR MODIFICATION OF AUTOMATIC STAY**

37. The proposed Interim Order contemplates that, as adequate protection, Prepetition First Lien Lender will be entitled to apply proceeds of its prepetition collateral to its prepetition debt. In addition, the proposed Interim Order includes a modification of the automatic stay imposed by section 362(a) of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and conditions of the Interim Order. Moreover, under the terms of the proposed Interim Order, upon the occurrence and during the continuance of any event of default as defined in the DIP Loan Documents (“**Event of Default**”), the DIP Lender and the Prepetition First Lien Lender may file a motion to terminate the automatic stay. The Interim Order further provides that the Court shall conduct a hearing on an expedited emergency basis in order to act on the motion to terminate the automatic stay under section 362 for the purpose of allowing the DIP Lender and the Prepetition First Lien Lender to exercise all of their rights and remedies under the Interim Order, the Loan Documents, and applicable law. Finally, the Interim Order provides that the only issue that may be raised or addressed at such hearing is whether an Event of Default has occurred.

38. Stay modifications of this sort are ordinary and typical features under these circumstances and, in the Debtor’s business judgment, are reasonable. Accordingly, the Debtor respectfully requests that the Court modify the automatic stay as provided in the proposed Interim Order.

**IX. NOTICE**

39. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. Notice of this Motion has been given by overnight mail, hand delivery or facsimile to the following: (i) the Office of the United States Trustee, (ii) the Office of the United States Attorney for the Middle District of Florida, (iii) the Internal Revenue Service, (iv) those entities or individuals included on the Debtor's list of twenty (20) largest unsecured creditors, (v) counsel to the First Lien Lender, (vi) the First Lien Lender, (vii) counsel to the Second Lien Lender, (viii) the Second Lien Lender, (ix) the Third Lien Lender, and (x) certain other creditors described in paragraph E of the Interim Order who have filed garnishment actions and who may assert interests in specific inventory of Debtor. In light of the nature of the relief requested, the Debtor submits, and requests that the Court find, that such notice is appropriate and that no further notice need be given.

**X. REQUEST FOR FINAL HEARING**

40. Pursuant to Bankruptcy Rule 4001(c)(2), the Debtor respectfully requests that the Court set a date for an Final Hearing that is no later than fifteen (15) days following the Petition Date. The Debtor respectfully requests that it be authorized to provide notice of the Final Hearing as soon as practicable after the entry of an order approving this Motion, by serving copies of such notice via fax or overnight delivery or other express mail to (a) the parties served with a copy of the Interim Order; (b) any other party that has filed a request for notices with the Court; and (c) counsel for any statutory committee, if one is appointed. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

WHEREFORE, the Debtor respectfully requests that the Court:

(i) enter the Interim Order, substantially in the form attached hereto as **Exhibit 1**, authorizing the relief requested herein;

(ii) approve the form and manner of notice of the Final Hearing on this Motion, as set forth herein;

(iii) schedule the Final Hearing on this Motion and enter the Final Order following the conclusion thereof; and

(iv) grant such other and further relief as the Court may deem just and proper.

Dated: February 18, 2011

Respectfully submitted,

BERGER SINGERMAN, P.A.  
*Proposed Counsel for the Debtor*  
200 South Biscayne Blvd., Ste 1000  
Miami, FL 33131  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340

By: /s/ Jordi Guso  
Jordi Guso  
Florida Bar No. 863580  
jguso@bergersingerman.com  
Paul Steven Singerman  
Florida Bar No. 378860  
singerman@bergersingerman.com

**EXHIBIT 1**

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**  
www.flmb.uscourts.gov

In re:

ROBB & STUCKY LIMITED LLLP,  
a Florida Limited Liability Limited Partnership,<sup>1</sup>

Case No.  
Chapter 11

Debtor.

---

**ORDER (1) AUTHORIZING DEBTOR IN POSSESSION TO OBTAIN INTERIM FINANCING, GRANT SECURITY INTERESTS AND ACCORD PRIORITY STATUS PURSUANT TO 11 U.S.C. §§ 361, 364(c) AND 364(d); (2) GIVING NOTICE OF FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b)(2) AND (c)(2); AND (3) MODIFYING AUTOMATIC STAY**

This matter is before the Court on the Motion (the "*Motion*") of **ROBB & STUCKY LIMITED LLLP**, a Florida limited liability partnership, as debtor and debtor in possession in the above-captioned Chapter 11 case ("*Debtor*"), requesting entry of an order (1) authorizing Debtor to obtain financing and other extensions of credit from **Bank of America, N.A.** ("*BofA*") (in its capacity as post-petition lender, the "*DIP Lender*"), grant priming security interests and liens and accord superpriority claim status in favor of DIP Lender pursuant to Sections 361, 364(c) and 364(d) of Title 11 of the United States Code (the "*Bankruptcy Code*"); (2) giving notice of a final hearing pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2); and (3) modifying the automatic stay.

Based upon the Court's review of the Motion and all matters brought to the Court's attention at the interim hearing, which was held on February 23, 2011, pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2) (the "*Interim Hearing*"), and after due deliberation and consideration, the Court makes the following findings of fact and conclusions of law applicable

---

<sup>1</sup> The last four digits of the taxpayer identification number for Debtor are 6415. The mailing address for Debtor is 14550 Plantation Road, Fort Myers, Florida 33912.

to the financing sought by Debtor from DIP Lender (to the extent any findings of fact constitute conclusions of law, they are adopted as such, and *vice versa*):

THE COURT HEREBY FINDS AND DETERMINES:

A. Petition Date. On February 18, 2011 (the "*Petition Date*"), Debtor filed with the Court its voluntary petition for relief under Chapter 11 of the Bankruptcy Code and is continuing to manage its properties and to operate its business as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed herein.

B. Nature of Business. Debtor is engaged in the business of distributing and selling high-end home furnishings and providing residential interior design services. Debtor operates approximately 30 showrooms located in Florida, Arizona, North Carolina and Nevada, and employs more than 760 salaried and hourly employees.

C. Pre-Petition First Lien Debt. Debtor has acknowledged in the Motion or at the Interim Hearing that Debtor was indebted to BofA as Debtor's pre-petition lender (in such capacity, the "*Pre-Petition First Lien Lender*"), as of the Petition Date, for revolving credit loans in the approximate principal amount of \$ 2,024,787.20 (the "*Pre-Petition First Lien Loans*"); for fees, expenses, and other charges associated with depository accounts and other banking products and services; and on a contingent basis in the approximate amount of \$150,000 for two letters of credit (the "*Pre-Petition LCs*"; collectively with the Pre-Petition First Lien Loans, all other obligations of Debtor in respect of indemnities, guaranties and other payment assurances given by Pre-Petition First Lien Lender for the benefit of Debtor, and all interest, fees, costs, legal expenses and all other amounts heretofore or hereafter accruing thereon or at any time chargeable to Debtor in connection therewith, referred to as the "*Pre-Petition First Lien Debt*"); the Pre-Petition First Lien Debt is evidenced and governed in part by a certain Amended and



Restated Loan Agreement dated as of September 19, 2000, between Pre-Petition First Lien Lender and Debtor, a copy of which may be reviewed at the offices of Debtor's counsel (hereinafter, together with all amendments thereto and modifications thereof, the "*Pre-Petition First Lien Loan Agreement*"); and the Pre-Petition First Lien Debt is due and owing to Pre-Petition First Lien Lender without any defense, offset, recoupment or counterclaim.

D. BofA Pre-Petition Liens. As security for the payment of all Pre-Petition First Lien Debt, Debtor granted to Pre-Petition First Lien Lender, pursuant to the Pre-Petition First Lien Loan Agreement and related documents, including, without limitation, a certain Security Agreement-Accounts, Inventory and General Intangibles, and Security Agreement-Equipment and Trademark Mortgage and Security Agreement, each dated as of September 19, 1991 (collectively, and including certain forbearance agreements related thereto, the "*Pre-Petition First Lien Loan Documents*"), security interests in and liens upon all or substantially all of Debtor's personal property, including, without limitation, all of Debtor's accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, inventory, equipment, fixtures, instruments, investment property, intellectual property, letter-of-credit rights, supporting obligations, monies, and books and records (all such personal property, as the same existed on the Petition Date, together with all cash and non-cash proceeds thereof, being hereinafter referred to as the "*Pre-Petition Collateral*"). Debtor has stipulated in the Motion or at the Interim Hearing that the security interests and liens granted by Debtor to Pre-Petition First Lien Lender pursuant to the Pre-Petition First Lien Loan Documents (the "*BofA Pre-Petition Liens*") are legal, valid, enforceable, duly perfected and first priority security interests in and liens upon the Pre-Petition Collateral.

E. Other Creditors Asserting Liens.

1. Collier Subordinated Debt. On or about September 30, 2009, Debtor entered into that certain Secured Note and Option Purchase Agreement (as at any time amended, restated, supplemented or otherwise modified, the "*Collier Purchase Agreement*") dated as of September 30, 2009, with CIRS Financing LLC, a Florida limited liability company ("*Collier A*"), and CIRS Management LLC, a Florida limited liability company ("*Collier B*" and, collectively with Collier A, "*Collier*"), pursuant to which Debtor has borrowed \$13,500,000 from Collier, as evidenced by certain promissory notes in the initial aggregate principal amount of \$13,500,000 executed by Debtor in favor of Collier (as at any time amended, modified, restated or replaced, each a "*Collier Note*," and collectively, the "*Collier Notes*"). As security for payment of the obligations and indebtedness of Debtor to Collier owing in respect of the Collier Notes (such obligations and indebtedness being referred to herein collectively as the "*Collier Debt*"), Debtor granted to Collier, pursuant to a certain Security Agreement dated as of September 30, 2009 (the "*Collier Security Agreement*"), security interests in and liens upon certain Pre-Petition Collateral (the "*Collier Liens*"). The Collier Debt and the Collier Liens are subordinate to the Pre-Petition First Lien Debt and the BofA Pre-Petition Liens pursuant to a certain Intercreditor Agreement (as at any time amended, restated, supplemented or otherwise modified, the "*Collier Intercreditor Agreement*") dated October 1, 2009, between BofA and Collier, and the Collier Intercreditor Agreement was acknowledged in writing by Debtor.

2. Investor Subordinated Debt. On or about September 30, 2009, Debtor entered into that certain Secured Note and Option Purchase Agreement (as at any time amended, restated, supplemented or otherwise modified, the "*Investor Purchase Agreement*") dated as of September 30, 2009, with Clive Lubner, the Bob and Linda Taylor Foundation, Inc., Fred Berkelbaugh, Entrust Freedom, LLC f/b/o Allen G. Ten Broek, Robert F. Anderson Irrevocable

Trust u/a/d, Curtis Bostick, Daniel Lubner, Brian F. Crowley, J. Robert Gould and Lawrence Cunningham (collectively, the "*Investors*"), pursuant to which Debtor has borrowed \$2,500,000 from the Investors, as evidenced by a certain Secured Note dated September 30, 2009, in the aggregate initial principal amount of \$2,500,000 (as at any time amended, modified, restated or replaced, the "*Investor Note*"), executed by Debtor in favor of the Investors. As security for the payment of the obligations and indebtedness of Debtor to the Investors owing in respect of the Investor Note (such obligations and indebtedness being referred to herein collectively as the "*Investor Debt*"), Debtor granted to the Investors, pursuant to a Security Agreement dated as of September 30, 2009 (the "*Investor Security Agreement*"), security interests in and liens upon certain Pre-Petition Collateral (the "*Investor Liens*"). The Investor Debt and the Investor Liens are subordinate to the Pre-Petition First Lien Debt, the BofA Pre-Petition Liens, the Collier Debt and the Collier Liens pursuant to a certain Subordination Agreement dated October 1, 2009 (as at any time amended, restated, supplemented or otherwise modified, the "*Investor Subordination Agreement*"), among BofA, the Investors and Collier, and the Investor Subordination Agreement was acknowledged in writing by Debtor.

3. Alleged Judgment Lien. JBC Investments, Inc. ("*JBC*") may assert a judgment lien against certain assets of Debtor pursuant to an alleged judgment entered on or about January 13, 2011, against Debtor by a Florida state court. On or about February 10, 2011, JBC filed a garnishment action against BofA, as garnishee, styled *JBC Investments, Inc. v. R & S Home of Fine Decorators, LLC and Robb & Stucky Limited LLLP, Bank of America Corporation, Garnishee*, Case No. 08-51681 (02), In the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the "*Garnishment Action*"). In response to the Garnishment Action, BofA has set aside \$157,400 (the "*Garnishment Reserve Funds*") in proceeds of Pre-Petition Collateral. Neither Debtor nor BofA concedes that JBC has any valid,

effective or unavoidable judgment lien or other interest in the Garnishment Reserve Funds, BofA affirmatively asserts that its security interest in the Garnishment Reserve Funds is senior in priority to the interest of JBC (if any) therein, and each of Debtor and BofA reserves all of its rights, remedies, claims and defenses with respect to any claim or lien that has been or may be asserted by JBC.

4. Parties Who May Assert Interests in Specific Inventory. Debtor believes, but does not stipulate or concede, that the following creditors may assert interests in specific inventory of Debtor: Heirloom Rug Gallery, Ltd. (Florida UCC Financing Statement No. 200704921713 filed on February 27, 2007); Artistica, a California corporation (Florida UCC Financing Statement No. 200704921713 filed on July 17, 2009); O.W. Lee Company Inc. (Florida UCC Financing Statement No. 201003608777 filed on November 22, 2010); and Hilco Merchant Resources, LLC (Florida UCC Financing Statement No. 201003705292 filed on December 9, 2010) (collectively, the "*Specific Inventory Creditors*"; and the specific inventory described in such UCC financing statements (if any is in the possession of Debtor) is hereinafter referred to as the "*Specified Inventory*"). Debtor represents that, to the best of its knowledge, there are no other security interests or liens asserted against any of the Pre-Petition Collateral other than by Pre-Petition First Lien Lender, Collier, the Investors, certain creditors who may assert interests in specific equipment of Debtor, the Specific Inventory Creditors and JBC.

F. Need for Financing. An immediate and ongoing need exists for Debtor to obtain financing to continue the operation of its business as debtor-in-possession under Chapter 11 of the Bankruptcy Code and to minimize disruption of Debtor's business. Despite diligent efforts, Debtor has been unable to obtain financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense or solely in exchange for the grant of a special administrative expense priority pursuant to Section 364(c)(1) of the

Bankruptcy Code; and other than the financing from DIP Lender pursuant to the DIP Loan Agreement (as hereinafter defined), Debtor is unable to obtain financing in the form of credit secured by liens solely on unencumbered assets of Debtor or solely by liens that are junior to existing liens on property of the estate pursuant to Sections 364(c)(2) and (c)(3) of the Bankruptcy Code.

G. Proposed DIP Facility. Debtor has requested DIP Lender to establish a secured revolving credit facility in favor of Debtor (the "*DIP Facility*") pursuant to which Debtor may obtain loans from time to time ("*DIP Loans*"), in an aggregate amount up to \$25,000,000 outstanding at any time, secured by all personal property of Debtor (but excluding Avoidance Claims and Avoidance Proceeds, as defined below), wherever located and whether created, acquired or arising prior to, on or after the Petition Date. DIP Lender is willing to establish the DIP Facility, upon the terms and conditions set forth herein and in a certain Post-Petition Loan and Security Agreement to be entered into by Debtor and DIP Lender, substantially in the form attached to the Motion (together with all schedules, exhibits and annexes thereto, and as at any time amended, modified or restated, the "*DIP Loan Agreement*").<sup>2</sup>

H. Certain Conditions to DIP Facility. DIP Lender's willingness to make DIP Loans and make other extensions of credit pursuant to the DIP Loan Agreement (collectively, the "*Credit Extensions*") is conditioned upon, among other things, (i) Debtor obtaining Court approval of the DIP Loan Agreement and all obligations of Debtor and all rights and remedies of DIP Lender thereunder, (ii) Debtor's provision of adequate protection for Pre-Petition First Lien Lender's interests in the Pre-Petition Collateral pursuant to Sections 361 and 363 of the Bankruptcy Code, and (iii) DIP Lender receiving, as security for the prompt payment of all DIP

---

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the DIP Loan Agreement.

Obligations (as hereinafter defined), a security interest in and lien upon all of Debtor's pre-petition and post-petition personal property, including, without limitation, all of Debtor's cash, accounts, inventory, equipment, general intangibles, documents, instruments, chattel paper, deposit accounts, letter-of-credit rights, commercial tort claims, investment property, intellectual property, leasehold interests, contract rights, books and records relating to any assets of Debtor and all proceeds (including, without limitation, insurance proceeds) of the foregoing, whether such assets are now in existence or hereafter created, acquired or arising and wherever located (all such personal property, including, without limitation, all Pre-Petition Collateral and the proceeds thereof, being collectively hereinafter referred to as the "*Collateral*"), and that such security interests and liens have the priority hereinafter set forth; provided, however, that the term "*Collateral*" shall not include Avoidance Claims or Avoidance Proceeds (as those terms are defined below).

I. Interim Hearing; Budget. Pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2), Debtor has requested in the Motion that the Court hold the Interim Hearing to consider authorizing Debtor to obtain, during the period (the "*Interim Period*") from the date of entry of this Order through the date on which the final hearing on the Motion pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2) scheduled pursuant to paragraph 22 of this Order (the "*Final Hearing*") is concluded, DIP Loans for purposes specified in Debtor's cash budget annexed to the Motion (as at any time amended or extended with the prior written consent of DIP Lender, the "*Budget*").

J. Service of Motion. Debtor's noticing and claims agent has certified that copies of the Motion (together with copies of the proposed DIP Loan Agreement and Budget annexed thereto) and notice of the Interim Hearing have been served by electronic mail, telecopy transmission, hand delivery, overnight courier or first class United States mail upon the Office of

the United States Trustee (the "*U.S. Trustee*"), counsel for Pre-Petition First Lien Lender, Collier and its counsel, the Investors, JBC, the Specific Inventory Creditors, the 20 largest unsecured creditors of Debtor, and the Internal Revenue Service. The Court finds that the foregoing notice of the Motion, as it relates to this Order, is sufficient for all purposes under the Bankruptcy Code and the Bankruptcy Rules, including, without limitation, Sections 102(1) and 364 of the Bankruptcy Code and Bankruptcy Rule 4001(b) and (c).

K. Finding Cause. Good cause has been shown for the entry of this Order and authorization for Debtor to obtain Credit Extensions pursuant to the DIP Loan Agreement as hereinafter provided during the Interim Period. Debtor's need for financing of the type afforded by the DIP Loan Agreement is immediate and critical. Entry of this Order will minimize disruption of Debtor's business and operation, will preserve the assets of Debtor's estate and their value and is in the best interests of Debtor, its creditors and its estate. The terms of the proposed financing are fair and reasonable, reflect Debtor's exercise of business judgment and are supported by reasonably equivalent value and fair consideration.

L. Finding of Good Faith. Based upon the record presented at the Interim Hearing, it appears that the DIP Loan Agreement and related documents, as well as the terms of this Interim Order, have been negotiated in good faith and at arm's length between Debtor, on the one hand, and Pre-Petition First Lien Lender and DIP Lender (collectively, in their respective capacities, the "*Lenders*"), on the other. Therefore, all Credit Extensions to Debtor pursuant to the DIP Loan Agreement shall be deemed to have been made in good faith within the meaning of Section 364(e) of the Bankruptcy Code.

M. Authorization for Priming Liens. Pursuant and subject to the express terms of the Collier Intercreditor Agreement and the Investor Subordination Agreement, each of Collier and the Investors has consented to the DIP Liens (defined below) in favor of DIP Lender priming,

pursuant to Section 364(d) of the Bankruptcy Code, all liens and security interests in favor of any of them.

N. Jurisdiction; Core Proceeding. This Court has jurisdiction to enter this Order pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding, as defined in 28 U.S.C. § 157(b)(2).

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. Grant of Motion; Authorization of Interim Financing. The Motion is hereby GRANTED and the Court hereby authorizes and approves (i) Debtor's execution and delivery of the DIP Loan Agreement in substantially the form annexed to the Motion (with such changes, if any, as were made prior to or as a result of the Interim Hearing or are otherwise authorized to be made as amendments to the DIP Loan Agreement in accordance with this Order) and all instruments, security agreements, assignments, pledges, mortgages, reaffirmations and other documents referred to therein or requested by DIP Lender to give effect to the terms thereof (the DIP Loan Agreement and such other instruments, security agreements, assignments and other documents, as at any time amended, being collectively called the "*DIP Financing Documents*"); (ii) Debtor's obtaining DIP Loans and other Credit Extensions in accordance with the DIP Loan Agreement from time to time up to an aggregate principal amount outstanding at any time of \$25,000,000 plus interest, fees and other charges payable in connection therewith, and to incur any and all liabilities and obligations thereunder and to pay all principal, interest, fees, expenses and other obligations provided for under the DIP Financing Documents; and (iii) Debtor's satisfying all conditions precedent and performing all obligations hereunder and thereunder in accordance with the terms hereof and thereof; provided, however, that, during the Interim Period and subject to all of the terms and conditions in the DIP Loan Agreement, Debtor may obtain



Credit Extensions only to the extent necessary to avoid immediate and irreparable harm to Debtor, which, for purposes hereof, shall mean proceeds of DIP Loans used (a) to pay any of the Credit Extensions or other DIP Obligations (as defined below), (b) for purposes specified (and in amounts not to exceed those shown) in the Budget, (c) to make adequate protection and other payments to Pre-Petition First Lien Lender to the extent authorized or required herein, and (d) to pay other expenses that are required or authorized to be paid, prior to the Final Hearing, under the DIP Loan Agreement. DIP Lender shall not have any obligation or responsibility to monitor Debtor's use of the DIP Loans and may rely upon Debtor's representations that the amount of Credit Extensions requested at any time, and the use thereof, are in accordance with the requirements of this Order, the DIP Financing Documents and Bankruptcy Rule 4001(c)(2). As provided in the DIP Loan Agreement, the Pre-Petition LCs shall be treated as having been issued under the DIP Loan Agreement, shall constitute part of the Credit Extensions thereunder, shall be entitled to all of the benefits and security of the DIP Financing Documents and this Order, and from and after entry of this Order shall cease to be regarded as part of the Pre-Petition First Lien Debt. Any and all objections to the relief requested in the Motion, to the extent not otherwise withdrawn, waived or resolved by consent at or before the Interim Hearing, are hereby OVERRULED and DENIED.

2. Execution, Delivery and Performance of DIP Financing Documents. The DIP Financing Documents may be executed and delivered on behalf of Debtor by any officer, director, or agent of Debtor, who by signing shall be deemed to represent himself or herself to be duly authorized and empowered to execute the DIP Financing Documents for and on behalf of Debtor, and Lender shall be authorized to rely upon any such person's execution and delivery any of the DIP Financing Documents as having done so with all requisite power and authority to do so. Upon execution and delivery thereof, the DIP Financing Documents shall constitute valid

and binding obligations of Debtor, enforceable against Debtor in accordance with their terms. In furtherance of the provisions of paragraph 1 of this Order, Debtor is authorized and directed to do and perform all acts; to make, execute and deliver all instruments and documents (including, without limitation, the execution of security agreements, pledge agreements, financing statements and intellectual property filings); and to pay all filing and recording fees as may be necessary or, in the opinion of DIP Lender, desirable to give effect to any of the terms and conditions of the DIP Financing Documents, to validate the perfection of the DIP Liens (as defined below) or as otherwise required or contemplated by the DIP Financing Documents.

3. DIP Liens. As security for Debtor's payment and performance of all Credit Extensions, all interest, costs, expenses, fees and other charges at any time or times payable by Debtor to DIP Lender in connection with any Credit Extensions or otherwise pursuant to any of the DIP Financing Documents, all reimbursement obligations in respect of the Pre-Petition LCs, and all other Obligations under the DIP Loan Agreement (including, without limitation, liabilities of Debtor at any time or times associated with DIP Lender's provision of Bank Products) (collectively, the "*DIP Obligations*"), DIP Lender shall have, and is hereby granted, security interests in and liens upon all of the Collateral (collectively, the "*DIP Liens*"), as follows:

(a) Unencumbered Collateral. Pursuant to Section 364(c)(2) of the Bankruptcy Code, perfected first priority senior security interests in and liens upon (i) all Collateral that, as of the Petition Date, is not subject to valid, perfected and non-avoidable liens or to valid and unavoidable liens in existence on the Petition Date that are perfected thereafter (with a priority that relates back to a date prior to the Petition Date), as permitted by Section 546(b) of the Bankruptcy Code, and (ii) all Collateral (other than direct proceeds of Pre-Petition Collateral that are subject to valid, perfected and non-

avoidable pre-petition liens) that is created or acquired, or arises, after the Petition Date; and

(b) Encumbered Collateral. Pursuant to Section 364(c)(3) of the Bankruptcy Code, perfected junior security interests in and liens upon all Collateral that is subject to valid, perfected and non-avoidable liens in existence on the Petition Date (including the BofA Pre-Petition Liens) or to valid and non-avoidable liens in existence on the Petition Date that are perfected thereafter (with a priority that relates back to a date prior to the Petition Date), as permitted by Section 546(b) of the Bankruptcy Code, except for the Collier Liens, the Investor Liens, the Collier Replacement Liens (defined below) and the Investor Replacement Liens (defined below) (collectively, the "*Contractually Subordinated Liens*"); and

(c) Extent of Priming DIP Liens. Notwithstanding anything to the contrary contained in this paragraph 3, pursuant to Section 364(d) of the Bankruptcy Code, the DIP Liens shall be senior in priority to all of the Contractually Subordinated Liens.

Notwithstanding the foregoing provisions of this paragraph 3 or anything to the contrary in the DIP Financing Documents, the DIP Liens shall not attach to any of the following property (unless Debtor shall grant or consent to any lien or security interest therein in favor of any other person or entity, in which event all such property shall be subject to the DIP Liens and such DIP Liens shall be first priority liens with respect to such property): (i) any claims pursuant to Sections 502(d), 544, 545, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code (the "*Avoidance Claims*") or (ii) any proceeds or property recovered in connection with the successful prosecution or settlement of any Avoidance Claim (the "*Avoidance Proceeds*"). In no event shall any of the DIP Liens be subject to any pre-petition or post-petition lien or security interest that is avoided and preserved for the benefit of Debtor's estate under Section 551 of the Bankruptcy

Code; and in no event shall any person or entity who pays (or, through the extension of credit to Debtor, causes to be paid) any of the DIP Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted to or in favor of, or conferred upon, DIP Lender by the terms of the DIP Financing Documents or this Order, until such time as all of the Pre-Petition First Lien Debt and all of the DIP Obligations are Paid in Full and the DIP Facility is terminated.

4. Superpriority Claim; Surcharge.

(a) Scope of Superpriority Claim. All DIP Obligations shall have administrative priority in accordance with, and shall constitute an allowed superpriority claim (the "*Superpriority Claim*") pursuant to, Section 364(c)(1) of the Bankruptcy Code over all other administrative expenses in Debtor's case of the kind specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(e), 507(a), 507(b), 546(c), 726 or 1114 of the Bankruptcy Code; provided, however, that the Superpriority Claim shall not attach to or be payable from Avoidance Claims or Avoidance Proceeds.

(b) No Surcharge. No costs or administrative expenses that have been or may be incurred in this Chapter 11 case, in any matters or proceedings related hereto or in any superseding Chapter 7 case and no priority claims are or will be prior to or on a parity with the Superpriority Claim of DIP Lender for the DIP Obligations. Subject to entry of a final order on the Motion, in no event shall any costs or expenses of administration be imposed upon any Lender or any of the Collateral pursuant to Section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of such Lender, and no such consent shall be implied from any action, inaction or acquiescence by any Lender.

5. Repayment. The DIP Obligations shall be due and payable, and shall be paid, as and when provided in the DIP Financing Documents and as provided herein, without offset or

counterclaim. Without limiting the generality of the foregoing, in no event shall Debtor be authorized to offset or recoup any amounts owed, or allegedly owed, by Pre-Petition First Lien Lender or DIP Lender to Debtor or any of its subsidiaries or affiliates against any of the DIP Obligations without the prior written consent of DIP Lender and no such consent shall be implied from any action, inaction or acquiescence by DIP Lender.

6. Cash Collateral.

(a) Dominion Account. Debtor shall cause all proceeds of Collateral ("*Cash Collateral*") to be promptly deposited in an account designated by DIP Lender (the "*Dominion Account*"). Prior to the deposit of Cash Collateral to the Dominion Account, Debtor shall be deemed to hold such proceeds in trust for the benefit of Lenders.

(b) Application of Cash Collateral. Lenders shall be entitled to apply all Cash Collateral (excluding the Garnishment Reserve Funds) to the Pre-Petition First Lien Debt or the DIP Obligations consistent with the terms of paragraph 7 of this Order and the DIP Loan Agreement.

(c) Unless and until all of the Pre-Petition First Lien Debt and DIP Obligations have been Paid in Full and the DIP Facility (and all commitments of the DIP Lender thereunder) has terminated, Debtor shall not be authorized to use any Cash Collateral for any purpose except as otherwise authorized by paragraph 7 of this Order or the DIP Loan Agreement or as otherwise authorized by Pre-Petition First Lien Lender in writing in its sole and absolute discretion. After the DIP Obligations have been Paid in Full and the DIP Facility (and all commitments of the DIP Lender thereunder) has terminated, the Debtor may petition the Bankruptcy Court for authority to use Cash Collateral.

7. Adequate Protection. As adequate protection pursuant to Sections 361 and 363 of the Bankruptcy Code for Debtor's sale, collection or other disposition of any of the Pre-Petition Collateral, the following measures of adequate protection are granted:

(a) BofA Replacement Liens. Pre-Petition First Lien Lender is hereby granted replacement liens, effective as of the Petition Date, in and to all of the Collateral (the "*BofA Replacement Liens*") as partial adequate protection to Pre-Petition First Lien Lender to the extent of any decrease in value of the BofA Pre-Petition Liens caused by Debtor's use, consumption, sale, collection or other disposition of any Pre-Petition Collateral. The BofA Replacement Liens shall be senior in priority to the DIP Liens and all Contractually Subordinated Liens (as defined in paragraph 3(b) above).

(b) Collier Replacement Liens. Collier is hereby granted replacement liens, effective as of the Petition Date, in and to all of the Collateral that is of the same type and nature as the Pre-Petition Collateral (the "*Collier Replacement Liens*") as partial adequate protection to Collier to the extent of any decrease in value of the Collier Liens caused by Debtor's use, consumption, sale, collection or other disposition of any Pre-Petition Collateral. The Collier Replacement Liens shall (i) be junior in priority to the BofA Pre-Petition Liens, the DIP Liens, and the BofA Replacement Liens, and (ii) be senior in priority to the Investor Replacement Liens (defined below).

(c) Investor Replacement Liens. The Investors are hereby granted replacement liens, effective as of the Petition Date, in and to all of the Collateral that is of the same type and nature as the Pre-Petition Collateral (the "*Investor Replacement Liens*") as partial adequate protection to the Investors to the extent of any decrease in value of the Investor Liens caused by Debtor's use, consumption, sale, collection or other disposition of any Pre-Petition Collateral. The Investor Replacement Liens shall be junior in priority to the BofA Pre-Petition

Liens, the DIP Liens, the BofA Replacement Liens, the Collier Liens and the Collier Replacement Liens.

(d) Adequate Protection in Favor of JBC and Specific Inventory Creditors.

The Garnishment Reserve Funds shall continue to be held by BofA pending further order of the Court, subject to all liens and security interests that may have existed with respect to the Garnishment Reserve Funds on the Petition Date, with all of such liens and security interests to have the same validity, extent, and priority as existed with respect to the Garnishment Reserve Funds as of the Petition Date. Debtor shall segregate and shall not sell or otherwise dispose of any of the Specified Inventory (described in the UCC Financing Statements listed in paragraph E(4) above), absent further order of the Court, and no Lender shall be liable to Debtor or any Specific Inventory Creditor if Debtor inadvertently sells any Specified Inventory and remits the proceeds thereof to such Lender.

(e) Application of Proceeds of Pre-Petition Accounts. All collections and proceeds of Debtor's accounts receivable and other rights to payment existing or arising on or prior to the Petition Date (the "*Pre-Petition Accounts*") (excluding the Garnishment Reserve Funds) and all payments by account obligors indebted to Debtor with respect to transactions entered into or concluded prior to the Petition Date, may in the discretion of Lender be applied to pay (or in the case of contingent obligations, cash collateralize) the Pre-Petition First Lien Debt, in such order of application as Pre-Petition First Lien Lender shall elect, in its discretion, until the Pre-Petition First Lien Debt is Paid in Full, and then applied to the DIP Obligations in such order of application as DIP Lender may elect in its discretion until Full Payment thereof. Debtor shall use its reasonable, good faith efforts to provide promptly to Lenders statements identifying the portion of each deposit to the Dominion Account that represents proceeds of Pre-Petition Accounts so as to assist Lenders in the application of the proceeds of Pre-Petition Accounts in

accordance herewith. Lenders shall be entitled to assume that all deposits to the Dominion Account and all collections of accounts receivable received by Debtor or any Lender after the Petition Date constitute proceeds of Pre-Petition Accounts, until such time as the Lenders have received and applied to their respective claims an amount equal to the aggregate balance of the Pre-Petition Accounts on the books and records of Debtor as of the Petition Date.

(f) Sale of Pre-Petition Inventory. In consideration of Debtor's sale or other disposition of any raw materials, work-in-process, finished goods, packaging materials or labels that were in existence on the Petition Date (collectively, "*Pre-Petition Inventory*"), Debtor shall (unless otherwise directed by Pre-Petition First Lien Lender in writing) pay to Pre-Petition First Lien Lender, concurrently with any sale or other disposition thereof, the value of such Pre-Petition Inventory (which shall be deemed to be no less than 60% of cost) and Pre-Petition First Lien Lender shall be authorized to apply all such payments to the Pre-Petition First Lien Debt (in such order of application as Pre-Petition First Lien Lender may elect in its discretion consistent with the Pre-Petition First Lien Loan Agreement) until the Pre-Petition First Lien Debt is Paid in Full and thereafter to the DIP Obligations (in such order of application as DIP Lender may elect in its discretion) until the DIP Obligations are Paid in Full and the DIP Facility is terminated. Based on Debtor's books and records, the total value at cost of all Pre-Petition Inventory as of the Petition Date was approximately \$46 million (the "*Pre-Petition Inventory Amount*") and, therefore, the aggregate of all payments made to Pre-Petition First Lien Lender pursuant to the provisions of this subparagraph shall not exceed such amount. For purposes of implementing this measure of adequate protection, it shall be assumed that Debtor's sale or disposition of any inventory after the Petition Date, including, without limitation, raw materials, work-in-process, finished goods, packaging materials or labels, constitutes a use of Pre-Petition Inventory until the aggregate amount of the payments received by Pre-Petition First Lien Lender under this



subparagraph equals the Pre-Petition Inventory Amount. DIP Lender is authorized to make DIP Loans in amounts sufficient to satisfy Debtor's payment obligations under this subparagraph and to disburse such DIP Loans directly to Pre-Petition First Lien Lender for application to the Pre-Petition First Lien Debt and thereafter to the DIP Obligations as hereinabove provided. All such DIP Loans shall be entitled to all of the benefits and security of the DIP Financing Documents and this Order.

(g) Use of Other Pre-Petition Collateral. In consideration of Debtor's use, consumption, sale or other disposition of Pre-Petition Collateral other than Pre-Petition Inventory or Pre-Petition Accounts, including, without limitation, equipment, vehicles, general intangibles, chattel paper, documents, instruments, investment property, intellectual property, and deposit accounts ("*Other Pre-Petition Collateral*"), Pre-Petition First Lien Lender may apply the proceeds of Other Pre-Petition Collateral to the Pre-Petition First Lien Debt, in such order of application as Pre-Petition First Lien Lender shall elect, until the Pre-Petition First Lien Debt is Paid in Full, and thereafter to the DIP Obligations in such order as DIP Lender may elect in its discretion. Nothing herein shall be construed to be a consent by Pre-Petition First Lien Lender or DIP Lender to any sale or other disposition of any Collateral.

(h) Reservation of Rights. Nothing herein shall be deemed to be a waiver by Pre-Petition First Lien Lender of its right to request additional or further protection of its interests in any Pre-Petition Collateral, to move for relief from the automatic stay, to seek the appointment of a trustee or examiner or the conversion or dismissal of this Chapter 11 case, or to request any other relief in this case; nor shall anything herein or in any of the DIP Financing Documents constitute an admission by Lenders regarding the quantity, quality or value of any Collateral securing the Pre-Petition First Lien Debt or DIP Obligations or constitute a finding of adequate protection with respect to the interests of Lenders in any Collateral. Pre-Petition First

Lien Lender shall be deemed to have reserved all rights to assert (subject to any defenses of Debtor or any other party in interest) entitlement to the protections and benefits of Section 507(b) of the Bankruptcy Code in connection with any use, sale or other disposition of any of the Collateral, to the extent that the protection afforded by this Order to Pre-Petition First Lien Lender's interests in any Collateral proves to be inadequate.

8. Fees and Expenses of Professionals. For so long as no "Event of Default" under (and as defined in) the DIP Loan Agreement shall have occurred and be continuing, Debtor is authorized to use proceeds of DIP Loans (but not proceeds of any of the Collateral without the prior written consent of Lenders) to pay such compensation and expense reimbursement (collectively, "*Professional Expenses*") of professionals (including attorneys, financial advisors, accountants, appraisers, consultants and investment bankers) retained by Debtor (the "*Debtor Professionals*") or the Official Committee of Unsecured Creditors (the "*Committee Professionals*"; the Debtor Professionals and Committee Professionals are referred to collectively as the "*Professionals*"), to the extent that such compensation and expense reimbursement is approved by the Court (including through any interim compensation procedures approved by the Court); provided, however, that no proceeds of DIP Loans or any Collateral shall be used to pay Professional Expenses of any Professional or any other costs incurred in connection with (1) commencing or continuing any claims, causes of actions or contested matters against Pre-Petition First Lien Lender or DIP Lender, including, without limitation, discovery proceedings subsequent to the commencement of any such claims or causes of action; (2) preventing, hindering or delaying performance or enforcement by Lenders of their respective rights or remedies under this Order, any of the DIP Financing Documents, any of the Pre-Petition First Lien Loan Documents, or any other agreement with Debtor; (3) challenging any BofA Pre-Petition Lien, BofA Replacement Lien, DIP Lien or Superpriority Claim; or (4)

any other purpose prohibited by the DIP Financing Documents (collectively, the "*Prohibited Uses*"). Notwithstanding the foregoing, DIP Loans may be used to pay up to \$10,000 of Professional Expenses of Committee Professionals incurred in connection with review by the Official Committee of Unsecured Creditors (the "*Committee*") of the validity, perfection, priority or amount of the Pre-Petition First Lien Debt, the BofA Pre-Petition Liens and the Pre-Petition First Lien Loan Documents. Debtor Professionals and Committee Professionals, if any, shall be permitted to submit to Debtor, with copies to counsel for the DIP Lender, periodic statements (but no more frequently than on a monthly basis) for services rendered and reimbursable expenses incurred by them (the "*Conditional Professional Expenses*"). DIP Lender shall advance commencing on Monday, February 28, 2011, and continuing each Monday thereafter until the Commitment Termination Date, the amounts set forth in the Budget for Professional Expenses (which excludes retainers paid pre -petition) not to exceed, in the aggregate, the Unwind Expense Commitment; said funds shall be advanced by wire transfer to and segregated and escrowed in an escrow account maintained by counsel for Debtor for payment to Committee Professionals and Debtor Professionals, in accordance with procedures which may be approved by the Court for the payment of professionals (the "*Professional Expense Escrow*"). Funds deposited in the Professional Expense Escrow shall be available and may be used solely for the payment of the Conditional Professional Expenses and Professional Expenses (to the extent not previously paid). DIP Lender shall have a first priority lien on all funds in the Professional Expense Escrow and any amounts not payable to any Professionals shall be returned to DIP Lender for application on account of the DIP Obligations. Nothing in this paragraph shall prejudice or impair the rights of either Debtor Professionals or Committee Professionals to request an award of compensation in excess of the amounts set forth in the Budget (the "*Unbudgeted Professional Expenses*") or the rights of the DIP Lender to object to the amount or

reasonableness of any Professional Expenses or Unbudgeted Professional Expenses. In no event, however, shall DIP Lender be responsible for the payment of Unbudgeted Professional Expenses or any amounts in excess of the Unwind Expense Commitment. Nothing herein shall be deemed as a consent to the allowance of the fees or expenses of any professionals retained by Debtor or the Committee or a waiver of the rights of the Pre-Petition Lenders (as defined in the Motion) or DIP Lender to object to any requests for allowance of any fees or expenses.

9. Unwind Expense Commitment of DIP Lender. If so requested in writing by Debtor within thirty (30) days after the Commitment Termination Date, DIP Lender shall be obligated (the "*Unwind Expense Commitment*") to make one or more DIP Loans to Debtor in an aggregate amount equal to the lesser of (A) the Unwind Reserve minus any amounts previously funded in the Professional Expense Escrow, or (B) an amount sufficient to pay the following (and such DIP Loans shall be used solely for the payment of the following) (collectively the "*Unwind Expenses*"): (i) unpaid Professional Expenses (whether or not accrued prior to the Commitment Termination Date) that are approved at any time for payment by final order of the Court, not to exceed in aggregate the Borrower Professional Expense Reserve (as defined in the DIP Loan Agreement on the date hereof) for payments to Debtor Professionals and the Committee Professional Expense Reserve (as defined in the DIP Loan Agreement on the date hereof) for payments to Committee Professionals; (ii) any fees required to be paid to the Clerk of the Court (whether or not accrued prior to the Commitment Termination Date); and (iii) unpaid quarterly fees that are required to be paid to the U.S. Trustee pursuant to 28 U.S.C. §1930(a)(6) and that accrued prior to the Commitment Termination Date. All such DIP Loans shall constitute DIP Obligations that shall be due and payable on demand by DIP Lender and shall be entitled to all of the benefits and security of this Order and the DIP Financing Documents. DIP Lender may, at any time on or after the Commitment Termination Date and in its sole discretion

(whether or not it has received any request therefor from Debtor), advance to Debtor an amount estimated by it as being sufficient to pay the Unwind Expenses (with written confirmation to Debtor of the purpose of such advance), in which event Debtor shall hold the amount so advanced in escrow for payment of the specified Unwind Expenses (with any surplus remaining to be remitted back to DIP Lender to the extent of any unpaid DIP Obligations). After funding the Unwind Expenses (whether such funding is made at Debtor's request or in DIP Lender's discretion), DIP Lender shall be deemed to have discharged the Unwind Expense Commitment in an amount equal to such funding and thereafter shall have no further obligation in respect of the Unwind Expense Commitment to the extent of such funding.

10. Preservation of Rights Granted Under This Order.

(a) Protection From Subsequent Financing Order. There shall not be entered in this Chapter 11 case or in any successor case any order that authorizes the obtaining of credit or the incurrence of indebtedness by Debtor (or any trustee or examiner) that is (i) secured by a security interest, mortgage or collateral interest or lien on all or any part of the Collateral that is equal or senior to the DIP Liens, BofA Pre-Petition Liens or BofA Replacement Liens or (ii) entitled to priority administrative status that is equal or senior to the Superpriority Claim granted to DIP Lender herein; provided, however, that nothing herein shall prevent the entry of an order that specifically provides that, as a condition to the granting of the benefits of clauses (i) or (ii) above, all of the DIP Obligations and Pre-Petition First Lien Debt must be indefeasibly Paid in Full, in cash, from the proceeds of such credit or indebtedness.

(b) Rights Upon Dismissal, Conversion or Consolidation. If this Chapter 11 case is dismissed, converted or substantively consolidated with another case, then neither the entry of this Order nor the dismissal, conversion or substantive consolidation of this Chapter 11 case shall affect the rights or remedies of DIP Lender under the DIP Financing Documents or the

rights or remedies of Lenders under this Order, and all of the respective rights and remedies hereunder and thereunder of Lenders shall remain in full force and effect as if this Chapter 11 case had not been dismissed, converted, or substantively consolidated. It shall constitute an Event of Default if Debtor seeks, or if there is entered, any order dismissing this Chapter 11 case. If an order dismissing this Chapter 11 case is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (i) the DIP Liens, BofA Replacement Liens and Superpriority Claim granted to and conferred upon Lenders shall continue in full force and effect and shall maintain their priorities as provided in this Order (and that such liens and Superpriority Claim shall, notwithstanding such dismissal, remain binding on all interested parties) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Liens, BofA Replacement Liens and Superpriority Claim.

(c) Survival of Order. The provisions of this Order, and any actions taken pursuant hereto, shall survive the entry of and shall govern with respect to any conflict with any order that may be entered confirming any plan of reorganization or liquidation or converting this Chapter 11 case from Chapter 11 to Chapter 7.

(d) No Discharge; Credit Bid Rights. The DIP Obligations shall not be discharged by the entry of any order confirming a plan of reorganization or liquidation in this Chapter 11 case and, pursuant to Section 1141(d)(4) of the Bankruptcy Code, Debtor has waived such discharge. No plan of reorganization or liquidation, nor any order entered in connection with a sale of assets under Section 363 of the Bankruptcy Code, shall limit or otherwise restrict the right of Pre-Petition First Lien Lender or DIP Lender to submit a credit bid for all or any part of the Collateral.

(e) No Marshaling. In no event shall DIP Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to any Collateral securing

any of the DIP Obligations; and in no event shall any DIP Liens be subject to any pre-petition or post-petition lien or security interest that is avoided and preserved for the benefit of Debtor's estate pursuant to Section 551 of the Bankruptcy Code.

(f) No Requirement to File Proof of Claim. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any bar order establishing a deadline for the filing of proofs of claims entitled to administrative expense treatment under Section 503(b) of the Bankruptcy Code, DIP Lender shall not be required to file any proof of claim with respect to any of the DIP Obligations, all of which shall be due and payable in accordance with the DIP Loan Agreement and the other DIP Financing Documents without the necessity of filing any such proof of claim; and the failure to file any such proof of claim shall not affect the validity or enforceability of any of the DIP Financing Documents or prejudice or otherwise adversely affect DIP Lender's rights, remedies, powers or privileges under the DIP Financing Documents or this Order.

11. Automatic Perfection of Liens. The DIP Liens, BofA Replacement Liens and Collier Replacement Liens shall be deemed valid, binding, enforceable and perfected upon entry of this Order. Neither any Lender nor Collier shall be required to file any UCC-1 financing statements, notices of lien or any similar document or take any other action (including possession of any of the Collateral) in order to validate the perfection of any DIP Liens, Collier Replacement Liens or BofA Replacement Liens. If any Lender or Collier shall, in its discretion, choose to file or record any such mortgages, deeds of trust, security deeds, notices of lien, or UCC-1 financing statements, or take any other action to validate the perfection of any part of the DIP Liens, BofA Replacement Liens, or Collier Replacement Liens, Debtor and its respective officers are directed to execute any documents or instruments as Lenders and Collier shall reasonably request, and all such documents and instruments shall be deemed to have been filed

or recorded at the time and on the date of entry of this Order. Each of Lenders and Collier may, in its discretion, file a certified copy of this Order in any filing office in any jurisdiction in which Debtor is organized or has or maintains any Collateral or an office, and each filing office is directed to accept such certified copy of this Order for filing and recording.

12. Reimbursement of Expenses. All reasonable costs and expenses incurred by DIP Lender in connection with the negotiation and drafting of the DIP Financing Documents (or any amendments thereto), the preservation, perfection, protection and enforcement of DIP Lender's rights hereunder or under the DIP Financing Documents, the collection of the DIP Obligations, or the monitoring of this Chapter 11 case, including, without limitation, all filing and recording fees and reasonable fees and expenses of attorneys, accountants, consultants, financial advisors, appraisers and other professionals incurred by DIP Lender in connection with any of the foregoing, whether any of the foregoing were incurred prior to or after the Petition Date, shall form a part of the DIP Obligations and shall be paid by Debtor (without the necessity of filing any application with or obtaining further order from the Court) in accordance with the terms of the DIP Financing Documents. In no event shall any statement submitted by any Lender to Debtor, the Committee or any other interested person (or any of their respective Professionals) with respect to fees or expenses incurred for any professional retained by Lenders operate to waive the attorney/client privilege, the work-product doctrine, or any other evidentiary privilege or protection recognized under applicable law.

13. Amendments to DIP Financing Documents. Debtor and DIP Lender are hereby authorized to implement, in accordance with the terms of the DIP Financing Documents and without further order of the Court, any amendments to and modifications of any of the DIP Financing Documents on the following conditions: (i) the amendment or modification must not constitute a material change to the terms of the DIP Financing Documents, (ii) copies of the



amendment or modification must be served upon counsel for the Committee (and, prior to the appointment of a Committee, upon Debtor's 20 largest unsecured creditors), the U.S. Trustee, Collier, the Investors and other interested parties specifically requesting such notice, and (iii) notice of the amendment must be filed with the Court. Any amendment or modification that constitutes a material change, to be effective, must be approved by the Court. For purposes hereof, a "material change" shall mean a change that operates to shorten the DIP Facility or the maturity of the DIP Obligations, increase the aggregate amount of the commitments of DIP Lender under the DIP Facility and this Order, increase the rate of interest other than as currently provided in or contemplated by the DIP Financing Documents, add specific Events of Default, or enlarge the nature and extent of remedies available to DIP Lender following the occurrence of an Event of Default. Without limiting the generality of the foregoing, any amendment of the DIP Loan Agreement to postpone or extend any date or deadline therein (including, without limitation, the Commitment Termination Date) shall not constitute a "material change" and may be effectuated by Debtor and DIP Lender without the need for further approval of the Court.

14. Events of Default; Remedies.

(a) Events of Default and Remedies. Upon or after the occurrence of an "Event of Default" under (and as defined in) the DIP Loan Agreement, including, without limitation, an Event of Default resulting from the failure of Debtor duly and punctually to observe, perform or discharge any obligation or duty imposed upon it by this Order or any of the DIP Financing Documents; the appointment in this Chapter 11 case of a trustee or an examiner with expanded powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; the dismissal or conversion to Chapter 7 of this Chapter 11 case; the filing of a motion by Debtor to convert this Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code or to dismiss this Chapter 11 case; this

Order is altered, amended, vacated, supplemented, modified, stayed or reversed on appeal or Debtor shall file any motion to alter, amend, vacate, supplement or modify this Order without DIP Lender's prior consent; or a final financing order acceptable to DIP Lender is not entered on or before March 15, 2011, then DIP Lender shall be fully authorized, in its sole discretion, to terminate further Credit Extensions under the DIP Facility, demand payment of all DIP Obligations, and hold and apply any balances in any accounts of Debtor to the payment or cash collateralization of any of the DIP Obligations; and (i) Lenders may file an emergency or expedited motion seeking relief from the automatic stay imposed by 11 U.S.C. § 362(a) as to some or all of the Collateral (a "*Stay Relief Motion*") and obtain a hearing on the Stay Relief Motion with five (5) business days' notice to counsel for Debtor, counsel for the Committee (or, prior to the appointment of the Committee, upon Debtor's 20 largest unsecured creditors) and the U.S. Trustee, (ii) Debtor irrevocably consents to any Stay Relief Motion being heard on an expedited or emergency basis by the Court, and (iii) at any hearing on a Stay Relief Motion, the only issue to be decided by the Court shall be whether an Event of Default has occurred and exists. Lenders may, subject to entry of an order of the Court granting a Stay Relief Motion, enforce the DIP Liens, BofA Pre-Petition Liens and BofA Replacement Liens with respect to the Collateral, take all other actions and exercise all other remedies under the DIP Financing Documents, Pre-Petition First Lien Loan Documents and applicable law that may be necessary or deemed appropriate by Lenders to collect any of the DIP Obligations and Pre-Petition First Lien Debt, proceed against or realize upon all or any portion of the Collateral as if this Chapter 11 case or any superseding Chapter 7 case was not pending, and otherwise enforce any of the provisions of this Order.

(b) Application of Collateral Proceeds. Notwithstanding any contrary provision contained in this Order (including, without limitation, any contrary provision contained

in paragraph 7 of this Order), if Lenders shall proceed to enforce their Liens in respect of any Collateral, then Lenders may, in their discretion, elect to apply all proceeds of the Collateral (including, without limitation, proceeds of Pre-Petition Collateral) to the payment of the DIP Obligations and the Pre-Petition First Lien Debt in such order of application as Lenders may elect in their discretion.

(c) Rights Cumulative. The rights, remedies, powers and privileges conferred upon Lenders pursuant to this Order shall be in addition to and cumulative with those contained in the DIP Financing Documents and the Pre-Petition First Lien Loan Documents.

15. Monitoring of Collateral.

(a) Inspection Rights. Representatives of Lenders shall be authorized to visit the business premises of Debtor and its subsidiaries to (i) inspect any Collateral or other assets, (ii) inspect and make copies of any books and records of Debtor, and (iii) verify or obtain supporting details concerning the financial information to be provided to Lenders hereunder or under any of the DIP Financing Documents or Pre-Petition First Lien Loan Documents, all as permitted by the DIP Financing Documents and Pre-Petition First Lien Loan Documents.

(b) DIP Lender's Right to Retain Professional Persons. DIP Lender shall be authorized to retain attorneys, appraisers, consultants and financial advisors, at Debtor's expense, which attorneys, appraisers, consultants and advisors shall be afforded reasonable access to the Collateral and Debtor's business premises and records, during normal business hours, for purposes of monitoring the business of Debtor, verifying Debtor's compliance with the terms of the DIP Financing Documents, this Order and the Pre-Petition First Lien Loan Documents, and analyzing or appraising all or any part of the Collateral.

16. Modification of Automatic Stay. The automatic stay provisions of Section 362 of the Bankruptcy Code are hereby modified and lifted as to Lenders and Collier to the extent

necessary to implement the provisions of this Order and the DIP Financing Documents, thereby permitting Lenders, *inter alia*, to receive collections and proceeds of Collateral for application to the Pre-Petition First Lien Debt and the DIP Obligations as provided herein, to file or record any UCC-1 financing statements, mortgages, deeds of trust, security deeds and other instruments and documents evidencing or validating the perfection of the DIP Liens, the BofA Replacement Liens and the Collier Replacement Liens, and to enforce the DIP Liens, BofA Pre-Petition Liens and BofA Replacement Liens as and to the extent authorized by this Order.

17. Effect of Appeal. Consistent with 364(e) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter modified, vacated or stayed on appeal:

(a) such stay, modification or vacation shall not affect the validity of any obligation, indebtedness or liability incurred or liens granted by Debtor to Lenders prior to the effective date of such stay, modification or vacation, or the validity, enforceability or priority of any liens, rights or claims authorized or created under the original provisions of this Order or pursuant to the DIP Financing Documents; and

(b) any indebtedness, obligation or liability incurred by Debtor to DIP Lender under the DIP Financing Documents prior to the effective date of such stay, modification or vacation shall be governed in all respects by the original provisions of this Order and the DIP Financing Documents, and DIP Lender shall be entitled to all the rights, remedies, privileges and benefits, including the DIP Liens and priorities granted herein and pursuant to the DIP Financing Documents, with respect to any such indebtedness, obligation or liability. All Credit Extensions under the DIP Financing Documents are deemed to have been made in reliance upon this Order, and, therefore, the indebtedness resulting from such Credit Extensions prior to the effective date of any stay, modification or vacation of this Order cannot as a result of any subsequent order in this Chapter 11 case, or any superseding case, of Debtor (i) be subordinated or (ii) be deprived of

the benefit or priority of the DIP Liens and Superpriority Claim granted to DIP Lender under this Order or the DIP Financing Documents.

18. Deadline for Challenge to BofA Pre-Petition Liens and Claims. Debtor has acknowledged, stipulated and agreed (the "*Stipulation*") that the Pre-Petition First Lien Debt and all liens and security interests of Pre-Petition First Lien Lender in the Pre-Petition Collateral are legal, valid, binding, enforceable, perfected and non-avoidable; the Pre-Petition First Lien Debt is allowable as a fully secured claim against Debtor; and the Pre-Petition First Lien Debt is not subject to offset, counterclaim, recoupment, equitable subordination or recharacterization. In consideration of DIP Lender's agreement to provide Credit Extensions pursuant to the DIP Financing Documents, Debtor has waived and shall be barred (a) from challenging the amount, validity, extent, perfection or priority of or seeking to set aside, avoid, offset or subordinate any of the Pre-Petition First Lien Debt or any liens or security interests of Pre-Petition First Lien Lender in any Pre-Petition Collateral and (b) from asserting against Pre-Petition First Lien Lender or DIP Lender any claim under any breach of contract or lender liability theories or pursuant to Sections 105, 510, 544, 546, 547, 548, 549 or 550 of the Bankruptcy Code. The foregoing Stipulation regarding the Pre-Petition First Lien Debt and the security interests of Pre-Petition First Lien Lender in the Pre-Petition Collateral shall be subject only to the right of an interested party (other than Debtor) having standing to do so to commence an appropriate adversary proceeding or contested matter objecting to the validity or amount of the Pre-Petition First Lien Debt, or the validity, extent, perfection, priority or non-avoidability of the Pre-Petition Liens and security interests of Pre-Petition First Lien Lender in the Pre-Petition Collateral or seeking disgorgement of all or part of the payment of the Pre-Petition First Lien Debt, which adversary proceeding or contested matter must be filed no later than the earlier to occur of (i) 30 days after the date of entry of this Order or (ii) the date of any closing of a sale of

all or substantially all of Debtor's assets or any closing of a sale of the right to sell such assets as an agent of Debtor. If such adversary proceeding or contested matter is not timely filed, then the liens and security interests of Pre-Petition First Lien Lender in the Pre-Petition Collateral shall be deemed legal, valid, binding, enforceable, perfected and unavoidable and all of the Pre-Petition First Lien Debt shall be conclusive and binding upon all parties in interest in this case and in any superseding Chapter 7 case, including any subsequently appointed trustee, as a legal, valid, binding, enforceable secured claim that is not subject to offset, counterclaim, equitable subordination, recharacterization or other defense or claim.

19. Service of Order. Promptly after the entry of this Order, Debtor shall mail, by first class mail, a copy of this Order, the Motion (and all exhibits attached to the Motion), and a notice of the Final Hearing, to counsel for Lenders, the U.S. Trustee, counsel for the Committee (or, if the Committee has not been formed and selected counsel as of the entry of this Order, then the 20 largest unsecured creditors of Debtor), Collier and its counsel, the Investors, the Specific Inventory Creditors, JBC, the Internal Revenue Service, and all parties who have filed requests for notices under Rule 2002 of the Bankruptcy Rules, and shall file a certificate of service regarding same with the Clerk of the Court. Such service shall constitute good and sufficient notice of the Final Hearing.

20. No Deemed Control. By consenting to this Order, making Credit Extensions or administering the financing relationship with Debtor pursuant to the DIP Financing Documents, Lenders shall not be deemed to be in control of Debtor or its operations or to be acting as a "responsible person," "managing agent" or "owner or operator" (as such terms are defined in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar state or federal statute) with respect to the operation or management of Debtor.

21. Binding Effect; Successors and Assigns. The provisions of this Order shall be binding upon all parties in interest in this Chapter 11 case, including, without limitation, Lenders and Debtor and their respective successors and assigns (including any Chapter 11 trustee hereafter appointed for the estate of Debtor or any Chapter 7 trustee appointed or elected in a superseding Chapter 7 case), and shall inure to the benefit of Lenders and Lenders' respective successors and assigns. In no event shall DIP Lender have any obligation to make Credit Extensions to any Chapter 7 or Chapter 11 trustee appointed or elected for the estate of Debtor.

22. Final Hearing. The Final Hearing shall be held at \_\_\_\_ o'clock \_\_.m., on \_\_\_\_\_, 2011, at Courtroom \_\_\_\_\_, Sam M. Gibbons United States Courthouse, 701 N. Florida Avenue, Tampa, Florida. If no objection to the Motion or this Order is timely filed and asserted at the Final Hearing, then this Order shall continue in effect in accordance with its terms subject to such modifications as the Court may make at the Final Hearing and that are acceptable to DIP Lender. If any or all of the provisions of this Order are modified, vacated or stayed as the result of any objection timely filed and asserted at the Final Hearing, then, without limiting the provisions of paragraph 17 hereof, any DIP Obligations incurred prior to the effective date of such modification, vacation or stay shall be governed in all respects by the original provisions of this Order, and DIP Lender shall be entitled to the protections afforded under Section 364(e) of the Bankruptcy Code and to all the rights, remedies, privileges, and benefits, including, without limitation, the DIP Liens and superiority claim status, granted herein and pursuant to the DIP Financing Documents with respect to all such DIP Obligations.

23. Objection Deadline. If any party in interest shall have an objection to any of the provisions of this Order, such party shall be authorized to assert such objection at the Final Hearing, provided that a written statement setting forth the basis for such objection is filed with the Court, and concurrently served upon the Office of the United States Trustee, Timberlake

Annex, Suite 1200, 501 East Polk Street, Tampa, Florida 33602; counsel for Debtor, Berger Singerman, P.A., 200 South Biscayne Boulevard, Miami, Florida 33131-5308, Attention: Paul Steven Singerman, Esq. (Singerman@bergersingerman.com) and Jordi Guso, Esq. (jguso@bergersingerman.com); counsel for Lenders, Parker Hudson Rainer & Dobbs LLP, 1500 Marquis Two Tower, 285 Peachtree Center Avenue, Atlanta, Georgia 30303, Attention: C. Edward Dobbs, Esq. (edobbs@phrd.com) and James S. Rankin, Jr. (jrankin@phrd.com); and co-counsel for Lenders, Bush Ross, Post Office Box 3913, Tampa, Florida 33601-3913, Attention: Jeffrey W. Warren, Esq. (jwarren@bushross.com), so that such objections and responses are filed on or before 5:00 p.m., prevailing Eastern time on \_\_\_\_\_, 2011. Unless an objecting party shall be and appear at the Final Hearing to assert the basis for such objection before the Court, such objection shall be deemed to have been waived and abandoned by such objecting party.

24. Immediate Effectiveness. This Order shall be valid, take full effect and be enforceable immediately upon entry hereof notwithstanding any contrary Bankruptcy Rule or Rule of Civil Procedure; there shall be no stay of execution or effectiveness of this Order; and any stay of the effectiveness of this Order that might otherwise apply is hereby waived for cause shown.

25. Inconsistencies. To the extent that any provisions in the DIP Loan Agreement are expressly inconsistent with any of the provisions of this Order, the provisions of this Order shall govern and control.

**DONE and ORDERED** in Chambers in Tampa, Florida on \_\_\_\_\_.

---

United States Bankruptcy Judge



Robb & Stucky Limited LLLP  
 DIP Budget - Weekly Cash Flow Projection  
 (\$ in 000's)

Week Ending	Auction			GOB							10 Weeks Total
	Week 1 25-Feb	Week 2 4-Mar	Week 3 11-Mar	Week 4 18-Mar	Week 5 25-Mar	Week 6 1-Apr	Week 7 8-Apr	Week 8 15-Apr	Week 9 22-Apr	Week 10 29-Apr	
<b>I. Cash Flows</b>											
<b>Receipts</b>											
Retail Proceeds	\$ 1,600	\$ 1,000	\$ 500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,100
GOB Inventory Proceeds	-	-	-	28,530	-	-	-	-	2,700	-	31,230
Other Proceeds	-	-	-	-	-	-	-	-	-	-	-
Less: Credit Fees/Charges	-	(200)	-	-	-	-	(75)	-	-	-	(275)
Less: Credit Card Block	(1,000)	-	-	-	-	-	-	-	-	-	(1,000)
Net Proceeds	600	800	500	28,530	-	-	(75)	-	2,700	-	33,055
GOB Expense Reimbursement	-	-	-	500	1,807	1,807	1,051	1,188	1,583	1,038	8,975
Total Receipts	600	800	500	29,030	1,807	1,807	976	1,188	4,283	1,038	42,030
<b>II. Operating Disbursements</b>											
Payroll, Taxes & Benefits	1,380	360	1,500	160	598	-	154	-	85	-	4,237
Merchandise	200	-	-	-	-	-	-	-	-	-	200
Freight	150	50	50	-	-	-	-	-	-	-	250
Rent	-	1,200	-	429	-	147	-	-	-	-	1,775
Sales Tax	700	35	-	350	75	25	-	100	-	-	1,285
Insurance	30	240	-	-	-	240	-	-	-	-	510
Utilities	60	60	60	-	-	15	-	-	-	-	195
Other Operating Expenses	90	30	30	443	85	120	20	20	20	20	878
subtotal	2,610	1,975	1,640	1,382	758	547	174	120	105	20	9,330
Operating Cash Flow	(2,010)	(1,175)	(1,140)	27,648	1,049	1,260	802	1,068	4,179	1,018	32,699
<b>III. Closing Store Expenses</b>											
Payroll, Taxes & Benefits	-	-	-	-	500	400	1,500	180	980	375	3,935
Occupancy Expenses	-	-	-	-	-	1,100	-	-	-	1,100	2,200
Sales Tax / Other	-	-	-	-	-	-	-	600	150	50	800
subtotal	-	-	-	-	500	1,500	1,500	780	1,130	1,525	6,935
<b>IV. Non-Operating Disbursements</b>											
Interest and Bank Fees	-	-	-	-	-	-	-	-	-	-	-
DIP Fees	250	-	-	-	-	-	-	-	-	-	250
Incentive Plan	-	-	-	-	-	-	18	-	27	-	46
Prof. Fees (Allocated per Subschedule)	165	175	170	125	120	95	85	75	75	75	1,160
Utilities Prepayment	-	125	-	-	-	-	-	-	-	-	125
Other Bankruptcy Expenses	-	-	-	-	50	-	-	-	-	-	50
subtotal	415	300	170	125	170	95	103	75	102	75	1,631
Total Disbursements	3,025	2,275	1,810	1,507	1,428	2,142	1,778	975	1,337	1,620	17,896
Net Cash Flow	(2,425)	(1,475)	(1,310)	27,523	379	(335)	(802)	213	2,946	(582)	24,134
<b>V. Loan Balance</b>											
Beg. Prepetition Loan Balance	(17,089)	(16,489)	(15,689)	(15,189)	-	-	-	-	-	-	(17,089)
Net Cash Flow <sup>(1)</sup>	600	800	500	15,189	-	-	-	-	-	-	17,089
Ending Prepetition Loan Balance	(16,489)	(15,689)	(15,189)	-	-	-	-	-	-	-	-
Beg. Postpetition Loan Balance	(2,235)	(5,260)	(7,535)	(9,345)	2,990	3,368	3,033	2,232	2,445	5,391	(2,235)
Net Cash Flow	(3,025)	(2,275)	(1,810)	12,334	379	(335)	(802)	213	2,946	(582)	7,045
Ending Postpetition Loan Balance	(5,260)	(7,535)	(9,345)	2,990	3,368	3,033	2,232	2,445	5,391	4,810	4,810
Total (Loan) / Cash Balance	(21,749)	(23,224)	(24,534)	2,990	3,368	3,033	2,232	2,445	5,391	4,810	4,810
<b>VI. Availability</b>											
Gross Borrowing Base	26,005	25,404	25,198	-	-	-	-	-	-	-	-
(Loan) / Cash Balance	(21,749)	(23,224)	(24,534)	2,990	3,368	3,033	2,232	2,445	5,391	4,810	4,810
Unwind Expense Commitment	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)
<b>Gross Availability</b>	<b>3,256</b>	<b>1,180</b>	<b>(336)</b>	<b>1,990</b>	<b>2,368</b>	<b>2,033</b>	<b>1,232</b>	<b>1,445</b>	<b>4,391</b>	<b>3,810</b>	<b>3,810</b>
Less: Customer Deposit Reserve	(4,825)	(4,825)	(4,625)	-	-	-	-	-	-	-	-
Less: Availability Reserve	(2,000)	(2,000)	(2,000)	-	-	-	-	-	-	-	-
Total Reserves	(6,825)	(6,825)	(6,625)	-	-	-	-	-	-	-	-
<b>Net Availability</b>	<b>\$ (3,569)</b>	<b>\$ (5,645)</b>	<b>\$ (6,961)</b>	<b>\$ 1,990</b>	<b>\$ 2,368</b>	<b>\$ 2,033</b>	<b>\$ 1,232</b>	<b>\$ 1,445</b>	<b>\$ 4,391</b>	<b>\$ 3,810</b>	<b>\$ 3,810</b>

Note:  
 1) Post-petition this amount represents Total Receipts.

**Robb & Stucky Limited LLLP**  
**DIP Budget - Professional Fees by Week**  
**(\$ in 000's)**

Week Ending	Auction		GOB								Wkly. Fcst.	
	Week 1 25-Feb	Week 2 4-Mar	Week 3 11-Mar	Week 4 18-Mar	Week 5 25-Mar	Week 6 1-Apr	Week 7 8-Apr	Week 8 15-Apr	Week 9 22-Apr	Week 10 29-Apr	10 Weeks Total	
Financial Adviser - FTI Consulting	\$ 50	\$ 50	\$ 65	\$ 30	\$ 25	\$ 25	\$ 25	\$ 25	\$ 25	\$ 25	\$ 25	\$ 345
Counsel - Berger Singerman	75	75	75	65	65	50	50	40	40	40	40	575
Claims Agent - Epiq / Trustee Fees	20	30	10	10	10	20	10	10	10	10	10	140
Committee Professionals	20	20	20	20	20	-	-	-	-	-	-	100
<b>Total</b>	<b>\$ 165</b>	<b>\$ 175</b>	<b>\$ 170</b>	<b>\$ 125</b>	<b>\$ 120</b>	<b>\$ 95</b>	<b>\$ 85</b>	<b>\$ 75</b>	<b>\$ 75</b>	<b>\$ 75</b>	<b>\$ 75</b>	<b>\$ 1,160</b>

**EXHIBIT 2**

DIP Credit Agreement

---

---

**POST-PETITION LOAN AND SECURITY AGREEMENT**

Dated: February 18, 2011

Up to \$25,000,000

---

---

**ROBB & STUCKY LIMITED LLLP,**

as Borrower

---

**BANK OF AMERICA, N.A.,**

as Lender

---

**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
ARTICLE I. Definitions and Terms .....	1
1.01. Definitions .....	1
1.02. Accounting Terms .....	19
1.03. UCC Terms .....	19
1.04. Certain Matters of Construction .....	19
ARTICLE II. DIP Facility .....	20
2.01. Commitment .....	20
2.02. Amounts .....	20
2.03. [Reserved].....	20
2.04. Revolving Credit Loans.....	20
2.05. Payment of Interest.....	20
2.06. Payment of Principal .....	21
2.07. The Borrower's Account.....	22
2.08. Noteless Agreement.....	22
2.09. Expenses .....	22
2.10. Use of Proceeds .....	22
2.11. Collection of Proceeds.....	22
2.12. Section 364(c)(1) and 503(b) Priority.....	23
2.13. Closing Fee and Unused Line Fee.....	23
2.14. Letters of Credit.....	23
2.15. Collateral Management Fee.....	24
2.16. Payments Free of Taxes.....	25
2.17. Payment .....	25
2.18. Effect of Termination .....	25
ARTICLE III. Reserved.....	25
ARTICLE IV. Yield Protection .....	25
4.01. Additional Costs.....	25
ARTICLE V. Conditions Precedent.....	26
5.01. Conditions Precedent to Effectiveness .....	26
5.02. All Loans and Letters of Credit .....	27
5.03. Limited Waiver of Conditions Precedent.....	28
ARTICLE VI. Security Agreement; Administrative Priority and Collateral Administration.....	28
6.01. Security.....	28
6.02. Further Assurances; Extent of Liens .....	29
6.03. [Reserved].....	29
6.04. Lien on Deposit Accounts; Cash Collateral.....	29
6.05. Commercial Tort Claims .....	30
6.06. Certain After-Acquired Collateral .....	30
6.07. Liens Under DIP Financing Orders .....	30
6.08. Lien Priority.....	30
6.09. Administrative Priority .....	30
6.10. Maintenance and Modification of the Collateral .....	31
6.11. Receipt of Payment.....	31
6.12. Collections; Lender's Right to Notify Account Debtors and to Endorse Borrower's Names ....	31
6.13. Assignments, Records and Schedules of Accounts and General Intangibles .....	32
6.14. Verification of Accounts .....	32

6.15. Safekeeping of Inventory..... 32

6.16. Records and Schedules of Inventory ..... 32

6.17. Equipment..... 32

6.18. Payment of Taxes ..... 33

ARTICLE VII. Representations and Warranties ..... 33

7.01. Representations and Warranties as to Borrower..... 33

7.02. Representations and Warranties of Borrower..... 34

ARTICLE VIII. Affirmative Covenants ..... 40

8.01. Financial Reports and Other Information..... 40

8.02. Maintain Properties ..... 41

8.03. Existence, Qualification, Etc ..... 41

8.04. Regulations and Taxes..... 41

8.05. Insurance; Payment of Premiums ..... 41

8.06. True Books ..... 42

8.07. Pay Indebtedness to Lender and Perform Other Covenants ..... 42

8.08. Payment of Indebtedness..... 43

8.09. Right of Inspection and Appraisal..... 43

8.10. Observe All Laws ..... 43

8.11. Officer's Knowledge of Default..... 43

8.12. Suits or Other Proceedings ..... 43

8.13. Environmental Reports ..... 43

8.14. Notice of Discharge of Hazardous Material or Environmental Complaint ..... 43

8.15. Inspection Rights ..... 44

8.16. Indemnification..... 44

8.17. Further Assurances ..... 44

8.18. ERISA Requirement ..... 44

8.19. Continued Operations ..... 45

8.20. Change of Locations..... 45

8.21. Use of Proceeds ..... 45

8.22. Compliance With Bankruptcy Code, Rules and Orders ..... 45

8.23. Distributions ..... 45

8.24. Net Cash Flow ..... 45

8.25. Cash Receipts. .... 45

8.26. Final DIP Budget..... 45

8.27. Other Notices..... 45

8.28. Chapter 11 Case Documents..... 46

8.29. [Reserved]..... 46

8.30. Equipment..... 46

8.31. Prosecution of Sale Agreement ..... 46

ARTICLE IX. Negative Covenants ..... 46

9.01. Indebtedness ..... 46

9.02. Liens ..... 47

9.03. Transfer of Assets..... 47

9.04. Restricted Investments..... 47

9.05. Transactions with Affiliates..... 47

9.06. ERISA..... 48

9.07. [Reserved]..... 48

9.08. Leasebacks..... 48

9.09. Fiscal Year..... 48

9.10. Collateral Account..... 48

9.11. Capital..... 48

9.12. Subordinated Debt.....48

9.13. Capital Expenditures.....49

9.14. Loans .....49

9.15. Fundamental Changes.....49

9.16. Subsidiaries.....49

9.17. Organizational Documents .....49

9.18. Tax Consolidations .....49

9.19. Conduct of Business .....49

9.20. Equipment.....49

9.21. Trade Styles .....49

9.22. Payment of Claims .....49

9.23. Filing of Motions and Applications.....49

9.24. Modifications to DIP Financing Orders .....49

9.25. Use of Proceeds .....49

9.26. Payments on Pre-Petition Debt.....50

ARTICLE X. Events of Default and Acceleration.....50

10.01. Events of Default.....50

10.02. Lender to Act.....54

10.03. Cumulative Rights.....54

10.04. No Waiver .....54

10.05. Default.....54

10.06. Default Remedies Subject to Automatic Stay. ....55

10.07. License .....55

10.08. Anti-Marshalling Provisions .....55

ARTICLE XI. Miscellaneous .....55

11.01. Participations.....55

11.02. Notices.....55

11.03. Appointment of Lender as Borrower's Lawful Attorney.....57

11.04. Setoff.....57

11.05. Survival .....57

11.06. Expenses.....57

11.07. Amendments .....58

11.08. Counterparts .....58

11.09. Waivers by Borrower .....58

11.10. Termination .....58

11.11. Governing Law; Jurisdiction and Venue.....59

11.12. Indemnification .....59

11.13. Conflicts with Other Loan Documents.....59

11.14. Successors and Assigns.....59

11.15. Confidentiality.....59

11.16. Credit Inquiries.....60

11.17. No Control; No Advisory or Fiduciary Responsibility .....60

11.18. Performance of Borrower's Obligations.....61

11.19. PATRIOT Act Notice .....61

**EXHIBITS AND SCHEDULES**

Exhibit A - Authorized Officers  
Exhibit B - Borrowing Notice  
Exhibit C - Collateral Locations  
Exhibit D - Trademarks  
Exhibit E - Compliance Certificate

Schedule 2.14(a)	Existing Letters of Credit
Schedule 7.02(a)	Partners
Schedule 7.02(b)	Ownership Interests
Schedule 7.02(c)	Material Indebtedness
Schedule 7.02(d)	Permitted Liens
Schedule 7.02(g)	Litigation
Schedule 7.02(t)	Labor Relations
Schedule 9.01	Permitted Indebtedness
Schedule 9.15	Tradenames



**POST-PETITION LOAN AND SECURITY AGREEMENT**

THIS POST-PETITION LOAN AND SECURITY AGREEMENT (this "Agreement") is made on February 18, 2011, by and between **ROBB & STUCKY LIMITED LLLP**, a Florida limited liability limited partnership and a Chapter 11 debtor-in-possession ("Borrower"), and **BANK OF AMERICA, N.A.**, a national banking association ("Lender").

**Recitals:**

Borrower is a debtor-in-possession under Chapter 11 of the Bankruptcy Code in a case (the "Chapter 11 Case") pending in the United States Bankruptcy Court for the Middle District of Florida, Tampa Division (together with any other court having jurisdiction over the Chapter 11 Case or any proceedings therein from time to time, the "Court"), as Case No. \_\_\_\_\_. Borrower has requested that Lender extend financing to Borrower in connection with the Chapter 11 Case in accordance with the provisions of this Agreement.

Lender is willing to make loans and other extensions of credit to Borrower, subject to the terms and conditions of this Agreement and subject to the terms and conditions set forth in orders of the Court approving the proposed financing.

NOW, THEREFORE, for Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, receipt of which is acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

## ARTICLE I.

Definitions and Terms

1.01. Definitions. For the purposes of this Agreement, in addition to the definitions set forth above, the following terms shall have the respective meanings set forth below:

"Acceptable Plan" means a Reorganization Plan which provides for allowance of all claims in favor of Lender as fully secured claims; Full Payment of all Obligations and any outstanding Pre-Petition Debt on the effective date of such Reorganization Plan; an effective date no later than 45 days after the date of entry of the Confirmation Order with respect to such Reorganization Plan; and a full and complete release of any and all claims that Borrower or the Estate might have or assert against Lender (whether arising prior to or after the Petition Date), including all claims that arise under any provision in Chapter 5 of the Bankruptcy Code; or which is otherwise acceptable to Lender in its discretion.

"Account Debtor" means any Person who is or who may become obligated to Borrower under or on account of an Account.

"Account Documents" has the meaning ascribed to it in **Section 6.13** hereof.

"Account Records" has the meaning ascribed to it in **Section 6.13** hereof.

"Accounts" means all accounts, accounts receivable, contract rights, notes, bills, acceptances, chattel paper, instruments, documents, and other forms of obligations at any time owing to Borrower, including any division thereof, the proceeds thereof and all of Borrower's rights with respect to any goods represented thereby, whether or not delivered, goods returned by customers and all rights as an unpaid

vendor or lienor, including rights of stoppage in transit and of recovering possession by proceedings including replevin and reclamation, together with all customer lists, books and records, ledger and account cards, computer tapes, software, disks, printouts and records, whether now in existence or hereafter created, relating to Accounts.

"Additional Costs" has the meaning ascribed to it in **Section 4.01(a)** hereof.

"Adequate Protection Claim" means the right of the holder of a secured claim against Borrower to receive periodic payments as adequate protection under Sections 361 or 363 of the Bankruptcy Code.

"Applicable Margin" means a percentage equal to three and one-quarter percent (3.25%) with respect to Prime Loans.

"Authorized Officer" means any of the Chief Financial Officer of Borrower, any Manager of R&S GP, LLC, any General Partner of Borrower or any other person expressly designated by the General Partner or Borrower as an Authorized Officer for purposes of this Agreement, as set forth on Exhibit A or as certified in writing by Borrower to Lender from time to time.

"Availability" means, on any date, the amount equal to the difference derived when the Revolving Loan Debit Balance is subtracted from the Borrowing Base.

"Availability Reserve" means on any date of determination thereof, an amount equal to the sum of the following (without duplication): (i) the amount of Pre-Petition Debt outstanding on any date of determination; (ii) the aggregate amount of reserves established by Lender from time to time in its credit judgment in respect of Banking Relationship Debt; (iii) the aggregate amount of all liabilities and obligations that are secured by Liens upon any of the Collateral that are senior in priority to Lender's Liens except for Liens in favor of Lender under the Pre-Petition Loan Documents (provided that the imposition of a reserve hereunder on account of such Liens shall not be deemed a waiver of the Event of Default that arises from the existence of such Liens); (iv) the Minimum Availability Reserve; (v) the Customer Deposit Reserve; (vi) the Unwind Reserve; and (vii) such additional reserves, in such amounts and with respect to such matters, as Lender may elect to impose from time to time in its reasonable credit judgment.

"Avoidance Claim" means any claim that could be asserted by or on behalf of Borrower or the Estate against a Person under Sections 544, 546, 547, 548, 549, 550 or 553 of the Bankruptcy Code.

"Avoidance Claim Proceeds" means any cash proceeds recovered in connection with the successful prosecution or settlement of any Avoidance Claims.

"Bank Products" mean any one or more of the following types of products, services or facilities extended to Borrower by Lender or any affiliate of Lender (whether or not in reliance on Lender's agreement to indemnify such affiliate): (i) commercial credit cards; (ii) merchant card services; (iii) products or services under Cash Management Agreements; (iv) interstate depository network services; (v) any equipment leasing arrangements between Borrower and Lender or any affiliate of Lender; and (vi) such other banking products or services provided by Lender or any affiliate of Lender as may be requested by Borrower, other than Letters of Credit.

"Banking Relationship Debt" means Indebtedness or other obligations of Borrower (i) to Lender (or any affiliate of Lender) arising out of or relating to Bank Products or (ii) to Lender in connection with its having provided any guaranty or indemnity on behalf of Borrower with respect to any Bank Products.

"Bankruptcy Code" means title 11 of the United States Code.

"Bid Procedures Order" means an order of the Court establishing the terms and conditions for an auction of all or substantially all of Borrower's assets (or an auction of the right to sell such assets as an agent of Borrower) under Section 363 of the Bankruptcy Code, which order must be in form and substance satisfactory to Lender in its sole discretion and must include, without limitation, provisions that preserve Lender's right to credit bid under Section 363(k) of the Bankruptcy Code without being required to pay any deposit in connection with any such credit bid.

"Board" means the Board of Governors of the Federal Reserve System (or any successor body).

"Borrower Professional Expense Reserve" means on any date, an amount (in each case excluding retainers) set forth for Professional Expenses in the Budget, but in no event shall such amount exceed the aggregate amount set forth in the Budget.

"Borrower's Account" means an account maintained by and in the name of Borrower with Lender for the purpose of disbursing Revolving Credit Loan proceeds pursuant to **Section 2.04(b)**.

"Borrowing Base" means, as of any date of determination, an amount equal to the lesser of:

- (a) the Maximum Facility Amount, **minus** the Letter of Credit Obligations, **minus** any outstanding unpaid Pre-Petition Debt; and
- (b) the sum of:
  - (i) up to 75% of the face amount of Eligible Accounts, but not more than *[\$\_\_\_\_\_]*, **plus**
  - (ii) up to the lesser of (A) 60% of the value of Eligible Inventory, or (B) 85% of the NOLV Percentage of the value of Eligible Inventory (in each case, at the lower of cost or market value of such Inventory, with the cost thereof determined on a first-in-first-out basis), **minus**
  - (iii) with respect to all Letter of Credit Obligations, up to 100% of such amounts in respect of standby Letters of Credit, **minus**
  - (iv) the Availability Reserve on such date; **plus**
  - (v) the Permitted Overadvance Amount.

"Borrowing Base Certificate" means a certificate in form and substance satisfactory to Lender, by which Borrower certifies calculation of the Borrowing Base.

"Borrowing Notice" means the telephonic request of the Authorized Officer to obtain a Revolving Credit Loan, as the obtaining of such Revolving Credit Loan, shall be otherwise permitted herein. Any Borrowing Notice shall be binding on and irrevocable by Borrower, and shall be confirmed in writing within two (2) Business Days by the Authorized Officer in the form attached hereto as Exhibit B.

"Budget" means the Interim DIP Budget or the Final DIP Budget, as applicable; and all references to the Budget shall be deemed to mean the Budget commencing with the calendar week ending February 25, 2011.

"Business Day" means any day other than a Saturday, Sunday or other day on which banks in Atlanta, Georgia are authorized to close.

"Capital Contributions" means the amount in cash, and/or the fair market value of Property, contributed by each Partner (or his predecessor in interest) to Borrower for such Partner's interest in Borrower.

"Capital Expenditures" means for any period the sum of (i) the gross amount of additions to Property, plant and equipment of Borrower during such period plus (ii) with respect to any Capital Lease entered into by Borrower during such period, the present value of the lease payments due under such Capital Lease over the term of such Capital Lease applying a discount rate equal to the interest rate provided in such lease.

"Capital Leases" means all leases which have been or should be capitalized in accordance with Generally Accepted Accounting Principles as in effect from time to time including Statement No. 13 of the Financial Accounting Standards Board and any successor thereof.

"Cash Collateral" means cash, and any interest or other income earned thereon, that is delivered to Lender to Cash Collateralize any Obligations.

"Cash Collateral Account" means a demand deposit, money market or other account established by Lender at such financial institution as Lender may select in its soles discretion, which account shall be subject to Lender's Liens.

"Cash Collateralize" means the delivery of cash to Lender, as security for the payment of Obligations, in an amount equal to (i) with respect to Letter of Credit Obligations, 105% of the aggregate Letter of Credit Obligations, and (ii) with respect to any inchoate, contingent or other Obligations (including Obligations arising under Bank Products), Lender's good faith estimate of the amount due or to become due, including all fees and other amounts relating to such Obligations.

"Cash Equivalents" means (i) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States government, maturing within 12 months of the date of acquisition; (ii) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by a commercial bank organized under the laws of the United States or any state or district thereof, rated A-1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by Lender) not subject to offset rights; (iii) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (i) and (ii) entered into with any bank meeting the qualifications specified in clause (ii); (iv) commercial paper rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within nine months of the date of acquisition; and (v) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least \$500,000,000 and has the highest rating obtainable from either Moody's or S&P.

"Cash Management Agreements" mean any agreement entered into from time to time between Borrower, on the one hand, and Lender or any of its affiliates, on the other, in connection with cash management services for operating, collections, payroll and trust accounts of Borrower provided by Lender or any of its affiliates, including automatic clearinghouse services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

"Cash Receipts" means proceeds of Borrower's Accounts and Inventory that are actually received by Bank as a result of payments made by third parties in respect of such Accounts or sales of Inventory.

"Change of Control" means the Permitted Holders cease to collectively own and control, beneficially and of record, all of the general partnership units of Borrower.

"Chapter 11 Case" has the meaning ascribed to it in the Recitals to this Agreement.

"Claims" means all liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees and disbursements) at any time (including after Full Payment of the Obligations and the Pre-Petition Debt) incurred by or asserted against any Indemnitee in any way relating to (i) any of the Loans, Pre-Petition Debt, Letters of Credit, Loan Documents, Pre-Petition Loan Documents, or the use thereof or transactions relating thereto, (ii) any action taken or omitted to be taken by any Indemnitee in connection with any of the Loan Documents or Pre-Petition Loan Documents, (iii) the existence or perfection of any Liens, or realization upon any Collateral, (iv) exercise of any rights or remedies under any of the Loan Documents, Pre-Petition Loan Documents or applicable law, (v) failure by any Obligor to perform or observe any terms of any Loan Document or Pre-Petition Loan Document in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including the Chapter 11 Case or any other Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto, (vi) 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 Borrower of any Hazardous Material, or (vii) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releases from, any real Property owned or operated by Borrower of any Hazardous Material (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, Borrower.

"Closing Date" means the date as of which this Agreement is executed by Borrower and Lender and on which the conditions set forth in **Section 5.01** hereof have been satisfied.

"Closing Fee" has the meaning ascribed to it in **Section 2.13(a)** hereof.

"Collateral" means, collectively, (a) all Property listed in **Section 6.01** hereof or interests in such Property, and (b) all other Property in which a Lien is granted in any of the DIP Financing Orders as security for the payment or performance of any of the Obligations, in each case (x) whether or not such Property or interest in such Property was in existence on or acquired by Borrower after the Petition Date and (y) excluding Avoidance Claims and Avoidance Claim Proceeds.

"Collateral Account" means an account maintained by and in the name of Borrower with Lender, which may be maintained at one or more offices of Lender, over which Lender shall maintain dominion and control and into which proceeds of Collateral shall be deposited.

"Collateral Account Agreement" means that certain Amended and Restated Deposit Account Control Agreement dated March 5, 2009, between Borrower, Lender, and Bank of America, N.A., as depository bank, relating to the Collateral Account.

"Collections" means proceeds of Borrower's Accounts that are received by Lender after the Petition Date for application to the Pre-Petition Debt or the Obligations.

"Collier" means, collectively, CIRS Financing LLC and CIRS Management LLC, each a Florida limited liability company.

"Collier Agreements" means, collectively, the First Collier Agreement and the Second Collier Agreement.

"Collier Debt" means Subordinated Debt owing to Collier pursuant to the Collier Agreements.

"Collier Intercreditor Agreement" means that certain Intercreditor Agreement dated October 1, 2009, among Collier, Borrower and Lender, pursuant to which the Indebtedness owing by Borrower to Collier and Liens granted by Borrower in favor of Collier are subordinated to the Obligations and Liens in favor of Lender on terms and subject to conditions satisfactory to Lender.

"Commitment" means the commitment of Lender to make Revolving Credit Loans pursuant to the DIP Facility, which shall not exceed in aggregate amount outstanding at any time the Maximum Facility Amount.

"Commitment Termination Date" means the date that is the soonest to occur of: (i) the last day of the DIP Term, (ii) the effective date of any confirmed Acceptable Plan or the date of entry of a Confirmation Order with respect to any other Reorganization Plan, (iii) the effective date of any sale of all or a substantial part of the Collateral or the sale of Borrower's right to sell all or any substantial part of the Collateral to a Person authorized to sell such Collateral as an agent of Borrower, (iv) the effective date of Lender's termination of the DIP Facility pursuant to **Section 11.10** of this Agreement, (v) the date on which Lender is granted relief from the automatic stay, or (vi) the date on which the Chapter 11 Case is dismissed or converted to Chapter 7.

"Committee" means any creditors' or equity security holders' committee appointed in the Chapter 11 Case by the U.S. Trustee.

"Committee Professional Expense Reserve" means on any date, the applicable amount per week set forth in the Budget (effective as of Monday or first business day of each week), multiplied by the number of Mondays that have elapsed from the date of this Agreement through the date of determination, minus the amount of allowed Professional Expenses paid during such period to Professional Persons retained by the Committee, but in no event shall such amount exceed the aggregate amount provided therefor in the Budget.

"Confirmation Order" means an order entered by the Court confirming a Reorganization Plan.

"Consistent Basis" in reference to the application of Generally Accepted Accounting Principles means the accounting principles observed in the period referred to are comparable in all material respects to those applied in the preparation of the audited financial statements of Borrower referred to in **Section 7.02(c)** hereof.

"Contingent Obligation" of any Person means all contingent liabilities required (or which, upon the creation or incurring thereof, would be required) to be included in the financial statements (including footnotes) of such Person in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis, including Statement No. 5 of the Financial Accounting Standards Board, and any obligation of such Person guaranteeing or in effect guaranteeing any Indebtedness, dividend or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including obligations of such Person however incurred:

(i) to purchase such Indebtedness or other obligation or any Property or assets constituting security therefor;

(ii) to advance or supply funds in any manner (a) for the purchase or payment of such Indebtedness or other obligation, or (b) to maintain a minimum working capital, net worth or other balance sheet condition or any income statement condition of the primary obligor;

(iii) to grant or convey any lien, security interest, pledge, charge or other encumbrance on any Property or assets of such Person to secure payment of such Indebtedness or other obligation;

(iv) to lease Property or to purchase securities or other Property or services primarily for the purpose of assuring the owner or holder of such Indebtedness or obligation of the ability of the primary obligor to make payment of such Indebtedness or other obligation; or

(v) otherwise to assure the owner of the Indebtedness or such obligation of the primary obligor against loss in respect thereof.

With respect to Contingent Obligations (such as litigation, guarantees and pension plan liabilities), such liabilities shall be computed at the amount which, in light of all the facts and circumstances existing at the time, represents the amount which can reasonably be expected to become an actual or matured liability.

"Court" has the meaning ascribed to it in the Recitals to this Agreement.

"Customer Deposit Inventory" means Eligible Inventory which consists of finished goods that have been allocated to an order and with respect to which Borrower has received and holds a Customer Deposit.

"Customer Deposit Reserve" means, on any date of determination, an amount equal to the greater of (i) \$0, and (ii) the remainder of (a) the aggregate amount of all Customer Deposits held by Borrower on such date, minus (b) the value of all Customer Deposit Inventory on such date (determined on the basis of the lower of cost or market value of such Inventory, with the cost thereof calculated on a first-in, first-out basis), as such reserve amount may be adjusted from time to time in Lender's sole discretion.

"Customer Deposits" means cash deposits received by Borrower from its customers.

"Default" means any event or condition which, with the giving or receipt of notice or lapse of time or both, would constitute an Event of Default hereunder.

"DIP Facility" means the facility described in **Article II** of this Agreement and pursuant to which the Commitment is made available by Lender, in an amount not to exceed the Maximum Facility Amount **minus** any Letter of Credit Obligations **minus** any outstanding unpaid Pre-Petition Debt.

"DIP Financing Orders" means, collectively, the Interim DIP Financing Order and the Final DIP Financing Order. To the extent that any provisions in this Agreement are expressly inconsistent with any of the provisions of any DIP Financing Order, the provisions of the DIP Financing Order shall govern and control.

"DIP Motion" means a motion of Borrower seeking entry of the Interim DIP Financing Order and the Final DIP Financing Order by the Court.

"DIP Term" means a period commencing on the date of entry of the Interim DIP Financing Order and ending on April 22, 2011.

"Distribution" means any declaration or payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); any distribution, advance or repayment of Indebtedness to a holder of Equity Interests; or any purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

"Dollars" and the symbol "\$" means dollars constituting legal tender for the payment of public and private debts in the United States of America.

"Eligible Account" means any Retail Account which:

(i) is owned by Borrower and represents a complete bona fide transaction which requires no further act under any circumstances on the part of Borrower to make such Account payable by the Account Debtor thereon,

(ii) is not unpaid as of a date which is more than 90 days after the date of the original invoice,

(iii) arises from the sale of goods that were shipped or delivered to the Account Debtor on an absolute sale basis (and not on a consignment, bill and hold or guaranteed sale basis or on the basis of any similar understanding), and no material part of such goods has been returned or rejected,

(iv) is not represented by chattel paper or any other instrument, unless such chattel paper or other instrument has been delivered to and is in the possession of Lender, together with any necessary endorsement or assignment,

(v) is not owing by an Account Debtor that is insolvent or the subject of any bankruptcy or Insolvency Proceedings of any kind,

(vi) is not owing by an Account Debtor having 50% or more in face value of its then existing Accounts owing to Borrower past due beyond the period specified in clause (ii) above or whose Accounts represent 15% or more of Borrower's total Eligible Accounts,

(vii) constitutes a valid, legally enforceable obligation of the Account Debtor thereon, subject to no present or contingent deduction or counterclaim, dispute or other defense on the part of such Account Debtor, nor to any deposit or other offset, but only to the extent thereof,

(viii) is subject to a first priority perfected security interest in favor of Lender and to no other lien, charge, security interest or encumbrance of any kind,

(ix) is not owing in connection with any transaction or series of related transactions in respect of which Borrower has provided a bond assuring its performance,

(x) is not owing by an Account Debtor located outside the United States of America or Canada, unless such Account and the Account Debtor's obligations in respect thereof are assured by a letter of credit that is acceptable in all respects to Lender and which has been assigned to Lender, and

(xi) is not determined by Lender nor owing by an Account Debtor determined by Lender, in either case in its sole discretion, to be ineligible based upon such credit and collateral considerations as Lender may deem appropriate.

"Eligible Inventory" means the Inventory which:



(i) is owned by Borrower, is located at one of the locations listed on Exhibit C hereto, and is subject to a first priority perfected security interest in favor of Lender and to no other lien, charge, security interest or encumbrance of any kind,

(ii) is in good condition and meets all standards imposed by any governmental agency having regulatory authority over such goods, their use or sale,

(iii) is currently either usable or salable, at prices at least equal to cost, in the ordinary course of Borrower's business,

(iv) is not obsolete or designated as "vendor return," "freight claim," "office" or "log-out" by Borrower consistent with Borrower's past practices, and

(v) is not determined by Lender, in its sole discretion, to be ineligible based upon such credit and collateral considerations as Lender may deem appropriate.

"Environmental Laws" means, collectively, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, as amended, the Clean Air Act, as amended, the Clean Water Act, as amended, any other "Superfund" or "Superlien" law or any other federal, or applicable state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

"Equipment" means all of Borrower's now owned or hereafter acquired fixtures, machinery and equipment, including furniture, leasehold improvements and trade fixtures.

"Equity Interest" means the interest of any (i) shareholder in a corporation, (ii) partner in a partnership (whether general, limited, limited liability or joint venture), (iii) member in a limited liability company, or (iv) other Person having any other form of equity security or ownership interest.

"ERISA" means, at any date, the Employee Retirement Income Security Act of 1974 and the regulations thereunder, all as the same shall be in effect at such date.

"Estate" means the estate created in the Chapter 11 Case pursuant to Section 541(a) of the Bankruptcy Code.

"Event of Default" means any of the occurrences set forth as such in **Section 10.01** hereof.

"Excluded Tax" means, with respect to Lender or any other recipient of a payment to be made by or on account of any Obligation, (i) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of Lender, in which its applicable lending office is located; and (ii) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Borrower is located.

"Existing Letters of Credit" means those letters of credit set forth on Schedule 2.14(a), all of which were in existence on the Petition Date.

"Extraordinary Expenses" means all costs, expenses or advances that Lender may incur during a Default or Event of Default, or during the pendency of the Chapter 11 case or any other Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Lender's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Lender in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any action to enforce any Obligations or Loan Documents or to realize upon any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, or otherwise); and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any of the Loan Documents or Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees and expenses, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses.

"Federal Funds Rate" means (a) the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on the applicable Business Day (or on the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if no such rate is published on the next Business Day, the average rate (rounded up, if necessary, to the nearest 1/8 of 1%) charged to Lender on the applicable day on such transactions, as determined by Lender.

"Final DIP Budget" has the meaning ascribed to it in **Section 8.26** hereof.

"Final DIP Financing Order" means an order that is entered by the Court pursuant to Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c), contains provisions substantially the same as those in the Interim DIP Financing Order, includes a waiver of all surcharge rights that may exist in favor of Borrower and the Estate pursuant to Section 506(c) of the Bankruptcy Code, is otherwise in form and substance acceptable to Lender in all respects, and authorizes the continued provision of financing to Borrower pursuant to the Loan Documents.

"First Collier Agreement" means that certain Secured Note and Option Purchase Agreement dated as of September 30, 2009, among Collier and the Borrower, providing for the extension of financial accommodations by Collier to the Borrower in a maximum principal amount not to exceed \$10,000,000.

"Fiscal Year" means each annual accounting and financial reporting period of Borrower consisting of 12 consecutive months beginning on July 1 in a calendar year and ending on June 30 in the succeeding calendar year, and when followed by the designation of a calendar year, such period ending on June 30 of such designated year (e.g., "Fiscal Year 2000" means such 12-month period ended June 30, 2000).

"Full Payment" and "Paid in Full" means, with respect to the Pre-Petition Debt and the Obligations, (i) the full and indefeasible cash payment thereof, including any interest, fees and other charges accruing during the Chapter 11 Case or any other Insolvency Proceeding (whether or not allowed or recoverable); (ii) if any of such Pre-Petition Debt or Obligations is inchoate or contingent in nature, including Contingent Obligations arising from Bank Products, the delivery to Lender of Cash Collateral in an amount equal to Lender's good faith estimate of all amounts due or to become due in respect of such

Contingent Obligations (and, in the case of Letters of Credit, 105% of the undrawn amount thereof); (iii) the absence on the payment date of any pending or threatened Claim against Lender for or on account of any act, omission or transaction prior to, on or after the Petition Date; (iv) the receipt by Lender of a release of any Claims of Obligors against Lender; and (v) the termination or expiration of the DIP Facility (and the Commitment thereunder), all Cash Management Agreements and the provision of Bank Products.

"FTI" means FTI Consulting, Inc., in its capacity as an officer of Borrower.

"General Intangibles" means all intangible personal Property of Borrower of every kind and nature (other than accounts, accounts receivable, contract rights, notes, bills, acceptances, chattel paper, instruments and documents) including choses in action, causes of action, corporate and other business records, inventions, designs, patents, patent applications, trademarks, trade names, trade secrets, goodwill, copyrights, registrations, licenses, franchises, tax refund claims, computer programs, and any guarantee claims, security interests or other security held by or granted to Borrower to secure payment by an Account Debtor of any of the Accounts.

"General Partner" means either R&S GP, LLC, a Florida limited liability company, or Derby Road Investments, Inc., a Florida corporation, or both.

"Generally Accepted Accounting Principles" means those principles of accounting set forth in pronouncements of the Financial Accounting Standards Board, the American Institute of Certified Public Accountants or which have other substantial authoritative support and are applicable in the circumstances as of the date of a report, as such principles are from time to time supplemented and amended.

"Hazardous Material" means and includes any hazardous, toxic or dangerous waste, substance or material, the generation, handling, storage, disposal, treatment or emission of which is subject to any Environmental Law in effect on any date.

"Indebtedness" means with respect to any Person, all Indebtedness for Money Borrowed of such Person, all indebtedness of such Person for the acquisition of Property other than purchases of products and merchandise in the ordinary course of business, indebtedness secured by any Lien on the Property of such Person whether or not such indebtedness is assumed, all liability of such Person by way of endorsements (other than for collection or deposit in the ordinary course of business); all Contingent Obligations; all Capital Leases and other items which in accordance with Generally Accepted Accounting Principles are classified as liabilities on a balance sheet; provided that in no event shall the term Indebtedness include capital stock, surplus and retained earnings, minority interest in the common stock of Subsidiaries, lease obligations (other than pursuant to Capital Leases), reserves for deferred income taxes and investment credits, other deferred credits and reserves, and deferred compensation obligations.

"Indebtedness for Money Borrowed" means, for any Person, (i) all indebtedness, obligations and liabilities of such Person for money borrowed which are evidenced by bonds, debentures, notes or other similar instruments and (ii) all Capital Leases which have been capitalized in accordance with Generally Accepted Accounting Principles; provided, however, the term "Indebtedness for Money Borrowed" shall specifically exclude payroll indebtedness and trade indebtedness incurred in the ordinary course of business provided such trade indebtedness has a maturity of less than one year.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitee" means Lender and its officers, directors, employees, affiliates, agents and attorneys.

"Insolvency Proceeding" means any action, case or proceeding commenced by or against a Person, or any agreement of such Person, for (i) the entry of an order for relief under any chapter of the Bankruptcy Code or other insolvency or debt adjustment law (whether state, federal or foreign); (ii) the appointment of a receiver, trustee, liquidator or other custodial for such Person or any part of its Property; (iii) an assignment or trust mortgage for the benefit of creditors of such Person; or (iv) the liquidation, dissolution or winding up of the affairs of such Person.

"Intellectual Property" means all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

"Interim DIP Budget" means a cash flow forecast commencing with the calendar week ending February 25, 2011, in form and substance acceptable to Lender, projecting, among other things, Borrower's forecasted cash flow, cash receipts and disbursements (including costs of the Chapter 11 Case) for each week in the [\_\_\_\_-week] period following the Petition Date as well as a depiction of operating results for the [\_\_\_\_-week] period following the Petition Date, a summary of which is to be attached to the DIP Motion as such budget may be amended, modified, restated, extended or supplemented from time to time with Lender's prior written consent.

"Interim DIP Financing Order" means an order that is entered by the Court, following proper notice and a hearing thereon, which is in form and substance satisfactory in all respects to Lender and which, among other things, affords adequate protection of the Liens in favor of Lender under the Pre-Petition Loan Documents, approves the form and substance of the Loan Documents evidencing the DIP Facility; grants judicial Liens to Lender pursuant to Section 364 of the Bankruptcy Code as contemplated herein and as provided for in the Loan Documents; confers Section 503(b) administrative status and Section 364(c)(1) priority status on all Obligations; and finds that Lender has acted in good faith in connection with the proposed financing and is entitled to the benefits of Section 364(e) of the Bankruptcy Code.

"Interim Period" means the period commencing on the date that the Interim DIP Financing Order is entered by the Court and ending on the earlier to occur of the date that (i) the Final DIP Financing Order is entered by the Court or (ii) March 15, 2011.

"Inventory" means and includes any and all goods, merchandise and other personal Property, including goods in transit, wherever located and whether now owned or hereafter acquired by Borrower which is or may at any time be held for sale or lease, furnished under any contract of service or held as raw materials, work-in-process, or supplies or materials used or consumed in Borrower's business, including all such Property the sale or other disposition of which has given rise to Accounts and which has been returned to or repossessed or stopped in transit by Borrower.

"Landlord Agreement" means, for each location on which material Collateral is located, an agreement in form and substance satisfactory to Lender, pursuant to which (i) for each location leased by Borrower, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Lender to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (ii) for each location operated by a third party warehouseman, the warehouseman waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Lender upon request, and (iii) for each location owned by Borrower which is mortgaged to a Person other than Lender, the mortgagee agrees to permit Lender to enter upon the premises and remove the Collateral or to use the

premises to store or dispose of the Collateral, in each case, as amended, restated, supplemented or otherwise modified from time to time.

"Leases" means all leases of Borrower for all store, office and warehouse locations operated by Borrower.

"Lender's Prime Rate" means the rate of interest announced by Lender from time to time as its prime rate. Such rate is set by Lender on the basis of various factors, including its 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 rate. Any change in such rate announced by Lender shall take effect at the opening of business on the day specified in the public announcement of such change.

"Letter of Credit" means any standby letter of credit issued by Lender for the account of Borrower, whether prior to or after the Petition Date, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Lender for the benefit of Borrower.

"Letter of Credit Obligations" means the sum (without duplication) of (a) all amounts owing by Borrower for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit; and (c) all fees and other amounts owing with respect to Letters of Credit.

"LIBOR Rate" means the greater of (i) 1% per annum and (ii) the per annum rate of interest (rounded up, if necessary, to the nearest 1/8th of 1%), determined by Lender at approximately 11:00 a.m. (London time) two Business Days prior to commencement of such Interest Period, for a term comparable to such Interest Period, equal to (a) the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source designated by Lender) or (b) if BBA LIBOR is not available for any reason, the interest rate at which Dollar deposits in the approximate amount of the LIBOR Loan would be offered by Lender's London branch to major banks in the London interbank Eurodollar market. If the Board of Governors of the Federal Reserve System imposes a Reserve Percentage with respect to LIBOR deposits, then the LIBOR Rate shall be the foregoing rate, divided by 1 minus the Reserve Percentage.

"Lien" means any interest in Property securing any obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and including but not limited to the lien or security interest arising from a mortgage, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. For the purposes of this Agreement, Borrower and its Subsidiaries shall be deemed to be the owners of any Property which it or they have acquired or hold subject to a conditional sale agreement, financing lease, or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Loan" or "Loans" means any of the Revolving Credit Loans made pursuant to this Agreement, as the context may require.

"Loan Documents" means this Agreement, the Security Agreements, the Collateral Account Agreement, the Landlord Agreements, financing statements and all other instruments and documents executed or delivered to and in favor of Lender in connection with the Loans as the same may be amended, modified or supplemented from the time to time.

"Management Investor" means, collectively, (i) Clive Larry Lubner, (ii) Bob and Linda Taylor Foundation, Inc., (iii) Fred Berkelbaugh, (iv) Entrust Freedom, LLC f/b/o Allen G. Ten Broek IRA, (v)

Robert F. Anderson Irrevocable Trust u/a/d 12/31/1991, (vi) Curtis Bostick, (vii) Daniel Lubner, (viii) Brian F. Crowley, (ix) J. Robert Gould, and (x) Lawrence Cunningham.

"Management Investor Debt" means Subordinated Debt owing to Management Investor pursuant to that certain Secured Note and Unit Purchase Agreement dated as of September 30, 2009, among Management Investor and Borrower, providing for the extension of financial accommodations by Management Investor to Borrower in a maximum principal amount not to exceed \$2,500,000.

"Management Investor Subordination Agreement" means that certain Intercreditor Agreement dated October 1, 2009, among Management Investor, Borrower and Lender, pursuant to which the Indebtedness owing by Borrower to Management Investor and Liens granted by Borrower in favor of Management Investor are subordinated to the Obligations and Liens in favor of Lender on terms and subject to conditions satisfactory to Lender.

"Maximum Facility Amount" means \$25,000,000.

"Minimum Availability Reserve" means \$2,271,378.

"Moody's" means Moody's Investors Service, Inc., and its successors.

"Multi-employer Plan" means an employee pension benefit plan covered by Title IV of ERISA and in respect of which Borrower is an "employer" as described in Section 4001(b) of ERISA, which is also a multi-employer plan as defined in Section 4001(a)(3) of ERISA.

"Net Cash Flow" means, for any period, (a) the aggregate amount of Borrower's Cash Receipts during such period minus (b) the aggregate amount of all payments and disbursements made by Borrower during such period, projections of which are depicted in the Interim DIP Budget and will be depicted in the Final DIP Budget.

"Net Income" means the gross revenues of Borrower less all operating and non-operating expenses of Borrower including taxes on income (but only to the extent that such taxes, in the aggregate, represent an expense), all determined in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis; but excluding: (i) gains or losses on the sale, conversion or other disposition of capital assets, (ii) gains or losses on the acquisition, retirement, sale or other disposition of capital stock and other securities by Borrower, (iii) gains on the collection of proceeds of life insurance policies, (iv) any write-up of any asset, and (v) any other gain or credit or loss of an extraordinary nature as determined in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis.

"NOLV Percentage" means the net orderly liquidation value of Inventory, expressed as a percentage of cost, expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of Borrower's Inventory performed by an appraiser and on terms satisfactory to Lender.

"Obligations" means the obligations, liabilities and Indebtedness of Borrower with respect to (i) the principal of and interest on the Loans, (ii) any and all Letter of Credit Obligations, (iii) any amount due and owing by Borrower to Lender with respect to any Banking Relationship Debt, (iv) Extraordinary Expenses, and (v) the payment and performance of all other obligations, liabilities, and Indebtedness of Borrower to Lender hereunder, under any one or more of the other Loan Documents or with respect to any Loans, Banking Relationship Debt or any other amounts or duties of Borrower to Lender or any of its affiliates, whether now existing or hereafter arising, whether evidenced by a note or other writing,

whether allowed in the Chapter 11 Case or any other Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

"Overadvance" has the meaning ascribed to it in **Section 2.01** hereof.

"Partner" and "Partners" means any or all, as the case may be, of the General Partners and the limited partners of Borrower.

"Permitted Holders" means collectively, one or more of R&S GP, LLC, Derby Road Investments, Inc., Collier, and Management Investor.

"Permitted Overadvance Amount" means (i) from February 21, 2011, through and including February 25, 2011, \$ \_\_\_\_\_, (ii) from February 26, 2011, through and including March 4, 2011, \$ \_\_\_\_\_, (iii) from March 5, 2011, through and including March 11, 2011, \$ \_\_\_\_\_, and (iv) at all times on and after March 12, 2011, \$0.

"Person" means an individual, partnership, corporation, trust, unincorporated organization, association, joint venture or a government or agency or political subdivision thereof.

"Petition Date" means February 18, 2011.

"PBGC" means Pension Benefit Guaranty Corporation.

"Post-Petition" means any date and time after the date and time of the commencement of the Chapter 11 Case.

"Pre-Petition" means any date and time prior to the date and time of the commencement of the Chapter 11 Case.

"Pre-Petition Debt" means all indebtedness and other obligations of Borrower or any other Obligor to Lender on the Petition Date and that arise under any of the Pre-Petition Loan Documents, whether direct or indirect, absolute or contingent or due or to become due, including all Obligations (as defined in the Pre-Petition Loan Agreement), interest and fees thereon accruing after the Petition Date and all legal fees and collection expenses heretofore or hereafter incurred in collecting any of such indebtedness or participating in the Chapter 11 Case, whether or not allowable in the Chapter 11 Case under Section 506 of the Bankruptcy Code or otherwise.

"Pre-Petition Loan Agreement" means that certain Amended and Restated Loan Agreement dated as of September 19, 2000, between Lender and Borrower, as at any time amended, restated, supplemented or otherwise modified.

"Pre-Petition Loan Documents" means all of the "Loan Documents" under (and as defined in) the Pre-Petition Loan Agreement.

"Prime Loan" means any Revolving Credit Loan for which the rate of interest is determined by reference to the Prime Rate.

"Prime Rate" means for any day, a per annum rate equal to the greatest of (i) Lender's Prime Rate for such day; (ii) the Federal Funds Rate for such day, plus 0.50%; or (iii) LIBOR Rate for a 30 day interest period as determined on such day, plus 1.0%.

"Principal Office" means the principal office of Lender at 300 Galleria Parkway, NW, Suite 800, Atlanta, Georgia 30339, Attention: Robb & Stucky Loan Administration, or such other office or address as Lender may from time to time designate.

"Professional Expenses" means the fees and reimbursable expenses of a Professional Person.

"Professional Expense Reserve" means *fix per new budget, pls*

"Professional Person" means (a) FTI in its capacity as an officer of Debtor and (b) a Person who is an attorney, accountant, appraiser, auctioneer or other professional person and who is retained, with Court approval, by (i) Borrower pursuant to Section 327 of the Bankruptcy Code or (ii) a Committee pursuant to Section 1103(a) of the Bankruptcy Code.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed and whether tangible or intangible.

"Regulation D" means Regulation D of the Board as the same may be amended or supplemented from time to time.

"Regulatory Change" means any change effective after the Closing Date in United States federal or state laws or regulations (including Regulation D and capital adequacy regulations) or foreign laws or regulations or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks, which includes Lender, under any United States federal or state or foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof or compliance by Lender with any request or directive regarding capital adequacy, including with respect to "highly leveraged transactions," whether or not having the force of law, whether or not failure to comply therewith would be unlawful and whether or not published or proposed prior to the date hereof.

"Reimbursement Date" has the meaning ascribed to it in **Section 2.14(d)** hereof.

"Reorganization Plan" means a plan of reorganization filed in the Chapter 11 Case under Section 1121 of the Bankruptcy Code.

"Resolutions" means unanimous resolutions executed each General Partner of the Borrower (and, to the extent applicable, the managers or board of directors of such General Partner) that (i) authorize the filing of the Chapter 11 Case, (ii) authorize and approve of Borrower's execution and delivery of all of the Loan Documents, Borrower's incurring Obligations thereunder and the grant of Liens in favor of Lender as provided in this Agreement and the DIP Financing Orders, and (iii) are in form and substance satisfactory to Lender.

"Reserve Percentage" means the reserve percentage (expressed as a decimal, rounded up to the nearest 1/8th of 1%) applicable to member banks under regulations issued from time to time by the Board of Governors of the Federal Reserve System for determining the maximum reserve requirement (including any



emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities").

"Restricted Investment" means any acquisition of Property by Borrower in exchange for cash or other Property, whether in the form of an acquisition of equity or other ownership interests in any Person or any Indebtedness, or the purchase or acquisition by Borrower of any other Property, or a loan, advance, capital contribution or subscription, except acquisitions of the following: (i) fixed assets to be used in the ordinary course of business of Borrower so long as the acquisition costs thereof constitute Capital Expenditures permitted hereunder; (ii) goods held for sale or lease or to be used in the manufacture of goods or the provision of services by Borrower in the ordinary course of business; (iii) direct obligations of the United States of America or any agency or instrumentality thereof or obligations guaranteed by the United States of America or any agency or instrumentality thereof, provided that such obligations mature within one year from the date of acquisition thereof; (iv) demand deposits, time deposits or certificates of deposit issued by Lender or in certificates of deposit maturing within one year from the date of acquisition issued by a bank or trust company organized under the laws of the United States or any state thereof having capital surplus and undivided profits aggregating at least \$400 million and being rated A-3 or better by Standard & Poor's Ratings Service or A or better by Moody's Investors Services, Inc.; and (v) commercial paper rated A-1 or better by Standard & Poor's Ratings Service or P-1 or better by Moody's Investors Services, Inc. (Commercial Paper Record).

"Retail Account" means an Account which represents the unpaid portion of the purchase price of any item or items of furniture sold by Borrower to a Person in a retail sales transaction.

"Revolving Credit Loan" means a loan made by Lender as provided in **Section 2.01** of this Agreement.

"Revolving Loan Debit Balance" means an amount equal to the excess, if any, of all debit entries over all credit entries required to be recorded pursuant to **Article II** hereof in the Borrower's Account up to and including the date of computation.

"Revolving Note" has the meaning ascribed to it in **Section 2.08** hereof.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

"Sale Agreement" means (i) that certain Agency Agreement dated February \_\_\_\_\_, 2011, among Borrower and \_\_\_\_\_, or (ii) another written agreement for the sale of all or substantially all of Borrower's assets (or a sale of the right to sell such assets as an agent of Borrower) that is in form and substance satisfactory to Lender in its sole and absolute discretion.

"Sale Approval Order" means an order of the Court approving the sale of all or substantially all of Borrower's assets (or a sale of the right to sell such assets as an agent of Borrower) under Section 363 of the Bankruptcy Code pursuant to a Sale Agreement, which order must be in form and substance satisfactory to Lender in its sole discretion and must include provisions that (i) require the payment to Lender at closing of all proceeds payable to Borrower in connection therewith, and (ii) provide that all of Lender's Liens and security interests shall continue in effect and shall attach to all proceeds, letter-of-credit rights and other consideration at any time payable to or received by Borrower in connection therewith.

"Schedule of Accounts" has the meaning ascribed to it in **Section 6.13** hereof.

"Schedule of Equipment" has the meaning ascribed to it in **Section 6.17** hereof.

"Schedule of Inventory" has the meaning ascribed to it in **Section 6.16** hereof.

"Second Collier Agreement" means that certain Secured Note and Option Purchase Agreement dated as of October 20, 2010, among Collier and the Borrower, providing for the extension of financial accommodations by Collier to the Borrower in a maximum principal amount not to exceed \$3,500,000.

"Security Agreements" means, collectively, this Agreement as it relates to a Lien upon or security interest in the Collateral, and any other mortgage instrument, deed, security agreement or similar instrument heretofore or hereafter executed by Borrower or other Person granting Lender a security interest in or Lien upon any Collateral to secure the Obligations.

"Single Employer Plan" means any employee pension benefit plan covered by Title IV of ERISA and in respect of which Borrower or any Subsidiary is an "employer" as described in Section 4001(b) of ERISA, which is not a Multi-employer Plan.

"Solvent" means, when used with respect to any Person, that at the time of determination: (i) the fair value of its assets (both at fair valuation and at present fair saleable value on an orderly basis) is in excess of the total amount of its liabilities, including Contingent Obligations; (ii) it is then able and expects to be able to pay its debts as they mature; (iii) it has capital sufficient to carry on its business as conducted and as proposed to be conducted; and (iv) is not "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code.

"Subordinated Debt" means Indebtedness of Borrower to Persons which is subordinated in right of payment to the Obligations on terms and conditions acceptable to Lender.

"Subsidiary" means any Person of which more than 50% of its outstanding voting stock or other ownership interests is owned directly or indirectly by Borrower.

"Tangible Net Worth" means the depreciated book value amount of all assets of Borrower, less:

- (i) intangible assets, such as (without limitation) capitalized organization and development costs, capitalized interest, debt discount and expense, goodwill, patents, trademarks, copyrights, franchises and licenses;
- (ii) amounts due from officers, employees, directors, stockholders and affiliates; and
- (iii) Total Liabilities less Subordinated Debt.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority, including any interest, additions to tax or penalties applicable thereto.

"Total Liabilities" means the aggregate amount of all liabilities (i.e., claims of creditors of Borrower that are to be satisfied by the disbursement or utilization of corporate resources) of Borrower, all determined in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis.

"Trade Styles" has the meaning ascribed to it in **Section 9.21** hereof.

"UCC" means the Uniform Commercial Code as in effect in the State of Florida or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

"Unwind Reserve" means on any date, an amount equal to the Professional Expense Reserve plus all U.S. Trustee Fees owing by Borrower (whether or not payable) on such date.

"U.S. Trustee" means the Office of the United States Trustee for the Middle District of Florida.

"U.S. Trustee Fees" means fees payable in the Chapter 11 Case to the U.S. Trustee.

"Weekly Period-to-Date" means as of any date of determination, the period of time commencing with the Petition Date and ending on the Friday of the immediately preceding calendar week.

1.02. Accounting Terms. All accounting terms not specifically defined herein shall have the meanings assigned to such terms and shall be interpreted in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis.

1.03. UCC Terms. Each term defined in Article 1 or 9 of the UCC shall have the meaning herein given therein unless otherwise defined herein.

1.04. Certain Matters of Construction. References to any legislation or statute or code, or to any provisions of any legislation or statute or code, shall include any modification or reenactment of, or any legislative, statutory or code provision substituted for, such legislation, statute or code or provision thereof. Each reference herein to a Person shall, unless otherwise specified, include such Person's successors and permitted assigns and shall include or be read as a reference to all genders. Definitions shall apply equally to the singular and plural forms of the words defined. The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding." The section titles, table of contents and list of exhibits appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All references to any of the Loan Documents shall include any and all amendments or modifications thereto and any and all restatements, extensions or renewals thereof; to "including" and "include" shall be understood to mean "including, without limitation" and "include, without limitation;" to the time of day shall mean the time of day on the day in question in Atlanta, Georgia; to any Property of Borrower shall mean and include all Property of the Estate; and to Lender's "discretion" shall mean Lender's sole and absolute discretion. A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender. Whenever the phrase "to the best of Borrower's knowledge" or words of similar import relating to the knowledge or the awareness of Borrower are used herein, such phrase shall mean and refer to (i) the actual knowledge of an Authorized Officer of Borrower or (ii) the knowledge that an Authorized Officer would have obtained if such Authorized Officer had engaged in good faith and the diligent performance of such Authorized Officer's duties, including the making of such reasonable specific inquiries as may be necessary of the officers, employees or agents of Borrower and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates.

ARTICLE II.

DIP Facility

2.01. Commitment. Subject to the terms and conditions of this Agreement, Lender, in its sole discretion reasonably exercised, agrees to make Revolving Credit Loans to Borrower from time to time from the Closing Date until the last day of the DIP Term up to but not exceeding the amount of the Maximum Facility Amount **minus** the Letter of Credit Obligations **minus** the aggregate amount of unpaid Pre-Petition Debt, provided, however, that Lender will not be required and shall have no obligation to make any Revolving Credit Loan (i) so long as a Default or an Event of Default has occurred and is continuing, (ii) if Lender has accelerated the maturity of the Obligations, (iii) if Borrower has not furnished to Lender the Borrowing Base Certificate required pursuant to **Section 8.01(d)** hereof, or (iv) on or after the Commitment Termination Date or that would exceed Availability but, in each case, Lender may do so in its discretion; provided further, however, that immediately after giving effect to each Revolving Credit Loan, the principal amount of all outstanding Loans shall not exceed the Borrowing Base as set forth on the Borrowing Base Certificate most recently delivered to Lender pursuant to **Section 8.01(d)**. Within such limits, Borrower may borrow, repay and reborrow hereunder on any Business Day, from the Closing Date until but (as to borrowings and reborrowings) not including, the Commitment Termination Date. If the aggregate Revolving Credit Loans exceed the Borrowing Base (each an "Overadvance") or the amount of the DIP Facility at any time, the excess amount shall be payable by Borrower **on demand** by Lender, but all such Revolving Credit Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Loan Documents. Any funding or sufferance of an Overadvance shall not constitute a waiver of the Event of Default caused thereby.

2.02. Amounts. Except as otherwise permitted by Lender from time to time, the aggregate unpaid principal amount of the Revolving Credit Loans shall not exceed at any time the DIP Facility.

2.03. [Reserved].

2.04. Revolving Credit Loans.

(a) The Authorized Officer shall give Lender irrevocable telephonic notice of each Prime Loan representing an additional borrowing hereunder prior to 12:00 noon Atlanta, Georgia time on the day of such proposed Prime Loan. Each such Borrowing Notice, which shall be effective upon receipt by Lender, shall specify the amount and date of the borrowing. The Authorized Officer shall provide Lender written confirmation of each such telephonic notice in the form attached hereto as Exhibit B with appropriate insertions but failure to provide such confirmation shall not affect the validity of such telephonic notice.

(b) On the date specified for each borrowing hereunder, Lender shall, subject to the terms and conditions of this Agreement, make available to Borrower the amount of the Loan by depositing the proceeds thereof in immediately available funds, in the Borrower's Account.

2.05. Payment of Interest.

(a) Borrower shall pay interest to Lender on the outstanding and unpaid principal amount of each Prime Loan for the period commencing on the date of such Loan until such Loan shall be due, at a rate per annum equal to the sum of the then applicable Prime Rate and the Applicable Margin; provided, however, that during an Event of Default, if Lender so elects, such amount shall bear interest thereafter at a rate of interest per annum which shall be two percent (2%) above the interest rate otherwise applicable thereto or the maximum rate permitted by applicable law, whichever is lower. In the event

Borrower shall not pay interest when due, Lender may, in its sole discretion without the request or consent of Borrower, to the extent permitted by applicable law, cause there to be made on behalf of Borrower, a Revolving Credit Loan of the amount of such past due interest which Revolving Credit Loan shall bear interest at the Prime Rate.

(b) Interest on each Revolving Credit Loan shall be computed on the basis of a year of 360 days and calculated for the actual number of days elapsed. Interest on each Revolving Credit Loan shall be paid (i) monthly, on the first day of each month, (ii) upon payment in full of the principal amount of such Loan, and (iii) on the Commitment Termination Date.

(c) [Reserved]

(d) Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law ("maximum rate"). If Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged or received by Lender exceeds the maximum rate, Lender may, to the extent permitted by applicable law, (i) characterize any payment that is not principal as an expense, fee or premium rather than interest; (ii) exclude voluntary prepayments and the effects thereof; and (iii) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### 2.06. Payment of Principal.

(a) The principal amount of each Revolving Credit Loan shall be due and payable in full on the Commitment Termination Date.

(b) Each payment of principal (including any prepayment) and payment of interest shall be made to Lender at the Principal Office in Dollars and in immediately available funds before 12:30 p.m. Atlanta, Georgia time on the date such payment is due. Lender may, but shall not be obligated to, debit the amount of any such payment which is not made by such time to the Borrower's Account or any ordinary deposit account of Borrower with Lender.

(c) Lender shall deem any payment by or on behalf of Borrower hereunder that is not made both (i) in Dollars and in immediately available funds and (ii) prior to 12:30 p.m. Atlanta, Georgia time (other than if such payment is made by a debit by Lender to the Borrower's Account) to be a non-conforming payment. Any such payment shall not be deemed to be received by Lender until the time such funds become available funds. Any non-conforming payment may constitute or become a Default or Event of Default. Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding Business Day), and if such payment is past due, at a rate of interest per annum which shall be two percent (2%) above the rate at which interest was payable on such Loan on the day immediately preceding the due date or the maximum rate permitted by applicable law, whichever is lower, from such due date until the funds become available.

(d) In the event that any payment hereunder becomes due and payable on a day other than a Business Day, then such due date shall be extended to the next succeeding Business Day; provided that interest shall continue to accrue during the period of any such extension.

2.07. The Borrower's Account. Lender shall render to Borrower each month a Loan ledger statement and a copy of the statement of the Borrower's Account. Borrower shall give Lender written notice of its exceptions to any such statement within 45 days after such statement has been rendered to Borrower.

2.08. Noteless Agreement. The Revolving Credit Loans shall be evidenced by the records of Lender and, unless otherwise required by Lender, shall not be evidenced by any note or other instrument. If any time Lender requests Borrower to execute any note or other instrument to evidence the Revolving Credit Loans (a "Revolving Note"), Borrower shall promptly comply with Lender's request and execute and deliver to Lender a Revolving Note in form and substance satisfactory to Lender.

2.09. Expenses. All accrued and unpaid Extraordinary Expenses and amounts payable by Borrower under **Section 11.06** hereof shall be due and payable by Borrower to Lender **on demand**.

2.10. Use of Proceeds. The proceeds of the Revolving Credit Loans shall be used by Borrower during the pendency of the Chapter 11 Case exclusively for one or more of the following purposes: (i) to pay the Pre-Petition Debt to the extent authorized by the Court; (ii) to pay expenses described (and not to exceed the amount provided for) in each line item of the Interim DIP Budget during the Interim Period and, after the Interim Period, to pay any expenses (and not to exceed the amount provided for) in each line item of the Final DIP Budget or, with Lender's consent after the occurrence of an Event of Default, to fund the costs of an orderly liquidation of the Collateral; (iii) to pay Adequate Protection Claims, but only to the extent authorized by the Court and consented to by Lender and specifically excluding any payment to a holder of Subordinated Debt; (iv) to pay fees required to be paid to the office of the U.S. Trustee; (v) to pay Professional Expenses of Professional Persons subject to any limitations in the DIP Financing Orders, allowance by the Court and Borrower's receipt of an itemized billing and expense statement from such Professional Person; (vi) to pay any of the Obligations; (vii) to pay property taxes with respect to any Collateral to the extent nonpayment thereof is secured by a Lien senior to Lender's Liens thereon; (viii) to fund the Unwind Reserve as provided in the DIP Financing Orders; and (ix) to pay other expenses authorized by the Court in orders entered in the Chapter 11 Case that are acceptable to Lender. Notwithstanding anything to the contrary contained herein, in no event shall proceeds of Revolving Credit Loans be used to pay Professional Expenses incurred in connection with the assertion of or joinder in any claim, counterclaim, action, contested matter, objection, defense or other proceeding, the purpose of which is to seek or the result of which would be to obtain any order, judgment, declaration, or similar relief (a) seeking damages from Lender on account of any alleged cause of action arising on, before or after the Petition Date; (b) invalidating, setting aside, avoiding or subordinating, in whole or in part, any of the Pre-Petition Debt, Obligations, or any of the Liens in any of the Collateral granted to Lender under this Agreement or the DIP Financing Orders or under any of the Pre-Petition Loan Documents; (c) declaring any of the Loan Documents or Pre-Petition Loan Documents to be invalid, not binding or unenforceable in any respect; (d) preventing, enjoining, hindering or otherwise delaying Lender's enforcement of any of the Loan Documents or Pre-Petition Loan Documents, or any realization upon any Collateral; (e) declaring any Liens granted or purported to be granted under any of the Loan Documents or Pre-Petition Loan Documents to have a priority other than the priority set forth therein; (f) objecting to the amount or method of calculation by Lender of the Pre-Petition Debt or any of the Obligations, or any accounting rendered by Lender with respect to any of those obligations; or (g) seeking to use the cash proceeds of any of the Collateral without the prior written consent of Lender. Nothing in this **Section 2.10** shall be construed to waive Lender's right to object to any requests, motions or applications made in or filed with the Court.

2.11. Collection of Proceeds. Borrower agrees to deposit not less frequently than once each Business Day to the Collateral Account all proceeds of Accounts and Inventory received on such day. Amounts which are collected funds at the Principal Office accumulated in the Collateral Account shall be

applied by Lender on a daily basis to reduce the Revolving Loan Debit Balance. Borrower shall promptly pay to Lender all costs and expenses incurred in connection with the Collateral Account. Lender shall be authorized to apply any proceeds of Pre-Petition Collateral to the payment of the Pre-Petition Debt (in such order of application as Lender may elect in its discretion) before application of any such proceeds to the payment of any of the Obligations, but may in its discretion apply any such proceeds of Pre-Petition Collateral first to the payment of the Obligations.

2.12. Section 364(c)(1) and 503(b) Priority. All Revolving Credit Loans and other credit accommodations made by Lender to Borrower shall constitute and be deemed a cost and expense of administration in the Chapter 11 Case and shall be entitled to administrative status under Section 503(b) of the Bankruptcy Code and priority under Section 364(c)(1) of the Bankruptcy Code ahead of all other costs and expenses of administration incurred in the Chapter 11 Case or in any superseding Chapter 7 case.

2.13. Closing Fee and Unused Line Fee. In connection with and as consideration for Lender's commitment hereunder, subject to the terms hereof, to lend to Borrower under the DIP Facility, Borrower shall pay to Lender:

(a) Upon the entry of the Interim DIP Financing Order by the Court, a closing fee (the "Closing Fee") in the amount of \$250,000, which shall be paid concurrently with the funding of the initial Revolving Credit Loans hereunder.

(b) From the Closing Date until the Commitment Termination Date, a fee in an amount equal to one-half percent (0.50%) per annum of the average daily unused portion of the DIP Facility, payable monthly in arrears on the first day of each month, on the date of any permanent reduction in the amount of the DIP Facility and on the Commitment Termination Date.

2.14. Letters of Credit.

(a) Borrower may request that Lender issue Letters of Credit for the account of Borrower. Each such request shall be accompanied by a completed application for such Letter of Credit, in form and substance acceptable to Lender. The fee applicable to each outstanding Letter of Credit issued by Lender shall be equal to the Applicable Margin for Prime Loans from time to time during the term of such Letter of Credit, multiplied by the stated amount of such Letter of Credit, which fee shall be payable monthly in arrears on the first day of each month, and, in addition to all other amounts payable under this Agreement, Borrower shall pay to Lender all of its customary charges associated with the application, issuance, amending, negotiating, payment, processing, transfer and administration of each such Letter of Credit. Borrower acknowledges that neither it nor Borrower intend the sum of the aggregate face amount of all Letters of Credit, if any, issued by Lender for the account of Borrower, plus the aggregate amount of any unsatisfied reimbursement obligations in connection therewith, to exceed at any time an amount equal to \$150,000 or the term of any thereof to exceed one year, and that the per annum fee to be charged by Lender in connection with the issuance of any standby Letter of Credit will be equal to the Applicable Margin for Prime Loans, payable upon and as a condition to issuance on the face amount thereof for the stated term. On and after the Closing Date, each Existing Letter of Credit shall be deemed to have been issued hereunder and shall constitute a Letter of Credit for all purposes hereof, and all fees heretofore paid in respect of such Existing Letter of Credit shall be deemed to have been paid on account of Pre-Petition Debt and any accrued and unpaid fees in respect of such Existing Letters of Credit as of the Closing Date shall be deemed to be part of the Obligations.

(b) Letters of Credit may be requested by Borrower only (i) to support obligations of Borrower incurred in the ordinary course of business; or (ii) for other purposes as Lender may approve

from time to time in writing. The renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit, except that delivery of a new application for such letter of credit shall be required at the discretion of Lender.

(c) Borrower assumes all risks of the acts, omissions or misuses of any Letter of Credit by the beneficiary. In connection with issuance of any Letter of Credit, Lender shall not be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Lender, including any act or omission of a governmental authority. Lender shall be fully subrogated to the rights and remedies of each beneficiary whose claims against Borrower are discharged with proceeds of any Letter of Credit.

(d) If Lender honors any request for payment under a Letter of Credit, Borrower shall pay to Lender, on the same day as Lender makes payment under a Letter of Credit (each a "Reimbursement Date"), the amount paid under such Letter of Credit, together with interest at the interest rate for Prime Loans from the Reimbursement Date until payment by Borrower. The obligation of Borrower to reimburse Lender for any payment made under a Letter of Credit shall be absolute, unconditional, and irrevocable, and shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or the existence of any claim, setoff, defense or other right that Borrower may have at any time against the beneficiary. Whether or not Borrower submits a Borrowing Notice, Borrower shall be deemed to have requested a borrowing of a Prime Loan in an amount necessary to pay all amounts due on any Reimbursement Date.

(e) If any Letter of Credit Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (i) that an Event of Default exists, (ii) that Availability is less than zero, (iii) after the termination of this Agreement by Lender, or (iv) on the Commitment Termination Date, then Borrower shall, at Lender's request, Cash Collateralize the stated amount of all outstanding Letters of Credit and pay to Lender the amount of all other Letter of Credit Obligations. If Borrower fails to provide Cash Collateral as required herein, Lender may advance, as Revolving Credit Loans, the amount of the Cash Collateral required.

(f) In addition to amounts payable as elsewhere provided in this Section, Borrower agrees to protect, indemnify, pay and hold Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) which Lender may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit or the provision of any credit support or enhancement in connection therewith; provided that this Section shall not apply to Indemnified Taxes and Other Taxes which are covered by **Section 2.17**. Borrower's obligations under this Section shall survive payment of all other Obligations.

2.15. Collateral Management Fee. Borrower shall pay Lender a monthly, non-refundable collateral management fee in the amount of \$2,000, payable in advance on March 1, 2011, and on the first Business Day of each month thereafter.



2.16. Payments Free of Taxes. All payments by Borrower of Obligations shall be free and clear of and without reduction for any Taxes. If applicable law requires Borrower or Lender to withhold or deduct any Tax (including backup withholding or withholding Tax), Lender shall pay the amount withheld or deducted to the relevant governmental authority. If the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by Borrower shall be increased so that Lender receives an amount equal to the sum it would have received if no such withholding or deduction (including deductions applicable to additional sums payable under this Section) had been made. Without limiting the foregoing, Borrower shall timely pay all Other Taxes to the relevant governmental authorities.

2.17. Payment. Borrower shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) Lender for any Indemnified Taxes or Other Taxes (including those attributable to amounts payable under this Section) withheld or deducted by any Obligor or Lender, or paid by Lender, with respect to any Obligations, Letters of Credit or Loan Documents, whether or not such Taxes were properly asserted by the relevant governmental authority, and including all penalties, interest and reasonable expenses relating thereto. If Lender receives a refund in respect of any amount paid by Borrower to Lender hereunder, then Lender shall credit the amount of such refund as a payment on the Obligations.

2.18. Effect of Termination. On the Commitment Termination Date, all of the Obligations shall be immediately due and payable, and Lender shall have no further obligation to make any Revolving Credit Loans; provided, however, that Lender may after the Termination Date fund an amount equal to the Unwind Reserve as provided in the DIP Financing Orders and such funding shall be deemed a Revolving Credit Loan. All undertakings, agreements, covenants, warranties and representations of Borrower contained in the Loan Documents shall survive any such termination and Lender shall retain its Liens upon all of the Collateral and all of its rights and remedies under the Loan Documents notwithstanding such termination until Full Payment of the Obligations. Notwithstanding Full Payment of the Obligations, Lender shall not be required to release or terminate its Liens upon any of the Collateral arising under the Loan Documents unless with respect to any loss or damage Lender may incur as a result of the dishonor or return of any items of payment applied to the Obligations, Lender shall have received either (i) a written agreement, executed by Borrower and any Person whose loans or other advances to Borrower are used in whole or in part to satisfy the Obligations, indemnifying Lender from any such loss or damage, or (ii) such Cash Collateral as Lender, in its reasonable credit judgment, may deem necessary to protect Lender from any such loss or damage. Notwithstanding anything to the contrary in this Agreement, all obligations of Borrower to indemnify Lender pursuant to this Agreement shall in all events survive any termination of the DIP Facility (and Commitment thereunder) and shall survive any release or termination of Liens by Lender.

ARTICLE III.

Reserved

ARTICLE IV.

Yield Protection

4.01. Additional Costs.

(a) Subject to the provisions of **Section 4.01(b)**, Borrower shall promptly pay to Lender from time to time, such amounts as Lender may determine to be necessary to compensate it for any costs incurred by Lender which it determines are attributable to its making or maintaining any Loan

or its obligation to make any Loans, or any reduction in any amount receivable by Lender under this Agreement, including reductions in the rate of return on Lender's capital (such increases in costs and reductions in amounts receivable and returns being herein called "Additional Costs"), resulting from any Regulatory Change which: (i) changes the basis of taxation of any amounts payable to Lender under this Agreement in respect of any of such Loans (other than taxes imposed on the income of Lender by any jurisdiction in which the Principal Office of Lender is located); or (ii) imposes or modifies any reserve, special deposit, or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of Lender (other than any such reserve, deposit or requirement reflected in the Prime Rate or the LIBOR Rate, in each case computed in accordance with the respective definitions of such terms set forth in **Section 1.01** hereof); or (iii) has or would have the effect of reducing the rate of return on capital of Lender to a level below that which Lender could have achieved but for such Regulatory Change (taking into consideration Lender's policies with respect to capital adequacy); or (iv) imposes any other condition affecting this Agreement (or any of such extensions of credit or liabilities). Lender will notify the Authorized Officer of any event occurring after the Closing Date which would entitle it to compensation pursuant to this **Section 4.01(a)** as promptly as practicable after it obtains knowledge thereof and determines to request such compensation.

(b) Determinations by Lender for purposes of this **Section 4.01** of the effect of any Regulatory Change on its costs of making or maintaining, or being committed to make Loans, or on amounts receivable by it in respect of Loans, and of the additional amounts required to compensate Lender in respect of any Additional Costs, shall be conclusive absent manifest error, provided that such determinations are made on a reasonable basis. Lender shall furnish to the Authorized Officer an explanation of the Regulatory Change and calculations, in reasonable detail, setting forth Lender's determination of any such Additional Costs.

## ARTICLE V.

### Conditions Precedent

5.01. Conditions Precedent to Effectiveness. Notwithstanding any other provision of this Agreement or any of the other Loan Documents, and without affecting in any manner the rights of Lender under other sections of this Agreement, Lender shall not be required to fund Revolving Credit Loans requested by Borrower during the Interim Period unless, on or before February 23, 2011, each of the following conditions has been and continues thereafter to be satisfied:

(a) Lender shall have received, in form and substance satisfactory to Lender, all of the following documents:

(i) executed originals of each of the Loan Documents, together with updated schedules and exhibits thereto in form and substance satisfactory to Lender;

(ii) certificate of the General Partner of Borrower to which is attached evidence of consent by the Partners to the transactions contemplated by this Agreement (including copies of corporate resolutions adopted by any Partner in connection therewith), Borrower's certificate of limited partnership and Partnership Agreement and specimen signatures of the officers or other authorized signatories of the General Partner executing the Loan Documents to which Borrower is a party;

(iii) to the extent reasonably required by Lender, such additional financing statements under the UCC, together with evidence of the filing of any such financing statements or, at the option of Lender, in form for filing;

(iv) evidence of insurance complying with the requirements of **Section 8.05** of this Agreement;

(v) a Borrowing Base Certificate duly completed by Borrower, together with all supporting statements, schedules and reconciliations required by Lender;

(vi) evidence that Borrower has filed a UCC-3 termination statement terminating Florida UCC Financing Statement No. 201003608777 filed on November 22, 2010, by O.W. Lee Company Inc. (as a result of the fact that Borrower owes no obligation to such entity and has no pending orders with such entity);

(vii) such other documents, instruments, certificates and opinions as Lender may reasonably request on or prior to the Closing Date in connection with the consummation of the transactions contemplated hereby;

(b) The Chapter 11 Case shall have commenced on or before February 18, 2011;

(c) All of the "first day orders" presented to the Court at or about the time of the commencement of the Chapter 11 Case (including orders with respect to maintenance of Borrower's cash management system) shall be satisfactory in form and substance to Lender, all such orders shall have been entered by the Court, and as of the date that each of the other conditions precedent set forth in this **Section 5.01** shall have been satisfied, all such orders (i) shall be in full force and effect and (ii) shall not have been vacated, reversed, modified, amended or stayed without the prior written consent of Lender;

(d) There is not pending any motion which, if granted by the Court, would result in an Event of Default;

(e) Lender shall have reviewed and approved the Interim DIP Budget and the reasonableness of all projections therein of expenses and collections; and

(f) Borrower shall have filed with the Court a motion seeking approval of a Sale Agreement.

5.02. All Loans and Letters of Credit. The obligations of Lender to make any Revolving Credit Loan or to issue any Letter of Credit for the account of Borrower are subject to the satisfaction of the following conditions:

(a) as to Revolving Credit Loans, Lender shall have received a notice of such borrowing or request if required by **Section 2.04** hereof;

(b) the representations and warranties of Borrower set forth in **Article VII** hereof and in each of the other Loan Documents shall be true and correct on and as of the date of such Revolving Credit Loan with the same effect as though such representations and warranties had been made on and as of such date, except to the extent that such representations and warranties expressly relate to an earlier date and except that the financial statements referred to in **Section 7.02(c)** shall be deemed to be those financial statements most recently delivered to Lender pursuant to **Section 8.01** hereof;

(c) at the time of each such Revolving Credit Loan no Default or Event of Default specified in **Article X** hereof shall have occurred and be continuing;

(d) immediately after giving effect to the Revolving Credit Loan (i) the aggregate principal balance of all outstanding Loans shall not exceed the Borrowing Base as shown on the Borrowing Base Certificate most recently furnished to Lender pursuant to **Section 8.01(d)** and (ii) the Revolving Loan Debit Balance shall not exceed the amount of the DIP Facility;

(e) With respect to all Revolving Credit Loans requested on or after the Petition Date but before the expiration of the Interim Period, following proper notice and a hearing thereon, the interim hearing on the DIP Motion shall have been held, with the presentation of evidence and the resolution of any objections to the DIP Motion or the proposed Interim DIP Financing Order in a manner satisfactory to Lender, and the Interim DIP Financing Order shall have been entered, and as of the date that each of the other conditions precedent set forth in this **Section 5.02** shall have been satisfied, the Interim DIP Financing Order (i) shall be in full force and effect and (ii) shall not have been vacated, reversed, modified, amended or stayed without the prior written consent of Lender;

(f) With respect to all Revolving Credit Loans requested after the expiration of the Interim Period, following proper notice and a hearing thereon, the final hearing on the DIP Motion shall have been held, with the presentation of evidence and the resolution of any objections to the DIP Motion or the proposed Final DIP Financing Order in a manner satisfactory to Lender, and the Final DIP Financing Order shall have been entered on or before the expiration of the Interim Period, shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed without the prior written consent of Lender; and

(g) With respect to any Revolving Credit Loans requested by Borrower on or after March 18, 2011, the Court shall have entered a Sale Approval Order.

5.03. Limited Waiver of Conditions Precedent. If Lender shall make any Revolving Credit Loan or otherwise extend any credit to Borrower under this Agreement at a time when any of the foregoing conditions precedent are not satisfied (regardless of whether the failure of satisfaction of any of such conditions precedent is known or unknown to Lender), the funding of such Revolving Credit Loans shall not operate as a waiver of the right of Lender to insist upon the satisfaction of all conditions precedent with respect to each subsequent Borrowing requested by Borrower or a waiver of any Default or Event of Default as a consequence of the failure of any such conditions to be satisfied. Without limiting the generality of the foregoing, if Lender shall make any Revolving Credit Loan or otherwise extend any credit to Borrower at a time when any condition set forth in this **Article V** is not satisfied, all Obligations arising from the extension of any such credit shall be payable **on demand**, and Lender shall have no obligation to fund any future request for Revolving Credit Loans.

## ARTICLE VI.

### Security Agreement; Administrative Priority and Collateral Administration

6.01. Security. To secure the payment, observance and performance of the Obligations, Borrower hereby grants to Lender a continuing security interest and Lien upon all personal Property of Borrower, including the following Property, whether now owned or hereafter acquired and wherever located (irrespective of whether the same existed on or was created or acquired after the Petition Date) (but excluding Avoidance Claims and Avoidance Claim Proceeds):

- (a) all Accounts;
- (b) all Chattel Paper, including electronic chattel paper;

- (c) all Commercial Tort Claims;
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all General Intangibles, including Intellectual Property;
- (g) all Goods, including Inventory, Equipment and fixtures;
- (h) all Instruments;
- (i) all Investment Property;
- (j) all Letter-of-Credit Rights;
- (k) all Supporting Obligations;
- (l) all leasehold interests of Borrower and rights of Borrower under Leases;
- (m) any Sale Agreement and all proceeds and other consideration payable to Borrower under a Sale Agreement;
- (n) all monies, whether or not in the possession or under the control of Lender, or a bailee or affiliate of Lender, including any Cash Collateral;
- (o) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and
- (p) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

6.02. Further Assurances; Extent of Liens. Promptly upon request, Borrower shall deliver such instruments, assignments, title certificates, or other documents or agreements, and shall take such actions, as Lender deems appropriate under applicable federal or state law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Borrower authorizes Lender to file any financing statement that indicates the Collateral as "all assets" or "all personal property" of Borrower, or words to similar effect, and ratifies any action taken by Lender prior to the date hereof to effect or perfect its Lien on any Collateral. Irrespective of any steps taken by Lender to perfect any security interest or other Lien granted or conveyed to Lender pursuant to any of the Loan Documents, all security interests and other Liens at any time granted or conveyed, or otherwise conferred upon, Lender pursuant to the Loan Documents or the DIP Financing Orders shall be automatically perfected as provided in the DIP Financing Orders without the necessity of the filing or recording of any other instrument or agreement, the taking of possession of any of the Collateral or any other action on the part of Lender.

6.03. [Reserved].

6.04. Lien on Deposit Accounts; Cash Collateral.

(a) To further secure the prompt payment and performance of all Obligations, Borrower hereby grants to Lender, a continuing security interest in and Lien upon all amounts credited to any Deposit Account of Borrower, including any sums in the Borrower's Account, the Collateral Account, any blocked or lockbox accounts, or in any accounts into which such sums are swept. Borrower hereby authorizes and directs each bank or other depository to deliver to Lender, upon request, all balances in any Deposit Account maintained by Borrower, without inquiry into the authority or right of Lender to make such request.

(b) Any Cash Collateral may be invested, at Lender's discretion, in Cash Equivalents, but Lender shall have no duty to do so, regardless of any agreement or course of dealing with Borrower, and shall have no responsibility for any investment or loss. Borrower hereby grants to Lender a security interest in all Cash Collateral held from time to time and all proceeds thereof, as security for the Obligations, whether such Cash Collateral is held in a Cash Collateral Account or elsewhere. Lender may apply Cash Collateral to the payment of any Obligations, in such order as Lender may elect, as they become due and payable. Each Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of Lender. Neither Borrower nor any other Person claiming through or on behalf of Borrower shall have any right to any Cash Collateral, until full payment of all Obligations.

6.05. Commercial Tort Claims. Borrower shall promptly notify Lender in writing if Borrower has a Commercial Tort Claim (other than, as long as no Default or Event of Default exists, a Commercial Tort Claim for less than \$50,000) and, upon Lender's request, shall promptly take such actions as Lender deems appropriate to confer upon Lender a duly perfected, first priority Lien upon such claim.

6.06. Certain After-Acquired Collateral. Borrower shall promptly notify Lender in writing if, after the date hereof, Borrower obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon Lender's request, shall promptly take such actions as Lender deems appropriate to effect Lender's duly perfected, first priority Lien upon such Collateral, including obtaining any appropriate possession, control agreement or agreement from any other Person possessing a Lien in such Collateral pursuant to which such Person waives or subordinates its Lien in such Collateral to Lender's Lien. If any Collateral is in the possession of a third party, at Lender's request, Borrower shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Lender.

6.07. Liens Under DIP Financing Orders. The Liens and security interests granted to Lender pursuant to the provisions of this **Article VI** and pursuant to any of the other Loan Documents shall be in addition to, and not in lieu of, all Liens conferred upon Lender pursuant to the terms of the DIP Financing Orders.

6.08. Lien Priority. The Liens and security interests granted to Lender pursuant to the provisions of this **Article VI** and pursuant to any of the other Loan Documents shall be first priority Liens and security interests in the Collateral, except for other Liens in favor of Lender.

6.09. Administrative Priority. Subject to the entry of the Interim DIP Financing Order, the Obligations will constitute allowed super-priority administrative expenses in the Chapter 11 Case, having priority in payment over all other administrative expenses and unsecured claims against Borrower of any kind or nature, whether now existing or hereafter arising, including all administrative expenses of the kind specified in or arising or ordered under Sections 105, 326, 328, 503(b), 506(e), 507(a), 507(b), 546(c) and 1114 of the Bankruptcy Code.

6.10. Maintenance and Modification of the Collateral. Lender shall be under no obligation to operate, maintain or repair the Collateral. Borrower agrees that until Full Payment of the Obligations it will at its own expense keep the Collateral owned by it in good repair and in good condition (subject to ordinary wear and tear and obsolescence, maintenance and replacement in the ordinary course) and make from time to time all necessary repairs thereto and renewals and replacements thereof. Borrower shall commit or permit or suffer others to commit a nuisance in connection with its use of any item of the Collateral. Borrower shall not make or cause to be made any addition, modification or improvement to the Collateral that may materially impair the effective use, or materially decrease the value of the Collateral. Borrower may make from time to time any additions, modifications or improvements to the Collateral owned by it that it may deem desirable for its business purposes and that do not materially impair the effective use, or materially decrease the value, of the Collateral. All such additions, modifications and improvements made by Borrower shall become part of the Collateral. Any damage to the Collateral occasioned by such addition, modification or improvements which materially decreases the value thereof shall be repaired by Borrower at its own expense.

6.11. Receipt of Payment. In the event that Borrower (or its affiliates, subsidiaries, stockholders, General Partner, directors, officers, employees or agents) shall receive any monies, checks, notes, drafts or any other items of payment made with respect to and/or proceeds of the Accounts or Inventory, Borrower agrees that: (i) Borrower shall hold all such items of payment in trust for Lender and as the property of Lender, separate from the funds of Borrower, and in accordance with the terms of this Agreement, Borrower shall deposit or cause the same to be deposited, in kind, in the Collateral Account; (ii) Borrower shall furnish to Lender, at intervals designated and if requested by Lender, deposit slips related to all such items of payment received by Borrower and, if requested by Lender, copies of such checks and other items, together with a statement showing the application of that portion of such items of payment relating to payment on Accounts to outstanding Accounts and a collection report with regard thereto in form and substance satisfactory to Lender; (iii) all such items of payment shall be the sole and exclusive property of Lender immediately upon the earlier of receipt of such items by Lender or the receipt of such items by Borrower; and (iv) no such items received by Lender shall constitute payment to Lender unless such item actually is received by Lender. Notwithstanding anything to the contrary herein, each such item of payment shall, solely for purposes of determining the occurrence of an Event of Default, be deemed received upon actual receipt by Lender, unless the same is subsequently dishonored for any reason whatsoever.

6.12. Collections; Lender's Right to Notify Account Debtors and to Endorse Borrower's Names. Upon the occurrence of an Event of Default, and subject to Lender's obtaining relief from stay as contemplated by the DIP Orders, Borrower hereby authorizes Lender, (i) to open its mail and collect any and all amounts due to it from any Account Debtors; (ii) to take over its post office boxes or make other arrangements as Lender deems necessary to receive its mail, including notifying the post office authorities to change the address for delivery of its mail to such address as Lender may designate; and (iii) to notify any or all Account Debtors that the Accounts have been assigned to Lender and that Lender has a security interest and Lien therein and to send requests for verification of Accounts to Account Debtors and to request from Account Debtors in Borrower's name or Lender's name or that of Lender's designee, any information concerning the Accounts and the amounts owing thereon. Lender shall promptly furnish Borrower with a copy of any such notice sent and Borrower agrees that any such notice, in Lender's sole discretion, may be sent on the stationery of Borrower, in which event Borrower shall co-sign such notice with Lender. Borrower irrevocably makes, constitutes and appoints Lender and all Persons designated by Lender for that purpose, as Borrower's true and lawful attorney (and agent-in-fact) to endorse its name on any checks, notes, drafts or any other payment relating to and/or proceeds of the Collateral which comes in Lender's possession or Lender's control, and to deposit the same to the account of Lender on account of the Obligations and, at any time an Event of Default has occurred and is continuing, and subject to

Lender's obtaining relief from stay as contemplated by the DIP Orders to take all actions described in **Section 10.01** hereof.

6.13. Assignments, Records and Schedules of Accounts and General Intangibles. Borrower shall keep accurate and complete records of its Accounts ("Account Records") in accordance with Generally Accepted Accounting Principles and its General Intangibles and from time to time at intervals reasonably designated by Lender, it shall provide Lender with a Schedule of Accounts and General Intangibles in form and substance acceptable to Lender describing all Accounts and General Intangibles created or acquired by it ("Schedule of Accounts") and shall execute and deliver written assignments of such Accounts to Lender; provided, however, that Borrower's failure to execute and deliver any such Schedule of Accounts or assignments shall not affect or limit Lender's Lien, security interest or other rights in and to any Accounts or the General Intangibles. Borrower shall furnish Lender with copies of proof of shipment and delivery and the original copy of all documents, including, without limitation, copies of invoices, repayment histories and present status reports, relating to the Accounts so scheduled (collectively, "Account Documents") and such other matters and information relating to the status of then existing Accounts as Lender shall reasonably request. Borrower shall not remove any Account Records or Account Documents from the location set forth on Exhibit C hereof except in the ordinary course of business.

6.14. Verification of Accounts. Whether or not an Event of Default has occurred, any of Lender's officers, employees, or agents shall have the right, at any time or times hereafter, to verify the validity, amount or any other matter relating to any Accounts by mail, electronic mail, telephone, facsimile or otherwise.

6.15. Safekeeping of Inventory. Borrower shall be responsible for the safekeeping of its Inventory, and in no event shall Lender have any responsibility for: (i) any loss or damage to Inventory or destruction thereof occurring or arising in any manner or fashion from any cause; (ii) any diminution in the value of Inventory; or (iii) any act or default of any carrier, warehouseman, bailee or forwarding agency thereof or other Person in any way dealing with or handling Inventory.

6.16. Records and Schedules of Inventory. Borrower shall keep correct and accurate records on a perpetual basis, itemizing and describing the kind, type, location, quality and quantity of Inventory, Borrower's cost therefor and selling price thereof, and shall furnish to Lender from time to time at reasonable intervals designated by Lender, but not more frequently than monthly, current Schedule of Inventory ("Schedule of Inventory") based upon its most recent physical inventory and its perpetual inventory records. Borrower shall promptly advise Lender in sufficient detail of any substantial change relating to the type, quality or quantity of the Inventory. In addition, Borrower or agents of Borrower shall conduct a physical inventory during the DIP Term consistent with the requirements of the Sale Agreement, at which Lender and its consultants and agents shall have the right to be present, and shall furnish to Lender such documents and reports as Lender shall request with respect to the Inventory and any physical count thereof, including invoices relating to Borrower's purchase of Inventory and the results of any physical count of the Inventory as and when such results are received by Borrower. Borrower shall not move any of the Inventory from the locations thereof set forth on Exhibit C except in the ordinary course of Borrower's business as such business was conducted as of the Petition Date.

6.17. Equipment. Borrower shall maintain accurate, itemized records itemizing and describing the kind, type, quality, quantity, value and location of its Equipment having a value of at least \$1,000 and shall furnish Lender with current schedules containing the foregoing information ("Schedule of Equipment") no later than three (3) Business Days after Borrower's receipt of a request for a Schedule of Equipment from Lender.



6.18. Payment of Taxes. Except as expressly prohibited by the Bankruptcy Code or the Court, Borrower will promptly pay, when due, all Taxes levied against any of the Collateral or in respect of sales of Collateral by Borrower or any agent of Borrower; provided, however, Borrower shall not be required to pay or cause to be paid any such Tax, so long as the validity thereof shall be actively contested in good faith by proper proceedings, any Lien arising in connection therewith shall be and remain in all respects inferior to the Liens in favor of Lender, and, if requested by Lender, adequate reserves with respect thereto shall be established and maintained; but provided further that any such Tax shall be paid forthwith upon the commencement of proceedings to foreclose any Lien securing the same. Lender shall not be liable for any Taxes owed by Borrower.

## ARTICLE VII.

### Representations and Warranties

7.01. Representations and Warranties as to Borrower. Borrower represents and warrants (which representations and warranties shall survive the delivery of the documents mentioned herein and the making of Loans), that:

(a) Organization and Authority.

(i) it is a limited liability limited partnership duly organized and validly existing under the laws of Florida;

(ii) it has the power and authority to own its properties and assets and to carry on its business as now being conducted and is qualified to do business in every jurisdiction in which failure so to qualify would have a material adverse effect on the business or operations of Borrower;

(iii) it has the power and authority to execute and perform this Agreement, and to borrow hereunder and to execute and deliver each of the other Loan Documents to which it is a party; and

(iv) when executed and delivered, each of the Loan Documents to which Borrower is a party will be valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject to entry of the Interim DIP Financing Order;

(b) Loan Documents. Subject to the entry of the Interim DIP Financing Order, and thereafter upon the entry of the Final DIP Financing Order, the execution, delivery and performance by Borrower of each of the Loan Documents to which Borrower is a party:

(i) have been duly authorized by all requisite action (including any required Partner approval) of Borrower required for the lawful execution, delivery and performance thereof;

(ii) do not violate any provisions of (1) applicable law, (2) any order of any court or other agency of government binding on Borrower or its properties, (3) the limited partnership agreement of Borrower or (4) any provisions of any indenture, agreement or other instrument to which Borrower is a party, or by which the properties or assets of Borrower are bound;

(iii) will not be in conflict with, result in a breach of or constitute an Event of Default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which Borrower is a party; and

(iv) will not result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Borrower except any Liens created by the Loan Documents.

(c) [Reserved].

(d) Borrower does not intend to treat the Loans and/or the Letters of Credit as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4). In the event Borrower determines to take any action inconsistent with such intention, it will promptly notify Lender thereof. If Borrower so notifies Lender, Borrower acknowledges that Lender may treat its Loans and/or such Letters of Credit as part of a transaction that is subject to Treasury Regulation Section 301.6112-1, and Lender will maintain the lists and other records required by such Treasury Regulation.

7.02. Representations and Warranties of Borrower. Borrower represents and warrants that:

(a) Partners. It has no Partners other than those Persons listed in Schedule 7.02(a) hereto.

(b) Ownership Interests. It does not own any interest in any Person other than the Persons listed in Schedule 7.02 (b) hereto.

(c) Financial Condition.

(i) Borrower has heretofore furnished to Lender unaudited interim financial statements of Borrower consisting of statements of financial position and operations, without notes, for and as of the end of each of the first six calendar months of the Fiscal Year beginning July 1, 2010, as certified by an Authorized Officer. Except as set forth therein, such financial statements (including the notes thereto) present fairly the financial condition of Borrower as of the end of each of such six calendar months and results of its operations and the changes in its Partners' equity for each of the six calendar months then ended, all in conformity with Generally Accepted Accounting Principles applied on a Consistent Basis, except that such financial statements have been prepared in accordance with the accounting principles applied, and in the manner used, for the preparation of interim unaudited financial statements of Borrower for previous interim fiscal periods (except for changes in accordance with Generally Accepted Accounting Principles) and present the financial condition of Borrower as of their respective dates and the results of operations of Borrower for the periods then ended, subject to normal year end and audit adjustments. Except as disclosed therein or otherwise described or referred to in Schedule 7.02(c), Borrower does not have, as of the date hereof, any known and material direct liability.

(ii) since the Petition Date, and except as resulting solely from the commencement of the Chapter 11 case, there has been no material adverse change in the condition, financial or otherwise, of Borrower or in the business, properties and operations of Borrower, nor have such business or properties been materially adversely affected as a result of any fire, explosion, earthquake, accident, strike, lockout, combination of workers, flood, embargo or act of God; and

(iii) except as set forth in Schedule 7.02(c) hereto, Borrower has not incurred, other than in the ordinary course of business, any material indebtedness, liabilities, obligations or commitments, contingent or otherwise, which remain outstanding or unsatisfied.

(d) Title to Properties. Borrower has title to all its real and personal Properties including the Collateral, subject to no transfer restrictions, Liens, mortgages, pledges, security interests, encumbrances or charges of any kind, except for (i) the transfer restrictions and Liens described in Schedule 7.02(d) attached hereto, and (ii) Liens permitted under **Section 9.02** hereof. [*NOTE: Wells Fargo mortgages need to be scheduled*]

(e) Taxes. Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed by it and except for taxes and assessments being contested in good faith and against which satisfactory reserves have been established, has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due and to the extent that such payment is not expressly prohibited by the Bankruptcy Code or the Court.

(f) Other Agreements. Borrower is not

(i) a party to any judgment, order, decree or any agreement or instrument or subject to restrictions materially adversely affecting the business, properties or assets, operation or condition (financial or otherwise) of Borrower; or

(ii) in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any agreement or instrument to which Borrower is a party, which default has, or if not remedied within any applicable grace period could have, a material adverse effect on the business, operations or condition, financial or otherwise, of Borrower.

(g) Litigation. Except for the Chapter 11 Case and for matters arising prior to the Petition Date that are subject to the automatic stay under the Bankruptcy Code, there is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or agency or arbitral body pending, or, to the best knowledge of Borrower, threatened by or against Borrower or affecting Borrower or any properties or rights of Borrower, which, if, determined adversely to Borrower, would materially adversely affect the financial condition, business or operations of Borrower.

(h) Margin Stock. Borrower does not own any "margin stock" as such term is defined in Regulation U of the Board. The proceeds of the borrowings made pursuant to **Section 2.01** hereof will be used by Borrower only for the purposes set forth in **Section 2.10** hereof, respectively. None of such proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry margin stock or for any other purpose which might constitute any of the Loans under this Agreement a "purpose credit" within the meaning of said Regulation U or Regulation X of the Board. Neither Borrower nor any agent acting in its behalf has taken or will take any action which might cause this Agreement or any of the documents or instruments delivered pursuant hereto to violate any regulation of the Board or to violate the Securities Exchange Act of 1934 or any state securities laws, in each case as in effect on the date hereof.

(i) Investment Company. Borrower is not an "investment company," or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act of 1940. The application of the proceeds of the Loans and repayment thereof by Borrower and the performance by Borrower of the transactions contemplated

by this Agreement will not violate any provision of said Act, or any rule, regulation or order issued by the Securities and Exchange Commission thereunder, in each case as in effect on the date hereof.

(j) Patents, Etc. Borrower owns or has the right to use, under valid license agreements or otherwise, all material patents, licenses, franchises, trademarks, trademark rights, tradenames, tradename rights, copyrights and know-how necessary to the conduct of its business as now conducted, without conflict known to Borrower with any patent, license, franchise, trademark, trade secrets and confidential commercial or proprietary information, tradename, copyright, rights to trade secrets or other proprietary rights of any other Person.

(k) No Untrue Statement. Neither this Agreement nor any other Loan Document or certificate or document executed and delivered by Borrower in accordance with **Section 5.01** hereof contains any misrepresentation or untrue statement of material fact or when taken as a whole omits to state a material fact necessary, in light of the circumstance under which it was made, in order to make any such representation or statement contained therein not misleading in any material respect.

(l) No Consents, Etc. Other than the entry by the Court of the Interim DIP Financing Order and thereafter the Final DIP Financing Order, neither the business or properties of Borrower, nor any relationship between Borrower and any other Person, nor any circumstance in connection with the execution, delivery and performance of the Loan Documents and the transactions contemplated hereby is such as to require a consent, approval or authorization of, or filing, registration or qualification with, any governmental or other authority or any other Person on the part of Borrower as a condition to the execution, delivery and performance of, or consummation of the transactions contemplated by, this Agreement or the other Loan Documents or if so, such consent, approval, authorization, filing, registration or qualification has been obtained or effected, as the case may be.

(m) ERISA.

(i) None of the employee benefit plans maintained at any time by Borrower or the trusts created thereunder has engaged in a prohibited transaction which could subject any such employee benefit plan or trust to a material tax or penalty on prohibited transactions imposed under Internal Revenue Code Section 4975 or ERISA;

(ii) None of the employee benefit plans maintained at any time by Borrower which are employee pension benefit plans and which are subject to Title IV of ERISA or the trusts created thereunder has been terminated nor has any such employee benefit plan of Borrower incurred any liability to the PBGC established pursuant to ERISA, other than for required insurance premiums which have been paid; Borrower has not withdrawn from or caused a partial withdrawal to occur with respect to any Multi-employer Plan; Borrower has made or provided for all contributions to all such employee pension benefit plans which it maintains and which are required as of the end of the most recent fiscal year under each such plan; Borrower has not incurred any accumulated funding deficiency with respect to any such plan, whether or not waived; nor has there been any reportable event, or other event or condition, which presents a material risk of termination of any such employee benefit plan by such PBGC;

(iii) The present value of all vested accrued benefits under the employee pension benefit plans which are subject to Title IV of ERISA, maintained by Borrower, did not, as of the most recent valuation date for each such plan, exceed the then current value of the assets of such employee benefit plans allocable to such benefits;

(iv) The consummation of the Loans provided for in **Article II** will not involve any prohibited transaction under ERISA;

(v) To the best of Borrower's knowledge, each employee pension benefit plan subject to Title IV of ERISA, maintained by Borrower, has been administered in accordance with its terms and is in compliance in all material respects with all applicable requirements of ERISA and other applicable laws, regulations and rules;

(vi) There has been no withdrawal liability incurred with respect to any Multi-employer Plan to which Borrower is or was a contributor;

(vii) As used in this Agreement, the terms "employee benefit plan," "employee pension benefit plan," "accumulated funding deficiency," "reportable event," and "accrued benefits" shall have the respective meanings assigned to them in ERISA, and the term "prohibited transaction" shall have the meaning assigned to it in Internal Revenue Code Section 4975 and ERISA; and

(viii) Borrower does not have any liability, contingent or otherwise, under any plan or program or the equivalent for unfunded post-retirement benefits, including pension, medical and death benefits, which liability would have a material adverse effect on the financial condition of Borrower.

(n) No Default. As of the date hereof, there does not exist any Default or Event of Default hereunder.

(o) Hazardous Materials. Neither Borrower nor, to the best of Borrower's knowledge, any previous owner or operator of any real Property currently owned or operated by Borrower or any other Person, has generated, stored, or disposed of any Hazardous Material on any portion of such Property, or transferred any Hazardous Material from such Property to any other location, giving rise to any liability of Borrower which would have a materially adverse effect on Borrower. Borrower is in compliance with all applicable Environmental Laws and Borrower has not been notified of any action, suit, proceeding or investigation which calls into question compliance by Borrower with any Environmental Laws or which seeks to suspend, revoke or terminate any license, permit or approval necessary for the generation, handling, storage, treatment or disposal of any Hazardous Material.

(p) Existing Locations. Exhibit C sets forth the address of each location where Collateral is maintained and the office where Borrower maintains books and records with respect to its Accounts.

(q) Tradenames. Exhibit D contains a list of all names, assumed or actual, under which Borrower or any predecessor of Borrower conducts or has conducted business after January 1, 2006.

(r) Surety. Borrower is not obligated as surety or indemnitor under any bond or other contract that assures payment or performance of any obligation of any Person, except as permitted hereunder.

(s) Governmental Approvals. \Upon the entry of the Interim DIP Financing Order, and thereafter upon the entry of the Final DIP Financing Order, and except as otherwise required by the Bankruptcy Code or Order of the Bankruptcy Court, Borrower has, is in compliance with, and is in good standing with respect to, all approvals of each governmental authority necessary to conduct its business

and to own, lease and operate its Property. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Borrower has complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a material adverse effect on the business or operations of Borrower.

(t) Labor Relations; Management Agreements. Borrower is not a party to or bound by any collective bargaining agreement or similar labor agreement. There are no material grievances, disputes or controversies with any union or other organization of Borrower's employees, or, to Borrower's knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining. Except as shown on Schedule 7.02(t), Borrower is not a party to or bound by any management agreement or consulting agreement.

(u) Accounts. With respect to Borrower's Accounts and each Schedule of Accounts prepared and delivered by Borrower, unless otherwise indicated in writing by Borrower:

(i) the Accounts are genuine, are in all respects what they purport to be, are not evidenced by a judgment instrument or document or, if evidenced by an instrument or document, are only evidenced by one original instrument or document, which has been delivered to Lender;

(ii) the Accounts cover bona fide sales and deliveries of Inventory usually dealt in by Borrower, or the rendition by Borrower of services, to an Account Debtor in the ordinary course of business;

(iii) the amounts of the face value of the Accounts shown on any Schedule of Accounts provided to Lender, and/or all invoices and statements delivered to Lender with respect to any Account, are actually and absolutely owing to Borrower and are not contingent for any reason except for claims arising as a result of warranties made by Borrower in its ordinary course of business which do not in the aggregate materially adversely affect Borrower's business, profits or condition, financial and otherwise;

(iv) there are no setoffs, discounts, allowances, material claims, material counterclaims or material disputes of any kind existing or asserted with respect to the Accounts, other than customary discounts and allowances granted in the ordinary course of Borrower's business, and Borrower has not made any agreement with any Account Debtor thereunder for any deduction therefrom;

(v) to the best of Borrower's knowledge, the Accounts represent valid and legally enforceable receivables according to their terms and there are no facts, events, or occurrences which in any way materially impair the validity or enforcement thereof or tend to reduce the amount payable thereunder from the amount of the invoice face value shown on any Schedule of Accounts, and on all contracts, invoices and statements delivered to Lender with respect thereto;

(vi) to the best of Borrower's knowledge, all Account Debtors (A) had the capacity to contract at the time any contract or other document giving rise to the Account was executed; (B) are able to pay all Accounts on which they are obligated in full when due and (C) will make payment of all Accounts on which they are obligated in full when due;

(vii) the goods or services giving rise thereto are not, and were not at the time of the sale or performance thereof, subject to any lien, claim, encumbrance or security interest, except for Liens permitted under **Section 9.02** hereof, Liens of Lender and Liens removed or terminated prior to the date hereof;

(viii) the Accounts have not been pledged to any Person other than to Lender, Collier and Management Investor, and will be owned by Borrower free and clear of any liens, claims, security interests or encumbrances except those in favor of Lender and the Liens in favor of Collier and Management Investor

(ix) except as provided in clause (viii) above, Lender's security interest in the Accounts will not be subject to any offset, deduction, counterclaim, lien or other adverse condition;

(x) the Accounts are for a liquidated amount maturing as stated in the Schedule of Accounts and in the invoice covering said sale; and

(xi) none of the Eligible Accounts represent a delivery of goods upon "consignment," "guaranteed sale," "sale or return," "payment on reorder" or similar terms and will not be subject to any prohibition or limitation upon assignment.

(v) Inventory. With respect to Borrower's Inventory, unless otherwise indicated in writing by Borrower:

(i) all Inventory of Borrower is located only at the locations listed on Exhibit C or is Inventory in transit;

(ii) No Inventory of Borrower is or will be subject to any Lien, claim, encumbrance or security interest whatsoever, except for the security interest and Lien of Lender hereunder and Liens permitted under **Section 9.02** hereof;

(iii) Except as disclosed on Exhibit C, no Inventory is now, and shall not at any time or times hereafter be, stored with a bailee, warehouseman, or similar party without Lender's prior written consent and, if Lender gives such consent, Borrower will concurrently therewith cause any such bailee, warehouseman, or similar party to issue and deliver to Lender in form and substance acceptable to Lender, warehouse receipts therefor in Lender's name; and

(iv) Except as stated on Exhibit C, no Inventory is under consignment to any Person.

(w) General Intangibles. With respect to Borrower's General Intangibles, unless otherwise indicated in writing by Borrower, none of the General Intangibles is or will be subject to any lien, claim, assignment encumbrance or security interest whatsoever, except for the Lien of Lender hereunder and Liens permitted under **Section 9.02** hereof.

(x) Equipment. With respect to Borrower's Equipment and each Schedule of Equipment prepared and delivered by Borrower, unless otherwise indicated in writing by Borrower:

(i) Borrower has good and marketable title to and ownership of the Equipment free and clear of any Lien whatsoever, except for the Lien of Lender hereunder and for Liens permitted under **Section 9.02** hereof; and

(ii) the book value for the Equipment listed on each Schedule of Equipment delivered to Lender represents reasonable estimations of the book value of the Equipment listed thereon as of the date of such Schedule of Equipment; and

(iii) the Equipment is in good operating condition and repair, all necessary replacements and repairs have been made so that the value and operating efficiency of the Equipment is preserved at all times, ordinary wear and tear excepted, is mechanically and structurally sound, and is capable of performing the functions for which it was designed, in accordance with manufacturer specifications.

(y) Priority of Liens. Upon entry of the Interim DIP Financing Order, and thereafter upon entry of the Final DIP Financing Order, the Liens granted pursuant to the Loan Documents constitute valid, enforceable, and perfected Liens on the Collateral, and such Liens constitute first priority Liens except with respect to other Liens in favor of Lender.

## ARTICLE VIII.

### Affirmative Covenants

During the DIP Term and thereafter until Full Payment of the Obligations, unless Lender shall otherwise consent in writing, Borrower shall:

#### 8.01. Financial Reports and Other Information.

(a) [reserved];

(b) as soon as practical and in any event within 30 days after the end of each month, deliver to Lender (i) statements of financial position of Borrower as of the last day of such month and the related statements of operations and partners' capital for such month and for the period from the beginning of the Fiscal Year through the end of such month, certified by an Authorized Officer as presenting fairly the financial position and results of operations of Borrower and the changes in partners' capital as of the date thereof and for the periods ended on such date, in conformity with the standards set forth in **Section 7.02(c)(i)** with respect to interim financials and (ii) together with such financial statements delivered in respect of any month which is the last month of a fiscal quarter of Borrower, a certificate of an Authorized Officer containing computations for such fiscal quarter (and Fiscal Year to date) in form satisfactory to Lender;

(c) [reserved];

(d) deliver to Lender, as soon as practicable and in any event not later than (i) each Business Day, a Borrowing Base Certificate prepared as of the close of business on the immediately preceding Business Day, including an update to the Schedule of Inventory and Schedule of Accounts as of the close of the immediately preceding Business Day, (ii) the fifteenth (15th) day of each month, (A) a Schedule of Accounts, including Accounts aging, prepared as of the last Business Day of the immediately preceding month, (B) a Schedule of Inventory prepared as of the last Business Day of the immediately preceding month, each in form and substance satisfactory to Lender, and (C) a report listing all of Borrower's accounts payable as of the last Business Day of the immediately preceding month, in form and substance satisfactory to Lender;

(e) [reserved];



(f) [reserved];

(g) promptly after Borrower has notified Lender of any intention by Borrower to treat the Loans and/or the Letters of Credit as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4), a duly completed copy of IRS Form 8886 or any successor form;

(h) promptly upon their becoming available to Borrower, deliver to Lender a copy of (i) all regular or special reports or effective registration statements which Borrower shall file with the Securities and Exchange Commission (or any successor thereto) or any securities exchange, (ii) all reports, proxy statements, financial statements and other information distributed by Borrower to its Partners, bondholders or the financial community in general, and (iii) any reports submitted to Borrower by independent accountants in connection with any annual, interim or special audit of Borrower;

(i) promptly, from time to time, deliver or cause to be delivered to Lender such other information regarding Borrower's operations, business affairs and financial condition as Lender may reasonably request;

(j) on and after February 23, 2011, and on or before the close of business on each Wednesday thereafter during the DIP Term, deliver to Lender an updated Budget as of the Friday preceding such Wednesday, a report showing actual results compared to those shown on the Budget for the preceding week, and an explanation of any material variances between projected results as shown in the Budget and actual results for such week on a line-by-line basis; and

(k) promptly after delivery thereof to the U.S. Trustee or any examiner appointed in the Chapter 11 Case, a copy of each report delivered to the U.S. Trustee or such examiner.

Lender is hereby authorized to deliver a copy of any such financial information delivered hereunder to Lender (or any affiliate of Lender), to any regulatory authority having jurisdiction over Lender pursuant to any written request therefor, and to any other Person who shall acquire or consider the acquisition of a participation interest in any Loan permitted by this Agreement.

8.02. Maintain Properties. Maintain all properties and other personal Property necessary to its operations in good working order and condition and make all needed repairs, replacements and renewals as are necessary to conduct its business in accordance with customary business practices.

8.03. Existence, Qualification, Etc. Do or cause to be done all things necessary to preserve and keep in full force and effect its existence and all material rights and franchises, trade names, trademarks and permits and maintain its license or qualification to do business and good standing in each jurisdiction in which its ownership or lease of Property or the nature of its business makes such license or qualification necessary.

8.04. Regulations and Taxes. Comply with or contest in good faith all statutes and governmental regulations and pay all taxes, assessments, governmental charges, claims for labor, supplies, rent and any other obligation which, if unpaid, might become a Lien against any of its properties except (i) liabilities being contested in good faith (with all proceedings to foreclose any such Lien on any of the Collateral being effectively stayed) and against which adequate reserves have been established, and (ii) Taxes the payment of which is expressly prohibited by the Bankruptcy Code or the Court.

8.05. Insurance; Payment of Premiums. Borrower shall, at its sole cost and expense, obtain and maintain (i) the Collateral insured for its full insurable value against loss or damage by fire, flood, theft, explosion, sprinklers and all other hazards and risks ordinarily insured against under all risk policies

in use in the jurisdiction where such properties are located, (ii) insurance against claims for general comprehensive liability relating to bodily injury, death or property damage in amounts as shall be satisfactory to Lender in its reasonable judgment, and (iii) insurance under the workers' compensation laws of the respective states in which it conducts business, and shall notify Lender promptly of any event or occurrence causing a material loss or decline in value of the Collateral and the occurrence of an event which may reasonably lead to the filing or threat of a filing of a claim for bodily injury, death or property damage or any claim under any workers' compensation law or the filing of such claim and the estimated (or actual, if available) amount of such loss or decline or claim. All policies of insurance on the Collateral shall be in form and with insurers recognized as adequate by prudent business persons and all such policies shall be in such amounts as may be reasonably satisfactory to Lender. Upon the request of Lender, Borrower shall deliver to Lender the original (or certified copy) of each policy of insurance on the Collateral and evidence of payment of all premiums therefor. Such policies of insurance shall contain an endorsement, in form and substance acceptable to Lender, showing loss payable to Lender. Such endorsement, or an independent instrument furnished to Lender, shall provide that the insurance companies will give Lender at least thirty (30) days' prior written notice before any such policy or policies of insurance shall be altered or canceled and that no act or default of Borrower or any other person shall affect the right of Lender to recover under such policy or policies of insurance in case of loss or damage. Borrower hereby directs all insurers under such policies of insurance where loss or damage to Collateral exceeds \$50,000 under any such policy of insurance to pay all proceeds payable thereunder solely to Lender. So long as no Event of Default exists hereunder, at the option of Borrower, in the case of insurance proceeds arising from the loss or damage of improvements to Borrower's real and personal Property, the proceeds may be used to replace or restore same with Property having equal or greater value and utility to that lost or destroyed. Borrower irrevocably makes, constitutes and appoints Lender (and all officers, employees or agents designated by Lender) as Borrower's true and lawful attorney (and agent-in-fact), effective from and after the occurrence of an Event of Default, for the purpose of making, settling and adjusting claims under such policies of insurance, endorsing the name of Borrower on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect to such policies of insurance. In the event Borrower, at any time or times hereafter, shall fail to obtain or maintain any of the policies of insurance required above or to pay any premium in whole or in part relating thereto, then Lender, without waiving or releasing any obligation or default by Borrower hereunder, may (but shall be under no obligation to) at any time or times thereafter obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto which Lender deems advisable. All sums so disbursed by Lender, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, on demand, by Borrower to Lender, shall bear interest until paid in full at the maximum interest rate per annum allowed by applicable law and shall be additional obligations hereunder secured by the Collateral. In addition, Borrower shall obtain and maintain in full force and effect policies of liability insurance in amounts at least equal to that carried by Persons in a similar size of business.

8.06. True Books. Keep true books of record and account in which full, true and correct entries will be made of all of its dealings and transactions, and set up on its books such reserves as may be required by Generally Accepted Accounting Principles with respect to all taxes, assessments, charges, levies and claims and with respect to its business in general, and include such reserves in interim as well as year-end financial statements.

8.07. Pay Indebtedness to Lender and Perform Other Covenants. Upon the entry of the Interim DIP Financing Order, and thereafter upon the entry of the Final DIP Financing Order: (i) make full and timely payment of the principal of and interest due and payable hereunder and all other Obligations due and payable hereunder whether now existing or hereafter arising; and (ii) duly comply with all the terms and covenants contained in all other instruments and documents given to Lender pursuant to this Agreement.

8.08. Payment of Indebtedness. To the extent permitted by the DIP Financing Orders and not expressly prohibited by the Bankruptcy Code or the Court, pay when due or within applicable grace periods (but in no event prior to due date thereof) all Indebtedness due third Persons, except when the amount thereof is being contested in good faith by appropriate proceedings and with adequate reserves therefor being set aside on the books of Borrower. If Borrower shall default in the payment of any principal (or installment thereof) of, or interest on, any such Indebtedness, Lender shall have the right, in its discretion, to pay such interest or principal for the account of Borrower and be reimbursed by Borrower therefor.

8.09. Right of Inspection and Appraisal. Permit any Person designated by Lender from time to time, subject (except when a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Collateral and other Properties of Borrower, inspect, audit and make extracts from Borrower's books and records, and discuss with its officers, employees, agents, advisors and independent accountants Borrower's business, financial condition, assets, prospects and results of operations. Lender shall not have any duty to Borrower to make any inspection, nor to share any results of any inspection, appraisal or report with Borrower. Borrower acknowledges that all inspections, appraisals and reports are prepared by Lender for its purposes, and Borrower shall not be entitled to rely upon them. Upon or after the occurrence and during the continuance thereafter of a Default or an Event of Default and subject to obtaining relief from stay as contemplated by the DIP Financing Orders (whether or not any or all Obligations are accelerated in consequence thereof), Lender may at any time and from time to time employ and maintain (at Borrower's expense) on any of Borrower's premises a custodian selected by Lender who shall have full authority to do all acts necessary to protect the interests of Lender.

8.10. Observe All Laws. Conform to and duly observe all laws, regulations and other valid requirements of any regulatory authority with respect to the conduct of its business.

8.11. Officer's Knowledge of Default. Upon any Authorized Officer or member, officer, manager or director of a General Partner obtaining knowledge of any Default or Event of Default hereunder or under any other obligation of Borrower, cause such officer to promptly notify Lender of the nature thereof, the period of existence thereof, and what action Borrower proposes to take with respect thereto.

8.12. Suits or Other Proceedings. Upon any Authorized Officer or member, officer, manager or director of a General Partner obtaining knowledge of any litigation, dispute or proceedings being instituted or threatened against Borrower, or any attachment, levy, execution or other process being instituted against any assets of Borrower in an amount greater than \$100,000 not otherwise covered by insurance, promptly deliver to Lender written notice thereof stating the nature and status of such litigation, dispute, proceeding, levy, execution or other process.

8.13. Environmental Reports. Promptly provide to Lender true, accurate and complete copies of any and all documents, including reports, submissions, notices, orders, directives, findings and correspondence made by Borrower to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration or to any other federal, state or local authority pursuant to any federal, state or local law, code or ordinance and all rules and regulations promulgated thereunder which require informational submissions concerning environmental, health or safety matters.

8.14. Notice of Discharge of Hazardous Material or Environmental Complaint. Give to Lender immediate written notice of any complaint, order, directive, claim, citation or notice by any governmental authority or any Person to Borrower or any successor with respect to (i) air emissions, (ii) spills, releases or discharges to soils or improvements located thereon, surface water, groundwater or

the sewer, septic system or waste treatment, storage or disposal systems servicing any leased or owned Property of Borrower, (iii) noise emissions, (iv) solid or liquid waste disposal, or (v) the use, generation, storage, transportation or disposal of Hazardous Material. Such notices shall include, among other information, the name of the party who filed the claim, the nature of the claim and the actual or potential amount of the claim. Borrower shall promptly comply with its obligations under law with regard to such matters. However, Borrower shall not be obligated to give such notice to Lender of discharge or existence of any Hazardous Material which occurs legally in accordance with and pursuant to the terms and conditions of a valid governmental permit, license, certificate or approval therefor.

8.15. Inspection Rights. Without limitation on Lender's rights under this Agreement, Lender shall have the right, but not the obligation, after giving prior notice to Borrower, to enter onto the Property of Borrower and to take such actions as it deems necessary or advisable to clean up, remove, resolve, minimize the impact of, or otherwise deal with, any Hazardous Material which could result in a complaint, order, citation, directive, claim, notice or other action against Borrower or any part of its assets, equipment, property, leaseholds or other facilities by any local, state or federal agency or otherwise, which in the sole opinion of Lender, could jeopardize its collateral security under the Loan Documents. All costs and expenses incurred by Lender in the exercise of any such rights shall be secured by the Collateral and shall be payable by Borrower **on demand**.

8.16. Indemnification. Borrower hereby agrees to defend, indemnify and hold the Indemnitees harmless from and against any and all claims, losses, liabilities, damages and expenses (including cleanup costs and reasonable attorneys' fees including those arising by reason of any of the aforesaid or an action against Borrower under this indemnity) arising directly or indirectly from, out of or by reason of the handling, storage, treatment, emission or disposal of any Hazardous Material by or in respect of Borrower or Property owned or leased by Borrower. This indemnity shall apply notwithstanding any negligent or other contributory conduct by or on the part of any Indemnitee or any one or more other Persons; provided, however, that nothing in this Section **8.16** shall preclude Borrower from taking action against Lender for damages for negligence by it or its employees. The provisions of this **Section 8.16** shall survive repayment of the Obligations, occurrence of the Commitment Termination Date and expiration or termination of this Agreement.

8.17. Further Assurances. At its cost and expense, upon request of Lender, duly execute and deliver or cause to be duly executed and delivered, to Lender such further instruments, documents, certificates, financing and continuation statements, and do and cause to be done such further acts that may be reasonably necessary or advisable in the opinion of Lender to carry out more effectively the provisions and purposes of this Agreement, any of the other Loan Documents or the DIP Financing Orders.

8.18. ERISA Requirement. Comply with all requirements of ERISA applicable to it and furnish to Lender as soon as possible and in any event (i) within thirty (30) days after Borrower or the duly appointed administrator of a employee benefit plan knows or has reason to know that any reportable event with respect to any plan has occurred, written statement of an Authorized Officer describing in reasonable detail such reportable event and any action which Borrower proposes to take with respect thereto, together with a copy of the notice of such reportable event given to the PBGC or a statement that said notice will be filed with the annual report of the United States Department of Labor with respect to such plan if such filing has been authorized, (ii) promptly after receipt thereof, a copy of any notice that Borrower may receive from the PBGC relating to the intention of the PBGC to terminate any employee benefit plan or plans or to appoint a trustee to administer any such plan, and (iii) within 10 days after a filing with the PBGC pursuant to Section 412(n) of the Internal Revenue Code of a notice of failure to make a required installment or other payment with respect to a plan, a General Partner's certificate setting forth details as to such failure and the action that Borrower proposes to take with respect thereto, together with a copy of such notice given to the PBGC.

8.19. Continued Operations. (i) Notify Lender in writing thirty (30) days in advance of any change in the location of its chief executive offices and principal place of business which are currently located at 14550 Plantation Road, Fort Myers, Florida 33912, (ii) notify Lender in writing thirty (30) days in advance of any change in the location of any of its Account Records to a location where there is no other Collateral, (iii) continue to conduct its business and engage principally in the same line or lines of business substantially as heretofore conducted, and (iv) continue at all times to preserve, protect and maintain free from Liens its material patents, copyrights, licenses, trademarks, trademark rights, trade names, trade name rights, trade secrets and know-how necessary or useful in the conduct of its operations.

8.20. Change of Locations. Notify Lender in writing ten (10) days in advance of any change in the location of any of its Collateral or any of its places of business or of the establishment of any new, or the discontinuance of any existing, place of business or of the locations at which any of the Collateral is kept, except that Borrower may move Inventory between and among its existing locations in order to fill orders in the ordinary course of Borrower's business without prior notice to Lender.

8.21. Use of Proceeds. Use the proceeds of the Loans solely for the purposes described in **Section 2.10** hereof.

8.22. Compliance With Bankruptcy Code, Rules and Orders. Comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Interim DIP Financing Order, the Final DIP Financing Order and all other orders entered by the Court in the Chapter 11 Case.

8.23. Distributions. Make no Distributions.

8.24. Net Cash Flow. Comply and perform in accordance with the Budget such that on any date of determination, Borrower's actual Net Cash Flow for the Weekly Period-to-Date is not less than the "net cash flow" projected on the Budget for such Weekly Period-to-Date.

8.25. Cash Receipts. Comply and perform in accordance with the Budget such that on any date of determination, Borrower's actual Cash Receipts for the Weekly Period-to-Date are not less than the "net proceeds" (excluding any "GOB Expense Reimbursement") projected on the Budget for such Weekly Period-to-Date.

8.26. Final DIP Budget. At or prior to the entry of the Final DIP Financing Order by the Court, deliver to Lender a rolling [    -week] budget setting forth, among other things, a cash flow forecast, cash receipts and disbursements (including costs of the Chapter 11 Case), each of which shall be in form and substance satisfactory to Lender (each a "Final DIP Budget").

8.27. Other Notices. Notify Lender in writing, promptly upon any Authorized Officer or any member, manager or officer of a General Partner obtaining knowledge of any of the following: (i) any pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract, any default under or termination of a contract to which Borrower is a party for which the breach, termination, nonperformance or failure to renew could result in monetary liability of or to any Person in an amount in excess of \$100,000 in any Fiscal Year or otherwise could reasonably be expected to have a material adverse effect on the business or operations of Borrower; (ii) the discharge of or any withdrawal or resignation by Borrower's independent accountants; (iii) Borrower's violation (or asserted violation) of any applicable law (including the Bankruptcy Code or any Environmental Law); (iv) any claim that Borrower may make under any policy of insurance with respect to the Collateral; (v) any dispute involving an amount due and owing in excess of \$25,000 between any Account Debtor and Borrower (which shall include, without limitation, any dispute in which an offset claim or counterclaim may result), including an explanation of the reason for the dispute, all claims related thereto and the amount in

controversy; (vi) any pleading filed with the Court seeking relief from the automatic stay or conversion or dismissal of the Chapter 11 Case or reclamation of any Collateral; and (vii) any offer or other expression of interest from any Person to purchase any of the Collateral (other than sales of Inventory in the ordinary course of business) and any proposed sale of any of the Collateral (including with such notice copies of drafts of all instruments and agreements applicable to any such sale), which shall specify the identity of the proposed purchaser, the terms of the proposed sale and the expected date of closing, subject to Court approval.

8.28. Chapter 11 Case Documents. Borrower shall provide, or shall cause its counsel in the Chapter 11 Case to provide, Lender's counsel with copies of all pleadings, motions, reports, applications and other papers filed by Borrower with the Court as well as copies of all billing and expense statements received from any Professional Person. Borrower shall include counsel for Lender on any "Special Notice List" or other similar list of parties to be served with papers in the Chapter 11 Case.

8.29. [Reserved]

8.30. Equipment. Immediately upon demand by Lender, deliver to Lender any and all evidence of ownership of any Equipment (including certificates of title and applications for the title) having an original cost of \$10,000 or more.

8.31. Prosecution of Sale Agreement. No later than (i) February 18, 2011, Borrower shall file with the Court a motion under Section 363 (a "Sale Motion") of the Bankruptcy Code seeking (a) entry of a Bid Procedures Order and (b) approval of a sale of all or substantially all of Borrower's assets pursuant to a fully executed Sale Agreement, subject to higher and better bids, (ii) February 24, 2011, the Court shall have entered a Bid Procedures Order, (iii) March 11, 2011, an auction pursuant to the Bid Procedures Order shall have occurred and concluded, and (iv) March 15, 2011, the Court shall have entered a Sale Approval Order, the transaction approved by the Sale Approval Order shall have closed and Lender shall have actually received all cash proceeds payable to Borrower at closing in connection therewith; and the Sale Motion shall remain pending and shall not have been withdrawn or dismissed by Borrower at any time during the DIP Term; and a Sale Agreement shall remain in full force and effect and shall not have expired or been terminated or withdrawn at any time during the DIP Term. Nothing herein shall constitute the consent or acquiescence of Lender to the sale or other disposition of any of the Collateral.

## ARTICLE IX.

### Negative Covenants

During the DIP Term and thereafter until Full Payment of the Obligations unless Lender shall otherwise consent in writing, Borrower will not:

9.01. Indebtedness. Incur, create, assume or permit to exist any Indebtedness, howsoever evidenced, except:

- (i) Indebtedness existing as of the date hereof and as set forth in Schedule 9.01 attached hereto;
- (ii) Indebtedness arising in connection with this Agreement;
- (iii) the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower's business; and

(iv) Indebtedness (other than Indebtedness for Money Borrowed) incurred in the ordinary course of business of Borrower during the Chapter 11 Case, including Professional Expenses, so long as such Indebtedness is not past due and payable (other than as required by the Court) and is not secured by a Lien that is not permitted pursuant to **Section 9.02**.

9.02. Liens. Incur, create or permit to exist any pledge, Lien, charge or other encumbrance of any nature whatsoever with respect to any Property or assets now owned or hereafter acquired by Borrower other than:

(i) Liens in favor of Lender;

(ii) Liens encumbering Equipment (and no other Property of Borrower), securing solely Borrower's obligations in respect of Indebtedness permitted to be incurred pursuant to the provisions of **Section 9.01(iv)**;

(iii) any unfiled Lien of materialmen, mechanics, workmen, warehousemen, carriers, landlords or repairmen; provided that if such a Lien shall be perfected and shall not be contested in good faith, it shall (unless prohibited by the Bankruptcy Code or Order of the Bankruptcy Court) be discharged of record immediately by payment, bond or otherwise; and

(iv) tax Liens which are being contested in good faith, or which constitute Liens for taxes the payment of which is not yet required (unless prohibited by the Bankruptcy Code or Order of the Bankruptcy Court);

(v) easements, restrictions, defects in title, covenants and similar encumbrances in respect of real Property as do not render title thereto uninsurable or detract from or interfere in any material respect with the use of such Property subject thereto in connection with the business of Borrower;

(vi) Liens securing the Collier Debt, so long as the Collier Intercreditor Agreement is in full force and effect;

(vii) Liens securing the Management Investor Debt, so long as the Management Investor Subordination Agreement is in full force and effect; and

(viii) valid, perfected, unavoidable Pre-Petition Liens that are Permitted Liens under (and as defined in) the Pre-Petition Loan Agreement.

9.03. Transfer of Assets. Sell, lease, transfer or otherwise dispose of any item of Property or asset except (i) sales, leases, and transfers or other dispositions in the ordinary course of business; (ii) sales and dispositions of assets or Property which are obsolete, worn out or no longer useful in Borrower's business; (iii) dispositions of Collateral that are consented to in writing by Lender and are authorized by the Court after notice and hearing; and (iv) the rejection pursuant to Section 365 of the Bankruptcy Code of unexpired leases and executory contracts that are consented to in writing by Lender and are authorized by the Court after notice and hearing.

9.04. Restricted Investments. Make or have any Restricted Investment.

9.05. Transactions with Affiliates. Enter into any transaction after the date hereof, including the purchase, sale, leasing or exchange of any real or personal Property, or the rendering of any service, with any Partner or any member, stockholder, officer, manager or director of any General Partner, except

that Borrower may continue in effect after the Petition Date its contract with FTI to serve as an officer of Borrower, and its employment arrangements with other officers of the Borrower.

9.06. ERISA. With respect to all employee pension benefit plans maintained by Borrower:

(i) terminate any of such employee pension benefit plans so as to incur any liability in excess of \$100,000 to the PBGC established pursuant to ERISA;

(ii) allow or suffer to exist any prohibited transaction involving any of such employee pension benefit plans or any trust created thereunder which would subject Borrower to a Tax or penalty or other liability on prohibited transactions in excess of \$100,000 imposed under Internal Revenue Code Section 4975 or ERISA;

(iii) fail to pay to any such employee pension benefit plan any contribution which it is obligated to pay under the terms of such plan;

(iv) allow or suffer to exist any accumulated funding deficiency, whether or not waived, with respect to any such employee pension benefit plan;

(v) allow or suffer to exist any occurrence of a reportable event or any other event or condition, which presents a material risk of termination by the PBGC of any such employee pension benefit plan that is a Single Employer Plan, which termination could result in any liability to the PBGC; or

(vi) incur any withdrawal liability with respect to any Multi-employer Plan which is not fully funded.

9.07. [Reserved].

9.08. Leasebacks. Enter into any arrangement, directly or indirectly, with any Person whereby Borrower shall sell or transfer any Property, whether now owned or hereafter acquired, used or useful in its business, in connection with the rental or lease of the Property so sold or transferred or of other Property which Borrower intends to use for substantially the same purpose or purposes as the Property so sold or transferred.

9.09. Fiscal Year. Change its Fiscal Year.

9.10. Collateral Account. After the date hereof, (i) close the Collateral Account or establish any new accounts with any Person other than Lender for the deposit or transfer of funds or (ii) establish, appoint, arrange for or enter into any kind of agreement or understanding with any Person other than Lender with respect to such Person's acting as an agent for the purpose of collection deposits for Borrower.

9.11. Capital. Permit any return or distribution to Partners of Capital Contributions.

9.12. Subordinated Debt. With respect to any Subordinated Debt (including the Collier Debt and the Management Investor Debt): (i) make any payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) in respect of such Subordinated Debt, or (ii) amend, supplement or otherwise modify any document, instrument or agreement relating to such Subordinated Debt (including the Collier Intercreditor Agreement and the Management Investor Subordination Agreement).



9.13. Capital Expenditures. Make any Capital Expenditures.

9.14. Loans. Make any loans or other advances of money to any Person, except (i) prepaid expenses and extensions of trade credit made in the ordinary course of business; and (ii) deposits with financial institutions permitted hereunder.

9.15. Fundamental Changes. Merge, combine or consolidate with any Person, or liquidate, wind up its affairs or dissolve itself, in each case whether in a single transaction or in a series of related transactions; change its name or, except as disclosed on Schedule 9.15, conduct business under any fictitious name; change its tax, charter or other organizational identification number; or change its form or state of organization.

9.16. Subsidiaries. Form or acquire any Subsidiary.

9.17. Organizational Documents. Amend, modify or otherwise change Borrower's agreement of certificate of limited partnership, agreement of limited partnership, or any other agreement or instrument governing the formation or operation of Borrower.

9.18. Tax Consolidations. File or consent to the filing of any consolidated income tax return with any Person.

9.19. Conduct of Business. Engage in any business, other than its business as conducted on the Petition Date, and any activities incidental thereto.

9.20. Equipment. Permit any Equipment to become affixed to any real Property unless the landlord or mortgagee of such Property delivers to Lender a Landlord Agreement, in form and substance satisfactory to Lender in its reasonable discretion.

9.21. Trade Styles. Materially change, amend, alter, terminate, or cease using its tradenames or styles under which it sells Inventory as of the date hereof ("Trade Styles"), or use additional Trade Styles, without prior written notice to Lender.

9.22. Payment of Claims. Without the prior approval of the Court and the consent of Lender, make any payment of principal or interest on account of any claim against Borrower that arose prior to the Petition Date, other than claims that may be paid from the proceeds of Revolving Credit Loans in accordance with **Section 2.10**.

9.23. Filing of Motions and Applications. Without the prior written consent of Lender, apply to the Court for authority to (i) take any action that is prohibited by the terms of any of the Loan Documents, (ii) refrain from taking any action that is required to be taken by the terms of any of the Loan Documents or the DIP Financing Orders or (iii) permit any Indebtedness, claim or Lien to be *pari passu* with or senior to any of the Obligations or Liens in favor of Lender.

9.24. Modifications to DIP Financing Orders. Seek or consent to any amendment, supplement or any other modification of any of the terms of the DIP Financing Orders.

9.25. Use of Proceeds. Use any proceeds of Revolving Credit Loans for a purpose that is not expressly permitted by **Section 2.10**.

9.26. Payments on Pre-Petition Debt. Make any payments or repurchases with respect to any Pre-Petition Debt or other claims arising prior to the Petition Date against Borrower except as expressly approved by an order of the Court.

ARTICLE X.

Events of Default and Acceleration

10.01. Events of Default. If any one or more of the following events (herein called "Events of Default") shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), that is to say:

(a) if default shall be made in the due and punctual payment of the principal of any Loan, when and as the same shall be due and payable whether pursuant to any provision of **Article II** or **Article III** hereof, at maturity, by acceleration or otherwise; or

(b) if default shall be made in the due and punctual payment of any amount of interest on any Loan or of any fees on the date on which the same shall be due and payable or of any other Obligation; or

(c) if default shall be made in the performance or observance of any covenant set forth in **Sections 2.10, 2.11, 6.02, 6.05, 6.06, 8.01, 8.03, 8.04, 8.05, 8.07, 8.09, 8.11, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26, 8.27, 8.28, 8.31** or **Article IX** hereof; or

(d) if a default shall be made in the performance or observance of, or shall occur under, any covenant, agreement or provision contained in this Agreement (other than as described in clauses (a), (b) or (c) above) and such default shall continue for five (5) or more days after the earlier of receipt of notice of such default by the Authorized Officer from Lender or Borrower becomes aware of such default, or if a default shall be made in the performance or observance of, or shall occur under, any covenant, agreement or provision contained in any of the other Loan Documents or in any instrument or document evidencing or creating any obligation, guaranty, Lien or security interest in favor of Lender or delivered to Lender in connection with or pursuant to this Agreement or any of the Obligations (beyond any applicable grace period contained therein), or if any Loan Document ceases to be in full force and effect (other than by reason of any action by Lender), or if without the written consent of Lender, this Agreement or any other Loan Document shall be disaffirmed or shall terminate, be terminable or be terminated or become void or unenforceable for any reason whatsoever (other than in accordance with its terms in the absence of default or by reason of any action by Lender); or

(e) if (other than as required by the Bankruptcy Code or Order of the Bankruptcy Court) a default shall occur (i) in the payment of any principal, interest or premium with respect to any Indebtedness (other than the Loans) of Borrower incurred after the Petition Date or (ii) in the performance, observance or fulfillment of any term or covenant contained in any agreement or instrument under or pursuant to which any such Indebtedness may have been issued, created, assumed, guaranteed or secured by Borrower, and such default shall continue for more than the period of grace, if any, therein specified, or if such default shall permit the holder of any such Indebtedness to accelerate the maturity thereof; or

(f) if any representation, warranty or other statement of fact contained herein or in any writing, certificate, report or statement at any time furnished to Lender by Borrower pursuant to or in

connection with this Agreement, or otherwise, shall be false or misleading in any material respect when given; or

(g) [Reserved]; or

(h) [Reserved]; or

(i) if (i) any judgment where the amount not covered by insurance (or the amount as to which the insurer denies liability) is in excess of \$100,000 is rendered against Borrower, or (ii) there is any attachment, injunction or execution against any of Borrower's properties for any amount in excess of \$100,000 and such judgment, attachment, injunction or execution remains unpaid, unstayed or undismissed for a period of thirty (30) days; or

(j) if Borrower shall, other than in the ordinary course of business (as determined by past practices), suspend all or any part of its operations material to the conduct of the business of Borrower; or

(k) if (i) Borrower shall engage in any prohibited transaction (as described in **Section 9.06(ii)** hereof) involving any employee pension benefit plan of Borrower, (ii) any accumulated funding deficiency (as referred to in **Section 9.06(iv)** hereof), whether or not waived, shall exist with respect to any Single Employer Plan, (iii) a reportable event (as referred to in **Section 9.06(v)** hereof) (other than a reportable event for which the statutory notice requirement to the PBGC has been waived by regulation) shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed to administer or to terminate, any Single Employer Plan, which reportable event or institution or proceedings is, in the reasonable opinion of Lender, likely to result in the termination of such Single Employer Plan for purposes of Title IV of ERISA, and in the case of such a reportable event, the continuance of such reportable event shall be unremedied for thirty (30) days after notice of such reportable event pursuant to Section 4043 (a), (c) or (d) of ERISA is given, as the case may be, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) Borrower shall withdraw from a Multi-employer Plan for purposes of Title IV of ERISA, and, as a result of any such withdrawal, Borrower shall incur withdrawal liability to such Multi-employer Plan, or (vi) any other event or condition shall occur or exist; and in each case in clauses (i) through (vi) of this **Section 10.01(k)**, such event or condition, together with all other such events or conditions, if any, could subject Borrower to any tax, penalty or other liabilities in the aggregate material in relation to the business, operations, property or financial or other condition of Borrower and in each such case the event or condition is not remedied to the satisfaction of Lender within thirty (30) days after the earlier of (i) receipt of notice of such event or condition by the Authorized Officer from Lender or (ii) Borrower becomes aware of such event or condition; or

(l) if Borrower denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to Lender; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Lender); or

(m) if a loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds \$100,000; or

(n) if Borrower, any officer of Borrower, or any member, manager, officer or director of any General Partner is criminally indicted or convicted for (i) a felony committed in the conduct of Borrower's business, or (ii) violating any state or federal law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that could lead to the forfeiture of any material Property or any Collateral; or

(o) if a Change of Control occurs, or, after the Petition Date, any event (other than the filing of the Chapter 11 Case) occurs that has a Material Adverse Effect on the business or operations of Borrower. For purposes of this clause (p), the term "Material Adverse Effect" shall mean the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, (i) has or could be reasonably expected to have a material adverse effect on the business, operations, Property, prospects or condition (financial or otherwise) of Borrower, on the value of any material Collateral, on the enforceability of any Loan Documents, or on the validity or priority of Lender's Liens on any Collateral; (ii) impairs the ability of Borrower to perform any obligations under the Loan Documents, including repayment of any Obligations; or (iii) otherwise impairs the ability of Lender to enforce or collect any Obligations or to realize upon any Collateral; or

(p) if Borrower shall fail to comply with any of the provisions of the DIP Financing Orders; a trustee shall be appointed in the Chapter 11 Case; an examiner shall be appointed in the Chapter 11 Case with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; the Chapter 11 Case shall be dismissed or converted to a case under Chapter 7 or a motion for any such dismissal or conversion shall be filed by Borrower; Borrower or any affiliate shall obtain the Court's approval of a disclosure statement for a Reorganization Plan other than an Acceptable Plan or a Confirmation Order shall be entered with respect to a Reorganization Plan (regardless of the proponent of such Reorganization Plan) if such Reorganization Plan is not an Acceptable Plan; there shall be filed by Borrower any motion to sell all or any substantial part of the Collateral (or to sell the right to sell the Collateral as an agent of Borrower) on terms that are not acceptable to Lender in its discretion; any substantial part of Borrower's Property, other than the Collateral, shall be sold by Borrower and, as a consequence of such sale, Borrower is not able to continue its business operations in substantially the same manner as was conducted by it prior to such sale; Borrower shall file any motion to alter, amend, vacate, supplement, modify, or reconsider, in any respect, either of the DIP Financing Orders or, without Lender's prior written consent, either of the DIP Financing Orders is amended, vacated, stayed, reversed or otherwise modified; the Court shall enter an order granting to any Person other than Lender relief from the automatic stay to foreclose upon a Lien with respect to any Property of Borrower provided that (x) Lender has a first priority Lien on such Property or (y) such relief of stay could reasonably be expected to have a material adverse effect on the ongoing business operations or financial performance of Borrower; an order shall be entered for the substantive consolidation of the Estate of Borrower with any other Person; Borrower shall not have sufficient Availability on any date to pay, or shall otherwise fail to pay as and when due and payable, all costs and expenses of administration that are incurred by it in the Chapter 11 Case that are due and payable on such date; Borrower shall file a motion or other request with the Court seeking authority to use any cash proceeds of the Collateral or to obtain any financing under Section 364(d) of the Bankruptcy Code secured by a priming Lien, or Lien of equal priority with Lender's Liens, upon any Collateral, in each case without Lender's prior written consent; an application shall be filed by Borrower for the approval of any superpriority claim in the Chapter 11 Case that is *pari passu* with or senior to the Obligations or any of the Pre-Petition Debt or there shall arise or be granted any such *pari passu* or superpriority claim; Borrower shall file any action, suit or other proceeding or contested matter challenging the validity, perfection or priority of any Liens of Lender securing the Pre-Petition Debt or the validity or enforceability of any of the Pre-Petition Loan Documents, the Obligations or the validity or enforceability of any of the Loan Documents, or asserting any Avoidance Claim against Lender or seeking to recover any monetary damages from Lender; or, without Lender's consent, Borrower shall discontinue or suspend all or any material part of its business operations or commence an orderly wind-down or liquidation of any material part of the Collateral;

then, and in any such event and at any time thereafter, if such Event of Default or any other Event of Default shall then be continuing, and subject to obtaining relief from stay as contemplated by the DIP Financing Orders,

(A) either or both of the following actions may be taken: (i) Lender may declare any obligation of Lender to make further Loans terminated, whereupon the obligation of Lender to make further Loans, hereunder shall terminate immediately, and (ii) Lender may, at its option, declare by notice to Borrower any or all of the Obligations to be immediately due and payable, and the same, all interest accrued thereon and all other Obligations of Borrower to Lender shall forthwith become immediately due and payable without presentment, demand, protest, notice or other formality of any kind, all of which are hereby expressly waived, anything contained herein or in any instrument evidencing the Obligations to the contrary notwithstanding;

(B) Borrower shall, upon demand of Lender, promptly cause to be performed at Borrower's expense by independent certified public accountants acceptable to Lender an audit of all Inventory of Borrower;

(C) Subject to compliance with the express terms of the DIP Financing Orders, Lender shall have the right to (i) enter upon the premises of Borrower through self-help and without judicial process, without first obtaining a final judgment or giving Borrower notice and opportunity for a hearing on the validity of Lender's claim and without any obligation to pay rent to Borrower, or any other place or places where any Collateral is located and kept, and remove the Collateral therefrom to the premises of Lender or any agent of Lender, for such time as the Lender may desire, in order effectively to collect or to liquidate the Collateral, and (ii) require Borrower to assemble the Collateral belonging to Borrower and make it available to Lender at a place to be designated by Lender in its sole discretion;

(D) Lender shall have all of the rights and remedies a secured party under the UCC in respect of the Collateral and which are otherwise available under the Loan Documents or under any applicable law, and in addition, shall have all of the following rights and remedies: Lender may at any time and from time to time, with or without judicial process or the aid and assistance of others and without incurring any liability to Borrower, upon ten (10) days' notice to Borrower and in a commercially reasonable manner sell or otherwise dispose of any Collateral, at public or private sale or proceedings or otherwise, by one or more contracts, in one or more lots, at the same or different times, with or without having the Collateral at the place of sale or other disposition, for cash and/or credit, and upon any terms, at such place(s) and time(s) and to such person(s) as Lender deems best, provided that all notice is hereby waived with respect to any of the Collateral which threatens to decline speedily in value or is of a type customarily sold on a recognized market; if any Collateral is sold by Lender upon credit or for future delivery, Lender shall not be liable for the failure of the purchaser to pay for same and in such event Lender may resell such Collateral in accordance with the provisions hereof; Lender may buy any Collateral at any public sale and Lender may buy such Collateral at private sale so long as such sale is made in a commercially reasonable manner and in each case may make payment therefor by any means, free from any right of redemption which is hereby expressly waived by Borrower and, in lieu of actual payment of such purchase price, Lender may set off the amount of such price against the Obligations;

(E) Lender shall have the right to (i) demand payment of the Accounts; (ii) enforce payment of the Accounts, by legal proceedings or otherwise; (iii) exercise all of Borrower's rights and remedies with respect to the collection of the Accounts; (iv) settle, adjust, compromise, extend or renew the Accounts; (v) settle, adjust or compromise any legal proceedings brought to collect the Accounts; (vi) if permitted by applicable law, sell or assign the Accounts upon such terms, for such amounts and at such time or times as Lender deems advisable; (vii) discharge and release the Accounts or extend the time of payment of any and all Accounts or to make allowances or adjustments relating thereto; (viii) take control, in any manner, of any item of

payment or proceeds with respect to any Account; (ix) prepare, file and sign Borrower's name on a proof of claim in an Insolvency Proceeding bankruptcy or similar document against any Account Debtor; (x) prepare, file and sign Borrower's name on any notice of lien, notice of assignment, financing statements, assignment or satisfaction of lien or similar document in connection with the Accounts; (xi) endorse the name of Borrower upon any chattel paper, document, instrument, invoice, freight bill, bill of lading or similar document or notices to Account Debtors or agreement relating to the Accounts or Inventory; (xii) use Borrower's stationery for verifications of the Accounts and notices thereof to Account Debtors; (xiii) use the information recorded on or contained in any data processing equipment and computer hardware and software relating to the Accounts and Inventory to which Borrower has access; (xiv) issue credit in Lender's name or Borrower's name; and (xv) do all acts and things and execute all documents necessary, in Lender's sole discretion, to collect the Accounts;

(F) Lender may make any adjustment to the Borrowing Base; and

(G) Lender may require Borrower to Cash Collateralize all Letter of Credit Obligations, Banking Relationship Debt and other Obligations that are contingent or not yet due and payable, and, if Borrower fails promptly to deposit such Cash Collateral, Lender may advance the required Cash Collateral as Revolving Credit Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 5.02** are satisfied).

In addition to the foregoing, Lender may, as provided for in the Financing Orders, at any time (whether or not an Event of Default exists or if the Commitment Termination Date has occurred) fund one or more Revolving Credit Loans into an escrow account at Lender for the sole benefit of the Professional Persons and the U.S. Trustee, and such Revolving Credit Loans shall be entitled to all of the benefits and security of the Loan Documents and the DIP Financing Orders.

10.02. Lender to Act. In case any one or more Events of Default shall occur and be continuing, Lender may proceed to protect and enforce its rights or remedies either by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein or in any other Loan Document, or to enforce the payment of the Obligations or any other legal or equitable right or remedy.

10.03. Cumulative Rights. No right or remedy herein conferred upon Lender is intended to be exclusive of any other rights or remedies contained herein or in any other Loan Document or existing under law, and every such right or remedy shall be cumulative and shall be in addition to every other such right or remedy contained herein and therein or now or hereafter existing at law or in equity or by statute, or otherwise.

10.04. No Waiver. No course of dealing between Borrower and Lender or any failure or delay on the part of Lender in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies hereunder and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder or of the same right or remedy on a future occasion.

10.05. Default. Lender shall have no right to accelerate any of the Loans upon, or to institute any action or proceeding before any court to realize upon Collateral as a result of, the occurrence of any Default which shall not also constitute an Event of Default; provided, however, nothing contained in this sentence shall in any respect impair or adversely affect the right, power and authority of Lender (i) to take any action expressly required or permitted to be taken under the Loan Documents upon the occurrence of any Default (and including any action or proceeding which Lender may determine to be necessary or

appropriate in furtherance of any such expressly authorized action) and (ii) to take any action provided under the Loan Documents or otherwise available by statute, at law or in equity upon the occurrence of any Event of Default.

10.06. Default Remedies Subject to Automatic Stay. To the extent that any remedy available to Lender under this Agreement after an Event of Default has occurred is subject to the automatic stay imposed by Section 362(a) of the Bankruptcy Code, nothing in this Agreement shall relieve Lender of the obligation to obtain relief from such automatic stay from the Court (pursuant to the terms of the DIP Financing Orders or otherwise) prior to exercising post-Default remedies that are subject to the automatic stay.

10.07. License. Lender is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of Borrower, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Borrower's rights and interests under Intellectual Property shall inure to Lender's benefit.

10.08. Anti-Marshalling Provisions. The right is hereby given by Borrower to Lender to make releases (whether in whole or in part) of all or any part of the Collateral agreeable to Lender without notice to, or the consent, approval or agreement of other parties and interests, including junior lienors, which releases shall not impair in any manner the validity of or priority of the Liens and security interest in the remaining Collateral conferred under such documents, nor release Borrower from personal liability for the Obligations hereby secured. Notwithstanding the existence of any other security interest in the Collateral held, Lender shall have the right to determine the order in which any or all of the Collateral shall be subjected to the remedies provided in this Agreement. Borrower hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

## ARTICLE XI.

### Miscellaneous

11.01. Participations. Lender may sell participations to one or more banks or other Persons as to all or a portion of its rights and obligations under this Agreement; provided that (i) Lender's obligations under this Agreement shall remain unchanged, (ii) Lender shall remain solely responsible for the performance of its obligations, (iii) Lender shall remain the holder of any Revolving Note issued to it for the purpose of this Agreement, (iv) such participations shall be in a minimum amount of \$1,000,000, and (v) Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement and with regard to any and all payments to be made under this Agreement; provided that the participation agreement between Lender and its participants may provide that Lender will obtain the approval of such participant prior to Lender's agreeing to any amendment or waiver of any provisions of this Agreement which would (A) extend the maturity of the Obligations, (B) reduce the interest rate hereunder or (C) release all or any substantial part of the Collateral other than in accordance with the terms of the Loan Documents, and (vi) the sale of any such participations which require Borrower to file a registration statement with the United States Securities and Exchange Commission or under the securities regulations or laws of any state shall not be permitted.

11.02. Notices. Any notice shall be conclusively deemed to have been received by any party hereto and be effective on the day on which delivered to such party (against receipt therefor) at the

address set forth below or such other address as such party shall specify to the other parties in writing (or, in the case of telephonic notice or notice by telecopy, telegram or telex (where the receipt of such message is verified by return) expressly provided for hereunder, when received at such telephone, telecopy or telex number as may from time to time be specified in written or verbal notice to the other parties hereto or otherwise received), or if sent prepaid by certified or registered mail return receipt requested on the third Business Day after the day on which mailed, addressed to such party at said address and to any counsel for such party who has made an appearance in the Chapter 11 Case at the address for notices to such counsel in the Chapter 11 Case:

(a) if to Borrower:

Robb & Stucky Limited LLLP  
14550 Plantation Road  
Ft. Myers, Florida 33912  
Attention: Chief Financial Officer  
Facsimile No.: (\_\_\_\_) \_\_\_\_-\_\_\_\_

and

Derby Road Investments, Inc.  
14550 Plantation Road  
Ft. Myers, Florida 33912  
Attention: Chief Financial Officer  
Facsimile No.: (\_\_\_\_) \_\_\_\_-\_\_\_\_

And

Paul Steven Singerman, Esq.  
Berger Singerman, PA  
200 S Biscayne Blvd; Suite 1000  
Miami, FL 33131  
Facsimile No.: 305 714 4340

(b) if to Lender:

Bank of America, N.A  
300 Galleria Parkway, NW  
Suite 800  
Atlanta, Georgia 30339  
Attention: Robb & Stucky Loan Administration  
Facsimile No.: (404) 607-3277

Electronic mail and internet websites may be used only for routine communications, such as financial statements, Borrowing Base Certificates and other information required by **Section 8.01**, administrative matters, distribution of Loan Documents for execution, and matters permitted under **Section 2.04**. Lender makes no assurances as to the privacy and security of electronic communications. Electronic and voice mail may not be used as effective notice under the Loan Documents. Lender may



rely upon any notices purportedly given by or on behalf of Borrower even if such notices were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Borrower shall indemnify and hold harmless Lender from any liabilities, losses, costs and expenses arising from any telephonic communication purportedly given by or on behalf of Borrower.

11.03. Appointment of Lender as Borrower's Lawful Attorney. In addition to any other appointment contained in this Agreement or any other Loan Document, during the continuance of an Event of Default, Borrower irrevocably designates, makes, constitutes and appoints Lender (and all Persons designated by Lender) as its true and lawful attorney (and agent-in-fact). All acts of Lender or its designee taken pursuant to **Section 10.01** are hereby ratified and confirmed and Lender or its designee shall not be liable for any acts of omission or commission nor for any error of judgment or mistake of fact or law. This power, being coupled with an interest, is irrevocable by Borrower until Full Payment of all of the Obligations.

11.04. Setoff. Borrower agrees that Lender shall have a Lien for all the Obligations of Borrower upon all deposits or deposit accounts, of any kind, or any interest in any deposits or deposit accounts thereof, now or hereafter pledged, mortgaged, transferred or assigned to Lender or otherwise in the possession or control of Lender (other than for safekeeping) for any purpose for the account or benefit of Borrower and including any balance of any deposit account or of any credit of Borrower with Lender, whether now existing or hereafter established, hereby authorizing Lender at any time or times with or without prior notice to apply such balances or any part thereof to such of the Obligations of Borrower to Lender then past due and in such amounts as they may elect, and whether or not the collateral or the responsibility of other Persons primarily, secondarily or otherwise liable may be deemed adequate. For the purposes of this paragraph, all remittances and Property shall be deemed to be in the possession of Lender as soon as the same may be put in transit to it by mail or carrier or by other bailee.

11.05. Survival. All covenants, agreements, representations and warranties made herein shall survive the making by Lender of the Loans and the execution and delivery to Lender of this Agreement and shall continue in full force and effect so long as any of Obligations remain outstanding or Lender has any commitment hereunder. Whenever in this Agreement, any of the parties hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party.

11.06. Expenses. Borrower agrees (a) to pay or reimburse Lender for all its reasonable and customary out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of, and any amendment, supplement or modification to, this Agreement or any of the other Loan Documents, and the consummation of the transactions contemplated hereby and thereby, including the reasonable and customary fees and disbursements of counsel to Lender, (b) to pay or reimburse Lender for all its reasonable costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement (including with respect to any Collateral), including the reasonable fees and disbursements of its counsel, (c) to pay, indemnify and hold Lender harmless from any and all recording and filing fees and any and all liabilities with respect to, or resulting from any failure to pay or delay in paying, documentary, stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation of any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, (d) to pay the costs of appraisals, inspections, and verifications of the Collateral, including travel, lodging, and meals for inspections of the Collateral and Borrower's operations by Lender plus Lender's then customary charge for field examinations and audits and the preparation of reports thereof (such charge is currently \$1,000 per day (or portion thereof) for each Person retained or employed by Lender with respect to each field examination or audit), (e) to pay, indemnify, and hold Lender harmless 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 and administration of this Agreement or in any respect relating to the transactions contemplated hereby or thereby, and (f) to pay or reimburse Lender for all of its reasonable costs and expenses, including legal fees and expenses, incurred in connection with monitoring or participating in the Chapter 11 Case; provided, however, that Borrower shall have no obligation hereunder with respect to liabilities to be indemnified under this **Section 11.06** arising from (i) the willful misconduct or gross negligence of the party seeking indemnification, (ii) any taxes imposed upon Lender other than the documentary, stamp, excise and similar taxes described in clause (c) above or any tax resulting from any Regulatory Change, which tax would be payable to Lender by Borrower pursuant to **Article IV** hereof, (iii) taxes imposed as a result of a transfer or assignment of any Revolving Note, participation or assignment of a portion of its rights or (iv) any taxes imposed upon any transferee of any Revolving Note. The agreements in this subsection shall survive repayment of all Obligations hereunder.

11.07. Amendments. No amendment, modification or waiver of any provision of this Agreement or any of the Loan Documents and no consent by Lender to any departure therefrom by Borrower shall be effective unless such amendment, modification or waiver shall be in writing and signed by Lender.

11.08. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.

11.09. Waivers by Borrower. In any litigation in any court with respect to, in connection with, or arising out of this Agreement, the Loans, any of the other Loan Documents, the Collateral, the Obligations, or any instrument or document delivered pursuant to this Agreement, or the validity, protection, interpretation, collection or enforcement thereof, or any other claim or dispute howsoever arising between Borrower and Lender, (i) Borrower hereby waives the right to interpose any setoff, recoupment, counterclaim or cross-claim in connection with any such litigation, irrespective of the nature of such setoff, recoupment, counter-claim or cross-claim unless such setoff, recoupment, counterclaim or cross-claim could not, by reason of any applicable federal or state procedural laws, be interposed, pleaded or alleged in any other action and (ii) Borrower and Lender hereby waive trial by jury in connection with any such litigation.

11.10. Termination. This Agreement shall continue in full force and effect until terminated pursuant to the terms hereof; however, Lender shall have the right to terminate this Agreement immediately at any time during the continuance of an Event of Default under **Article X** hereof as provided therein. The termination of this Agreement shall not affect any rights of Borrower or Lender or any obligation of Borrower or Lender, arising prior to the effective date of such termination, and the provisions hereof shall continue to be fully operative until all transactions entered into or rights created or obligations incurred prior to such termination have been fully disposed of, concluded or liquidated and the Obligations arising prior to or after such termination have been Paid in Full. Upon the termination of this Agreement, all Obligations (including the Loans) shall be due and payable without notice or demand. The security interests, Liens and rights granted to Lender hereunder and under the other Loan Documents shall continue in full force and effect, notwithstanding the termination of this Agreement, until all of the Obligations have been Paid in Full after the termination hereof. All representations, warranties, covenants, waivers and agreements contained herein shall survive termination hereof until Full Payment of all of the Obligations unless otherwise provided herein. Notwithstanding the foregoing, if after receipt of any payment of all or any part of the Obligations, Lender is for any reason compelled to surrender such payment to any Person because such payment is determined to be void or voidable as a preference, impermissible setoff, a diversion of trust funds or for any other reason, this Agreement shall continue in

full force and Borrower shall be liable to, and shall indemnify and hold Lender harmless for, the amount of such payment surrendered until Lender shall have been finally and irrevocably paid in full. The provisions of the foregoing sentence shall be and remain effective notwithstanding any contrary action which may have been taken by Lender in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Lender's rights under this Agreement and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

11.11. Governing Law; Jurisdiction and Venue. All documents executed pursuant to the transactions contemplated herein, including this Agreement and each of the Loan Documents shall be deemed to be contracts made under, and for all purposes shall be construed in accordance with, the internal laws and judicial decisions of the State of Florida; provided that this **Section 11.11** shall not affect the applicability of, and interpretation or construction of appropriate terms and provisions under the UCC of any jurisdiction which governs the security interests in any of the Collateral. Borrower and Lender hereby submit to the jurisdiction and venue of the Court for the purposes of resolving disputes hereunder (or under any other Loan Document) or for the purposes of collection. Notwithstanding the foregoing, if the Chapter 11 Case is dismissed or Lender obtains relief from the automatic stay or is otherwise authorized to enforce its remedies hereunder or under applicable law while any Event of Default exists, the term "Court" as used in this **Section 11.11** shall also mean any state or federal court of competent jurisdiction located in the State of Florida, as elected by Lender in its discretion.

11.12. Indemnification. **BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE.** In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee.

11.13. Conflicts with Other Loan Documents. In the event that any term of any of the Loan Documents other than this Agreement conflicts with any term of this Agreement, the terms and provisions of this Agreement shall control. To the extent that any provisions in this Agreement or the other Loan Documents are inconsistent with any of the provisions of the DIP Financing Orders, the provisions of the DIP Financing Orders shall govern and control.

11.14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower, Lender and their respective successors and assigns, except that (i) Borrower shall not have the right to assign its rights or delegate performance of any of its obligations under any of the Loan Documents, and (ii) neither this Agreement nor any of the other Loan Documents shall inure to the benefit of any trustee appointed in the Chapter 11 Case or any Chapter 7 case of Borrower without Lender's express written consent.

11.15. Confidentiality.

(a) Borrower hereby consents that Lender may issue and disseminate to the public general information describing the credit accommodation entered into pursuant to this Agreement, including the name and address of Borrower and a general description of Borrower's business and may use Borrower's name in advertising and other promotional material.

(b) Lender agrees to take normal and reasonable precautions and exercise due care to maintain the confidentiality of all information identified as "confidential" or "secret" by Borrower and provided to Lender by or on behalf of Borrower, under this Agreement or any other Loan Document,

except to the extent that such information (i) was or becomes generally available to the public other than as a result of disclosure by Lender or (ii) was or becomes available on a nonconfidential basis from a source other than Borrower, provided that such source is not bound by a confidentiality agreement with Borrower known to Lender; provided, however, that Lender may disclose such information (A) at the request or pursuant to any requirement of any governmental authority to which Lender is subject or in connection with an examination of Lender by any such governmental authority; (B) pursuant to subpoena or other court process; (C) when required to do so in accordance with the provisions of any applicable law; (D) to the extent reasonably required in connection with any litigation or proceeding to which Lender or any of its affiliates may be party; (E) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document; (F) to Lender's independent auditors, accountants, attorneys and other professional advisors; (G) to any prospective participant or assignee of all or any part of the Obligations, actual or potential, provided that such prospective participant or assignee agrees to keep such information confidential to the same extent required of Lender hereunder; (H) as expressly permitted under the terms of any other document or agreement regarding confidentiality to which Borrower is party or is deemed party with Lender; (I) to its affiliates, provided that such affiliates agree to keep such information confidential to the same extent required by Lender hereunder, and (J) to any Committee or any unofficial representative of unsecured creditors. Notwithstanding anything herein to the contrary, the information subject to this Section shall not include, and Lender may disclose without limitation of any kind, any information with respect to the "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to Lender relating to such tax treatment or tax structure; provided that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transactions as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the tax treatment or tax structure of the Loans, Letters of Credit and transactions contemplated hereby. Borrower acknowledges and agrees that Lender may discuss Borrower's business and financial condition and assets and liabilities with any Committee of creditors and prospective participants, provided that any such participant or potential participant has executed a confidentiality agreement containing provisions substantially similar to those contained in this Section.

11.16. Credit Inquiries. Borrower hereby authorizes Lender (but it shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning Borrower.

11.17. No Control; No Advisory or Fiduciary Responsibility. Nothing in any Loan Document and no action of Lender pursuant to any Loan Document shall be deemed to constitute control of Borrower by Lender. In connection with all aspects of each transaction contemplated by any Loan Document, Borrower acknowledges and agrees that (a)(i) this credit facility and all related services by Lender or its affiliates are arm's-length commercial transactions between Borrower and such Person; (ii) Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate; and (iii) Borrower is capable of evaluating and understanding, and does understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Lender and its affiliates is and has been acting solely as a principal in connection with this credit facility, is not the financial advisor, agent or fiduciary for Borrower, any General Partner or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Lender and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower, the General Partners and their affiliates, and have no obligation to disclose any of such interests to Borrower or such other Person. To the fullest extent permitted by applicable law, Borrower hereby waives and releases any claims that it may have against Lender and its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by a Loan Document.

11.18. Performance of Borrower's Obligations. Lender may, in its discretion at any time and from time to time, at Borrower's expense, pay any amount or do any act required of Borrower under any Loan Documents or otherwise lawfully requested by Lender to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Lender's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses of Lender under this Section shall be reimbursed by Borrower, on demand, with interest from the date incurred to the date of payment thereof at the rate of interest that is applicable to Prime Loans during the existence of an Event of Default if Lender so elects. Any payment made or action taken by Lender under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

11.19. PATRIOT Act Notice. Lender hereby notifies Borrower that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "PATRIOT Act"), Pub. L. No. 107-56, 115 Stat. 272 (2001), Lender is required to obtain, verify and record information that identifies Borrower, including its legal name, address, tax ID number and other information that will allow Lender to identify it in accordance with the PATRIOT Act. Lender will also require information regarding each personal guarantor, if any, and may require information regarding Borrower's management and owners, such as legal name, address, social security number and date of birth.

[Remainder of page intentionally left blank; Signatures appear on following page.]

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

BORROWER:

**ROBB & STUCKY LIMITED LLLP**

By: **R&S GP, LLC**, a General Partner

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

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

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

By: **Derby Road Investments, Inc.**, a  
General Partner

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

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

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

LENDER:

**BANK OF AMERICA, N.A.**

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

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

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

**EXHIBIT A**

**AUTHORIZED OFFICERS**

**EXHIBIT B**

**BORROWING NOTICE (LOAN)**

To: Bank of America, N.A.  
300 Galleria Parkway, N.W.  
Suite 800  
Atlanta, Georgia 30339  
Attention: Robb & Stucky Loan Administration Officer

Reference is hereby made to the Post-Petition Loan and Security Agreement dated [\_\_\_\_\_, 2011] (as at any time amended, modified, restated or supplemented, the "Loan Agreement") between **BANK OF AMERICA, N.A.** and **ROBB & STUCKY LIMITED LLLP**. Capitalized terms used but not defined herein shall have the respective meanings therefor set forth in the Loan Agreement.

Borrower through its Authorized Officer hereby confirms its prior notice of borrowing given to Lender by telephone on \_\_\_\_\_, 20\_\_ to the effect that Loans of the type and amount set forth below be made on the date indicated by deposit of such amount in the Borrower's Account:

Date of Loan:  
Amount of Loan:

The undersigned hereby certifies that:

1. No Default or Event of Default exists either now or after giving effect to the borrowing described herein; and
2. All the representations and warranties set forth in the Loan Agreement (other than those expressly stated to refer to a particular date) are true and correct as of the date hereof except that the reference to the financial statements in Section 7.02(c) thereof are to those financial statements most recently delivered to you pursuant to Section 8.01 of the Loan Agreement (it being understood that any financial statements delivered pursuant to Section 8.01(b) have not been certified by independent public accountants).
3. After giving effect to Loans requested hereby, the principal amount of all outstanding Loans will not exceed the Borrowing Base.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ROBB & STUCKY LIMITED LLLP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chief Financial Officer



**EXHIBIT C**

**COLLATERAL LOCATIONS**

1. Chief Executive Office  
*[To be completed by Borrower]*
2. Owned Locations  
*[To be completed by Borrower]*
3. Leased Locations  
*[To be completed by Borrower]*
4. Warehouseman and other Bailees  
*[To be completed by Borrower]*
5. Locations of Collateral on Consignment  
*[To be completed by Borrower]*

**EXHIBIT D**

**TRADENAMES**

**EXHIBIT E**

**COMPLIANCE CERTIFICATE**

See attached.

**Schedule 2.14(a)**

Existing Letters of Credit

**Schedule 7.02(a)**

Partners

**Schedule 7.02(b)**

Ownership Interests

**Schedule 7.02(c)**

Material Indebtedness

**Schedule 7.02(d)**

Permitted Liens



**Schedule 7.02(g)**

Litigation

**Schedule 7.02(t)**

Labor Relations

**Schedule 9.01**

Permitted Indebtedness

**Schedule 9.15**

Tradenames